

## Advertisement for Bids

### Cleveland-Cuyahoga County Port Authority Cleveland, Ohio

NOTICE IS HERBY GIVEN by the Board of Directors that Sealed Bids will be received by the Cleveland-Cuyahoga County Port Authority for the:

#### Dock 24 & 26 Master Modernization & Rehabilitation Project

The successful Bidder will perform the work outlined in the Contract Documents. The work includes the reconstruction of 1098' of bulkhead on Dock 26W. The work also includes the rehabilitation and reconstruction of the marine fenders and bollards on Docks 24 and 26. The elevations of docks 24 and 26 will be increased and include new concrete pile caps and pavement. Drainage improvements include rerouting/consolidation of stormwater collection infrastructure, outfalls and the installation of water quality and subsurface water storage devices.

Bids will be received at the office of the Cleveland-Cuyahoga County Port Authority, Attention: Mr. Nicholas A. LaPointe, 1100 West Ninth Street, Suite 300, Cleveland, Ohio 44113 until 10:00 a.m. local time on June 25, 2021.

Specifications ("Bid Packets") will be available and may be obtained at the office of the Cleveland-Cuyahoga County Port Authority ("Port Authority") at 1100 West Ninth Street, Suite 300, Cleveland, Ohio 44113 during regular business hours of 9:00 a.m. through 4:00 p.m. or on the Port Authority website: <https://portofcleveland.com/doing-business/>.

A Small and Disadvantaged Business Enterprise goal of **15%** (subcontracts, materials, supplies) has been set on this Project by the Port Authority, pursuant to the requirements of the Ohio Revised Code 123.152 and C.F.R. 200.321.

A mandatory pre-bid meeting will be held on June 9 at 10:00 a.m. at the General Cargo Terminal, at 775 Erieside Ave., Cleveland, Ohio. Registration to attend this pre-bid meeting is required a minimum of 24 hours in advance. All attendees must wear appropriate PPE and must present a valid government issued photo ID. TWIC credentials are preferred.

Bids must be submitted on the forms furnished in the Bid Packet.

**THE PORT AUTHORITY RESERVES THE RIGHT TO REJECT ANY AND ALL BIDS, TO WAIVE ANY TECHNICALITIES, TO REQUEST ADDITIONAL BIDS AND TO OTHERWISE PROCEED IN ACCORDANCE WITH THE BEST INTERESTS OF THE PORT AUTHORITY.**

Any Bid may be withdrawn or amended prior to the closing time for the receipt of the Bids. If any Bidder has questions, they should contact Nicholas LaPointe of the Port Authority at 216-377-1342 or email [Nicholas.LaPointe@portofcleveland.com](mailto:Nicholas.LaPointe@portofcleveland.com).

**UNDER NO CIRCUMSTANCE WILL THE PORT AUTHORITY BE RESPONSIBLE FOR ANY COSTS INCURRED BY ANY BIDDER IN RESPONDING TO THIS REQUEST FOR BIDS.**

The successful Bidder will be required to enter into a contract with the Port Authority based upon the materials submitted and any mutually agreeable negotiations completed between the parties.

Cleveland-Cuyahoga County Port Authority

William D. Friedman  
President/CEO

# **Cleveland-Cuyahoga County Port Authority**

## **Project: Dock 24 & 26 Master Modernization & Rehabilitation Project**

**Bid Deadline: 10:00 a.m. local time on June 25<sup>th</sup>, 2021**

Instruction to Bidders, General Contract  
Conditions,  
Proposal & Bid Forms, and Form Contract  
Agreement

### **Part A - Instruction to Bidders & Special Conditions**

#### **A-1 ADVERTISEMENT**

An advertisement for bids for the Project is available in one or more newspapers of general circulation in Cuyahoga County and can be examined, along with the publication dates of said ad, at the office of the Port Authority. Copies of the Specifications can also be viewed on the Port Authority website at <https://portofcleveland.com/doing-business/>. The Project will be advertised for a minimum of 21 days.

#### **A-2 PRE-BID MEETING**

A mandatory pre-bid meeting will be held on June 9, 2021 at 10:00 am at the General Cargo Terminal, located at 775 Erieside Avenue in Cleveland, Ohio. All attendees must wear appropriate PPE and must present a valid government issued photo ID. Entry will be through the main entrance gate of the Terminal. All interested bidders are required to attend this pre-bid meeting. Pre-registration is required to attend this meeting and shall be made to the attention of Nicholas LaPointe at [Nicholas.LaPointe@PortofCleveland.com](mailto:Nicholas.LaPointe@PortofCleveland.com) on or before close of business, the day before the scheduled meeting.

#### **A-3 BID DEADLINE**

Sealed bids with the envelope clearly endorsed with the Project's name will be received at the office of the Port Authority, 1100 West Ninth Street, Suite 300, Cleveland, Ohio 44113, until 10:00 am of the Bid opening date and then publicly opened and read. The Bid Opening Date may be extended by the Port Authority if the Port Authority believes good cause exists to do so.

#### **A-4 BID FORM**

Every bid must be made upon the blank Bid Forms and each Bidder must fully, truthfully and accurately complete all portions of the Bid Forms. The Bid Forms must acknowledge all Addenda made hereto and failure to acknowledge all Addenda may cause the bid to be considered non-responsive, which may result in the rejection of the bid. Please note, Addenda are official contract documents. Oral representations, statements, explanations or instructions given before the award of the Contract will not be binding upon the Port Authority.

#### **A-5 REVISIONS PRIOR TO BID OPENING DATE**

The Port Authority reserves the right to revise or amend this Bid Package, including, without limitation, the specifications and/or drawings, prior to the Bid Opening Date. Such revisions and amendments, if any, will be announced by Addenda on the Port Authority's website. If the revisions and amendments require changes the Port Authority considers material, the Bid Opening Date may be postponed by such number of days as in the opinion of the Port Authority will enable Bidders to respond to the material revisions and amendments.

## **A-6 DEFINITIONS**

The following words, or pronouns used in their stead, shall, wherever they appear in the Contract Documents, be construed as follows, unless a different meaning is clear from the context:

1. "Addendum" or "Addenda" shall mean the additional or modified contract requirements prepared by the Port Authority and issued in writing, by means of drawings, specifications, or both, by the Port Authority prior to the receipt of bids. Addenda are official contract documents which could modify contract requirements during the bid process.
2. "Authorized Representative" shall mean the authorized representative of the Port Authority appointed in the Specifications and Supplemental Conditions or otherwise.
3. "Bidder" shall be any entity submitting a bid.
4. "Bid Form" shall be the blank bid form attached to this Bid Package.
5. "Bid Opening Date" is the date given in the caption of this document unless otherwise altered.
6. "Bid Package" consists of the Advertisement described in A-1, Instructions to Bidders, General Conditions, Specifications and Supplemental Conditions, Bid Form and Form Contract and the documents identified herein and any Addenda issued by the Port Authority prior to Bid Opening Date ("Bid Package").
7. "Change Directive" shall have the meaning given to it in B-31.
8. "Change Order" shall have the meaning given to it in B-31.
9. "Contract" or "Contract Documents" shall mean each of the various parts of the contract referred to in Section B-1, both as a whole and severally, and shall include subsidiary agreements or amendments thereto, if any.
10. "Contractor" shall mean the entity awarded the Contract and its permitted successors.
11. "Contract Drawings" shall mean those identified in Section B-1.
12. "Final Acceptance" shall mean final acceptance of the Work by the Port Authority, as evidenced by the certificate of completion and acceptance executed by the Port Authority, a copy of which shall be sent to the Contractor. Such acceptance shall be deemed to have taken place as of the date so stated in such certificate.
13. "Form Contract" shall be the blank contract form attached to this Bid Package.
14. "Law" or "Laws" shall mean all applicable laws including the Constitutions of the State of Ohio and United States, statutes and regulations of the United States, the State of Ohio or any of its political subdivisions or agencies, resolutions of the Port Authority, and any municipal ordinance, rule or regulation having the force of law which is applicable to the Contract, the Work or the Bid Package.
15. "MARAD" shall mean the U.S. Department of Transportation Maritime Administration.

16. "Materialman" shall mean any entity other than employees of the Contractor, which contracts with the Contractor, or any Subcontractor to fabricate or deliver, or who actually fabricates or delivers, materials, plant, or equipment to be expended, used or incorporated in the Work.
17. "ODOT" shall mean the Ohio Department of Transportation.
18. "President" shall mean the President of the Port Authority.
19. "Port Authority" shall mean the Cleveland-Cuyahoga County Port Authority.
20. "Prospective Bidders" or "Potential Bidders" shall mean all who have, in writing, provided their name, address and facsimile numbers to the Port Authority and specifically stated their interest in the Project.
21. "Site" shall mean the area upon which the Work is to be performed, and such other areas adjacent thereto as may be designated by the Authorized Representative.
22. "Specifications" shall mean all of the directions, requirements, standards of performance applying to the Work as hereinafter detailed.
23. "Standard" shall have the meaning given to it in Section B-18.
24. "Subcontractor" shall mean anyone (other than the Contractor and its employees) who performs work (other than or in addition to the furnishing of materials, plant or equipment) at or about the Site, directly or indirectly for or on behalf of the Contractor (whether or not in privity of contract with the Contractor), but shall not include any person who furnished merely his own personal labor or his own personal services.
25. "Work" shall include the furnishing of all labor, materials, tools, equipment, incidentals, and any other thing necessary or required for the full performance of the Contract by the Contractor.
26. "Workman", "Laborer" or "Workingman" shall mean any employee of the Contractor, or of a Subcontractor, who performs personal labor or personal services at the Site.

#### **A-7 CORRECTNESS OF BIDDING DOCUMENTS**

Prospective Bidders shall examine the documents of this Bid Package and note any errors, inconsistencies, omissions, ambiguities or deficiencies bearing on the performance of the Work or the interpretation of the Contract Documents. Upon discovery of any errors, inconsistencies, omissions, ambiguities or deficiencies, Prospective Bidders shall promptly notify the Port Authority in writing and request clarification. The Port Authority is not bound to respond to any such request. The Port Authority will make any corrections it deems necessary to the Contract Documents by issuing an Addendum before the Bid Opening Date.

By placing a Bid, Prospective Bidder waives any claim based on any error, inconsistency, omission, ambiguity or deficiency in the Contract Documents known to it or which could have been reasonably discovered by it.

#### **A-8 NAME OF BIDDER**

Each bid must be clearly signed with the full accurate legal name and address of the entity

making the bid and of each person, firm or corporation having a 5% or more interest in it and any fictional business or trade name used by said entity. In case of a partnership, the firm name and address and name and address of each individual partner must be given. In case of a corporation or limited liability company, the title of the officer signing must be stated, and each officer is warranting that it is duly authorized by signing. In case of an individual, use the term "doing business as \_\_\_\_\_" or "sole owner."

**A-9 BIDDER'S AFFIDAVIT**

Each Bidder is required to submit with its bid the Port Authority's standard bid affidavit, a copy which is enclosed and available from the Port Authority on request. Contractor shall also familiarize himself/herself with the certifications by which the Contractor is agreeing to or verifying through the signature and submission of a bid.

**A-10 BID BOND, CERTIFIED OR CASHIER'S CHECK, LETTER OF CREDIT**

Each bid must be accompanied by a bid bond signed by a surety company authorized to do business in Ohio, or by a certified check, cashier's check, or Letter of Credit in the sum of 10% of the amount of the bid. Said bond, check or Letter of Credit shall be security for entry into a contract by Bidder and security for Bidder providing proper security for its performance if the bid is accepted. Any bid bond must be in proper form to establish the surety company's liability to Port Authority, which form is subject to approval by Port Authority's counsel.

**A-11 DISPOSITION OF BID BOND, CERTIFIED OR CASHIER'S CHECK, LETTER OF CREDIT**

- a. The bid bond, certified or cashier's check, or Letter of Credit shall be forfeited and the principal amount of said bid bond shall be paid to the Port Authority, or said check or Letter of Credit shall be surrendered to the Port Authority as the agreed amount of liquidated damages in case of failure to enter into a Contract. The bid bond, check or Letter of Credit will be released or returned to the Bidder if the bid is rejected.
- b. If the bid is accepted, the bid bond, certified or cashier's check or Letter of Credit will be returned after the form Contract has been signed and the payment and performance bond herein required furnished and approved by the Port Authority. All bid bonds, certified or cashier's checks or Letters of Credit will be retained until Bidder has signed and secured the performance of its Contract. Any Bidder in default of signing and properly securing the Contract awarded to it, shall forfeit the bid bond, certified or cashier's check or Letter of Credit to the Port Authority as liquidated damages. If any or all of the Bidders fail to enter into a Contract or properly secure its performance, the Port Authority may retain any or all of the bid bonds, checks or Letters of Credit of such Bidders so failing and reject all other bids.

**A-12 UNACCEPTABLE BIDS**

A bid may be rejected in the Port Authority's sole and absolute discretion from any entity that is or was in arrears or is or was in default to the Port Authority upon any debt, contract or upon any obligation to the Port Authority.

**A-13 EVIDENCE OF ABILITY TO DO WORK**

Bidders must present evidence to the Port Authority, with their bid, that they are fully competent and have the necessary facilities, experience, personal and pecuniary resources to deliver the material and complete the Work in a satisfactory manner and within the time specified. Failure to submit this information may be grounds for bid rejection or determination that a Contractor is unresponsive and irresponsible.

#### **A-14 APPROXIMATE QUANTITIES**

Actual contract quantities may vary from those estimated by the Port Authority to perform the scope of work outlined in the bid documents. It is the responsibility of the Contractor to verify the quantities listed in the Contract Documents. The Port Authority reserves the right to increase to perform additional work outside of work highlighted in the bid documents, or to omit any one or more items, at the unit price bid. Upon completion of the Project a close out Change Order will be issued to finalize quantities on the Project and increases/decreases in quantity will be adjusted in accordance with 104.02 of ODOT's C&MS.

#### **A-15 EXAMINATION OF SITE OF WORK**

- a. Bidders are strongly encouraged to satisfy themselves as to all of the relevant existing conditions of the Site including existing improvements, historic use and drawings, utilities, traffic patterns and public parking, lake and groundwater elevations/trends, back flooded stormwater infrastructure, proximity of active rail track, dock operations, facility activities, sequencing, and pay particular attention to any soil condition or other factors that may affect the progress or performance of the Work. The Port Authority makes no guarantee, either express or implied, or any representations regarding Site conditions. Bidder's submission of a bid is the acknowledgment of Bidder that it has inspected the Site and informed itself of observable Site conditions, or has waived its right to do so, and, in any event, has assumed the risk of all Site conditions, whether latent or patent.
- b. Subject to the convenience of the Port Authority, Prospective Bidders may visit the Site and take such other steps as may be necessary to ascertain the nature and location of the Work and Site Conditions. Prospective Bidders will be permitted to explore the Site by making borings, or dig test pits or making other test so long as it does not interfere with Port Authority business or any other users of the Site. In such event, the Work shall be done at the sole expense and risk of the Potential Bidder, who shall maintain the Site in a safe condition and restore it to its previous condition upon completion of its test. Potential Bidders desiring to visit the Site must make arrangements for such visit by contacting the Authorized Representative and have insurance acceptable to the Port Authority.

#### **A-16 MATERIAL SAMPLES**

Before any Contract is awarded, the Bidder may be required to furnish a complete certified statement of the origin including the signature of a Buy American affidavit, composition, and manufacture of any or all materials to be used in the Work, together with samples, which samples may be subjected to tests to determine its quality and fitness for the Work.

#### **A-17 CONSIDERATION OF RESPONSIVE BIDS AND RESPONSIBLE BIDDERS**

- a. All responsible and responsive bids shall be considered. The Port Authority reserves the right to meet with any Bidder after the Bid Opening Date but prior to the awarding of the Contract to ascertain the responsiveness of the bid and responsibility of the Bidder.
- b. To be considered responsive, a bid must comply in all respects with the terms and conditions of the Bid Package and must not contain any irregularities or deviations from the Bid Package, which would affect the amount of the Bid or otherwise give the Bidder a competitive advantage. The bid must constitute a definite and unqualified offer to perform the Work in accordance with the terms and conditions of the Bid Package. Each bid is deemed submitted on the Plans, Specifications, Bid Documents and other Contract Documents, including, but not limited to, all Addenda. The Bidder will be required to comply with all requirements of the Contract Documents, regardless

of whether the Bidder had actual knowledge of the requirements and regardless of any statement, clarification, exception or qualification made by the Bidder which might indicate a contrary intent.

- c. Factors which the Port Authority shall consider in determining whether a Bidder is responsible included, but are not necessarily limited to, the experience of the Bidder, its financial condition, its conduct and performance on previous contracts, its facilities, its management skills and its ability to execute a contract properly, its experience working at active maritime transportation and cargo handling facilities, its experience performing work with ODOT on projects that have Federal/State funding, and its experience working along the lakefront in high water/saturated subsurface conditions.

**A-18 REJECTION OR ACCEPTANCE OF BIDS; WAIVER OF NONCOMPLIANCE**

- a. The Port Authority will award the Contract(s) hereunder to the lowest responsive and responsible Bidder as determined in the discretion of the Port Authority and Sections 9.312 and 4582.12, Ohio Revised Code.
- b. The Port Authority reserves the right to reject any or all bids. The Port Authority reserves the right to act in its best interest in awarding a Contract. Any bid, which is incomplete, conditional, ambiguous, or which contains additions not called for, irregularities of any kind, or in any manner does not strictly comply with this Bid Package, may be rejected.

**A-19 WITHDRAWAL OF BID**

No bid may be withdrawn after the bid deadline has passed with the Port Authority.

**A-20 TIME OF AWARD**

Unless further time is required for analysis of the responsiveness of the bids or investigation of the responsibility and ability of any Bidder and in the absence of a limitation upon the time of acceptance set forth in the bid, the Port Authority will ordinarily notify the successful bidder its intent to award or reject all bids received hereunder not later than thirty (30) days following the opening of bids although it reserves the right to unilaterally extend that time in a written notice to Potential Bidders, but in no event shall it be longer than sixty (60) days from Bid Opening Date. Any extension of time beyond that date shall be subject to agreement between said Bidder and the Port Authority. The Port Authority anticipates taking this Project before our Board for authorization to award at our July Board meeting, presently scheduled for July 15<sup>th</sup>, 2021.

**A-21 EXECUTION OF CONTRACT**

After award, within three (3) days of being provided with a final version of the Form Contract attached in draft form hereto, with blanks appropriately completed, Bidder shall execute the Form Contract and return to Port Authority. The finalized Form Contract will be sent to the successful Bidder following Board approval and authorization of the Contract.

**A-22 PERFORMANCE AND PAYMENT BOND**

The Contractor shall furnish a payment and performance bond to the Port Authority in the form specified by Sections 153.54, 153.57 and 153.571 of the Ohio Revised Code, for the amount at least equal to 100 percent of the estimate as security for the faithful performance of its Contract. In addition to the Port Authority, ODOT and MARAD shall be named as an obligee.

**A-23 RELEASE OF BOND**

The Contractor's bond will be released in the manner provided by law.

#### **A-24 FEDERAL PREVAILING WAGE RATES & PAYROLL REQUIREMENTS**

This Project must comply with the provisions of the Davis-Bacon and Related Act. Please refer to Section 18.1 of the referenced U.S. Department of Transportation Maritime Administration Agreement. For up-to-date information regarding the Davis-Bacon and Related Act, please visit the Federal website at: <https://www.fhwa.dot.gov/construction/cqjit/dbacon.cfm>. Additional bid requirements related to prevailing wage and certified payrolls can be found in section B-26.

#### **A-25 SMALL & DISADVANTAGED BUSINESS REQUIREMENTS**

The Contractor shall be responsible for compliance with the requirements of 2 C.F.R. 200.321 ("Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms"). The Port Authority will require the Contractor to develop and submit, following award, a Project specific plan which outlines the affirmative steps the Contractor will do to comply with the following and to achieve the goals outlined below:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

*Not less than quarterly and upon completion of the Project prior to final closeout, the Contractor shall provide the Port Authority with a report outlining the Contractor's actions, including good faith efforts, taken to comply with the above requirements. The Port Authority has placed an overarching small and disadvantage bid goal, **inclusive of the State specific EDGE participation highlighted in A-26, of 15% on this Project. With the Contractor's bid, the Port Authority requires the Contractor to submit a participation plan outlining how the Contractor plans on meeting the above goal with their bid to be considered fully responsive and responsible.***

Please note that the Port Authority does not independently certify firms. Firms shall be certified by other local, state, Federal government agencies for consideration/participation on this Project. State and Federal certification is preferred over local certifications. The Waiver Process for EDGE Goals outlined in A-26 shall carry across the entire small, disadvantage and EDGE participation on this Project and shall be incorporated into the Contractor's Project specific plan.



## **A-26 ENCOURAGING DIVERSITY, GROWTH, & EQUITY (EDGE)**

Pursuant to Ohio Revised Code 123.152, the Ohio Department of Transportation has established a **0%** EDGE participation goal on this project. While the Ohio Department of Transportation will not require EDGE firm participation, it is encouraged by the Port Authority. EDGE participation will count towards the goal outlined in the Advertisement and in A-25. EDGE certified firms are those who have been certified by the Ohio ODOT of Administrative Services. The Contractor must use its best efforts to solicit quotes from and to utilize EDGE subcontractors/suppliers on this project.

### **WAIVER PROCESS FOR EDGE GOAL**

The Contractor must document the progress and efforts being made in securing the services of EDGE subcontractors in similar fashion as required in A-25 for all firms. In the event the Contractor is unable to meet the EDGE Goal placed on this Local Let project, a request for a waiver of all or part of the goal may be made. The written request must indicate a good faith effort was made to meet the goal and be sent to the LPA contracting authority. The LPA forwards the request with recommended action to the ODOT District. The ODOT District then makes recommendation and forwards the request to the Administrator, Office of Civil Rights, 1980 West Broad Street, Columbus, Ohio, 43223. There will be no extension of time for the project granted if the Contractor wishes to avail himself of this process. If an item of work subcontracted to a firm is non-performed by LPA or the subject of an approved VECP, the Contractor may request a waiver for the portion of work excluded.

The Contractor must provide the following information and documentation when requesting EDGE goal waiver:

1. Dollar value and % of EDGE goal. Dollar value and % of waiver request.
2. Signed copy of each subcontract or purchase order agreement between the prime and EDGE subcontractor/supplier utilized in meeting the contract goal.
3. Copy of dated written communication, fax confirmation, personal contact, follow up and negotiation with the EDGE firm.
4. Copy of dated written communication and/or fax confirmation that bidder solicited and provided EDGE with adequate information about the plans, specifications and requirements of the contract in a timely manner to assist them in responding to a solicitation.
5. Copy of dated written communication and/ or fax confirmation of each noncompetitive EDGE quote that includes the dollar value of each reference item and work type.
6. Copy of dated written communication and/ or dated fax confirmation of EDGE firms that were not interested in providing a quote for the project.
7. Documentation of all negotiating efforts and reason for rejecting quotes from EDGE firms.
8. Documentation of good faith efforts (GFE) to meet the EDGE subcontract goal, by looking beyond the items typically subcontract or consideration of subcontracting items normally performed by the prime as a way to meet the EDGE goal.

The Administrator will review the submitted documentation and issue a written decision within ten (10) business days. The Contractor may request administrative reconsideration within 14 days of being informed that it did not perform a GFE. The Contractor must make this request in writing to:

Ohio Department of Transportation  
Attention: Administrator, Office of Contracts  
1980 West Broad Street  
Columbus, Ohio 43223

The reconsideration official will not have played any role in the original determination that the Contractor did not document sufficient good faith effort. As part of this reconsideration, the

Contractor will have the opportunity to provide written documentation or an argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. ODOT will send the Contractor a written decision on reconsideration explaining the basis for finding that the Contractor did or did not meet the goal or make adequate good faith efforts. The result of the reconsideration process may be appealed to the Franklin County Court of Common Pleas.

### **AFFIDAVIT OF SUBCONTRACTOR PAYMENT**

The Ohio Revised Code 123.152 requires the Ohio Department of Transportation (ODOT) to monitor and verify that work subcontracted to Encouraging Diversity, Growth and Equity (EDGE) firms is actually performed by the EDGE firms. The affidavit seeks to verify actual payments made to EDGE firms on the project. Each EDGE firm must verify the actual payment amount.

The blank spaces in the affidavit must be filled in correctly, where indicated. The affidavit must be signed by the Contractor and subcontractor, or by the subcontractor and EDGE subcontractor, if applicable. By signing the affidavit, the noted firm agrees that the payment amount recorded is true and accurate as of the payment time period.

Completed and signed affidavit shall be mailed to the Ohio Department of Transportation, Office of Business & Economic Opportunity, 1980 West Broad Street, Columbus, Ohio 43223.

### **SANCTIONS**

The Ohio Department of Transportation will issue sanctions if the Contractor chooses not to request a waiver, the Contractor fails to comply with the contract requirements and/or fails to demonstrate the necessary good faith effort.

The Ohio Department of Transportation may impose any of the following sanctions:

- (1) letter of reprimand;
- (2) liquidated damages computed up to the amount of goal dollars not met;
- (3) cross-withhold from future projects;
- (4) contract termination and/or
- (5) other remedies available by law including suspension, revocation, and/or debarment.

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

- (1) the magnitude and the type of offense;
- (2) the degree of the Contractor's culpability;
- (3) any steps taken to rectify the situation;
- (4) the Contractor's record of performance on other projects including, but not limited to:
  - a. annual EDGE participation over EDGE goals;
  - b. annual EDGE participation on projects without goals;
  - c. number of complaints the Ohio Department of Transportation has received from EDGE firms regarding the Contractor; and
  - d. the number of times the Contractor has been previously sanctioned by the Department of Transportation; and
- (5) whether the Contractor falsified, misrepresented, or withheld information.

ODOT's Office of Diversity, Opportunity, and Inclusion assigned the EDGE participation goal for this Project.

### **A-27 AFFIDAVIT OF SUBCONTRACTOR PAYMENT**

The Code of Federal Regulations 49, 26.37(b), requires the Port Authority to monitor and verify that work committed to Small and Disadvantaged Business Enterprise (DBE) firms at Contract award is actually performed by the Small and DBEs (A-25). Additionally, the Port Authority is required to report the DBE participation on each project, including all work, materials or service

sublets. Therefore, it is the Port Authority's responsibility to discern whether payments are made to DBE firms. An affidavit is to be completed and signed by the Contractor within 15 days of the completion of the project and submitted to the Port Authority. The affidavit seeks to verify actual payments made to DBE firms on the project. Each DBE firm must verify the actual payment amount. The Port Authority will also request this for all EDGE firms that participated on the Project.

The blank spaces in the affidavit must be filled in correctly, where indicated. The affidavit must be signed by the prime Contractor and subcontractor, or by the subcontractor and DBE subcontractor, if applicable. By signing the affidavit, the noted firm agrees that the payment amount recorded is true and accurate as of the payment time period.

The completed and signed affidavits shall be provided to the Port Authority for the Project record and shall be made available to MARAD and the Department of Transportation upon request. The submission of these forms as part of closing out the Project shall be included in the Contractor's plan highlighted in A-25.

#### **A-28 ODOT 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. When determining the lowest, responsive and responsible bidder in accordance with sections 4582.12 of the Ohio Revised Code (A-17), the Port Authority will evaluate ODOT prequalifications the Contractor and major subcontractors have related to this scope of work when verifying the experience of the bidder. ODOT prequalification is required to bid on this Project and the applicable prequalification categories include: 08 Temporary Soil Erosion & Sediment Control, 09 Aggregate Bases, 10 Flexible Paving, 12 Rigid Paving, 15 Sawing, 16 Flexible Replacement, 17 Rigid Pavement Replacement, 23 Reinforcing Steel, 27 Expansion & Contraction Joints, 33 Tieback Installation, 34 Earth Retaining Structures, 35 Drainage, 38 Misc. Concrete, 39 Maintenance of Traffic, 45 Pavement Markings, 50 Railroad Track Construction, 53 Piling, & 55 Fiber Optic Cable Installation, Splicing, Termination and Testing. Subcontractors are not subject to the pre-qualification requirement but are recommended. Note, the "prime" contractor is not required to perform all of the tasks for which the firm is prequalified and the prime is not required to be prequalified in every category, however, the "prime" Contractor must perform no less than 30 percent of the total original contract price and must be ODOT prequalified to perform this work.

#### **A-29 BUY AMERICAN ACT REQUIREMENTS**

By submitting a bid, the Contractor affirms during their ability to comply with the Buy American requirements below and the State of Ohio (O.R.C. 153.011). If there is a conflict, the more stringent requirement between the Federal requirements outlined below and those included in Ohio Revised Code will govern as determined by the Port Authority. The Port Authority will audit the Contractor's fulfillment of the requirement through the submission of delivery tickets and TE-24s on all permanent materials, Contractor will be required to submit proof all materials comply with the below requirements.

- (1) The Recipient shall apply, comply with, and implement all provisions of the Buy American Act, 41 U.S.C. §§ 8301-8305. The Project is a public work of the Federal Government under 41 U.S.C. § 8301.
- (2) This Section 18.2 implements 41 U.S.C. §§ 8301-8305, the Buy American Act, by providing a

preference for domestic construction material. The Recipient shall not use foreign construction materials in performing this agreement, except that:

- the Recipient may use a commercially available off-the-shelf item under 41 U.S.C. § 1907, regardless of its components, if the item is manufactured in the United States;
  - the Recipient may use information technology that is a commercial item;
  - the Recipient may use foreign construction materials that are listed at 48 C.F.R. 25.104; and
  - the Recipient may use foreign construction materials if MARAD has authorized their use under Section 18.2(d).
- (3) If the Recipient uses foreign construction material in violation of Section 18.2(b), the Port Authority may disallow and deny reimbursement of costs incurred by the Recipient and take other remedial actions under Article 16 and 2 C.F.R. 200.338.
- (4) The Port Authority may authorize the Recipient to use foreign construction material, if MARAD and the Port Authority determines that:
- applying the Buy American statute to the construction material would be impracticable or inconsistent with the public interest;
  - the construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or
  - the cost of domestic construction material is unreasonable.

The cost of a domestic construction material is unreasonable under Section 18.2(d)(3) if the cost of that material exceeds the cost of comparable foreign material by more than 6 percent.

- (5) The Contractor may request that MARAD, via the Port Authority, authorize the Contractor to use foreign construction material under Section 18.2(d). If the Contractor makes a request under this Section 18.2(d), the Recipient shall provide adequate information for MARAD to evaluate the request, including:
- a description of the foreign and domestic construction materials;
  - unit of measure;
  - quantity;
  - price, including all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued);
  - time of delivery or availability;
  - location of the construction project;
  - name and address of the proposed supplier;
  - a detailed justification of the reason for use of foreign construction materials identifying the specific basis for an exception under Section 18.2(d);
  - if the Contractor requests authorization under Section 18.2(d)(3), a reasonable survey of the market and a full price comparison measuring the relative costs of the available domestic and foreign construction materials; and
  - if the Contractor submits the request after contract award, an explanation why the Recipient could not have, before contract award: (A) reasonably foreseen the need for the determination and (B) requested the determination.

Note, the Port Authority is not responsible for any construction delays and/or additional Project costs if a waiver is not granted by MARAD or if MARAD makes a recommendation to the Port Authority to not advance the submission of a waiver. Contractor shall bid and construction the Project without needed to obtain any waivers.

(6) The Contractor acknowledges that:

- this agreement is not a Government procurement contract;
- acquisitions of supplies, services, or construction materials by the Contractor under this agreement are not acquisitions by the Government; and
- the Free Trade Agreement exceptions to the Buy American Act as provided by 48 C.F.R. Part 25, Subpart 25.4 are inapplicable to this Agreement.

(7) In this Section 18.2, the following definitions apply:

**“commercially available off-the-shelf (COTS) item”**

- means any item of supply (including construction material) that is: (A) a commercial item as defined by 48 C.F.R. 2.101; (B) sold in substantial quantities in the commercial marketplace; and (C) offered to the Government, under an agreement, without modification, in the same form in which it is sold in the commercial marketplace; and
- does not include bulk cargo, as defined in 46 U.S.C. § 40102(4), such as agricultural products and petroleum products.

**“construction material”**

- means an article, material, or supply brought to the construction site by the Recipient for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site.

**“cost of components” means—**

- For components purchased by the Recipient, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- For components manufactured by the Recipient, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

**“domestic construction material” means—**

- An unmanufactured construction material mined or produced in the United States; or

- A construction material manufactured in the United States, if: (A) the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or (B) the construction material is a COTS item.

**“foreign construction material”**

- means a construction material other than a domestic construction material.

**“United States”**

- means the 50 States, the District of Columbia, and outlying areas.

**A-30 CERTIFICATION AGAINST DEBARMENT, SUSPENSION, & OTHER RESPONSIBILITY MATTERS (2. C.F.R. Parts 180 & 1200)**

The assurances and certifications below are 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 MARAD approval or that is estimated to cost \$25,000 or more – as defined in 2 C.F.R. Parts 180 and 1200.

By signing and submitting a bid the Contractor is providing the assurances and certifications as a First Tier Participant and all subcontracts and purchase orders will be required to meet the certifications of Lower Tier Participants as set out below:

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

- a. 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,” “civil judgment,” “debarred,” “suspended,” “ineligible,” “participant,” “person,” “principal,” and “voluntarily excluded,” as used in this clause, are defined in 2 C.F.R. Parts 180 and 1200. “First Tier Covered Transactions” refers to any covered transaction between a Recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to

the participant who has entered into a covered transaction with a Recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers to 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 System for Award Management website (<https://www.sam.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.

**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, including a civil settlement, 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.

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

(Applicable to Contractor and all subcontracts, purchase orders and other lower tier transactions requiring prior MARAD approval or estimated to cost \$25,000 or more - 2 C.F.R. Parts 180 and 1200)

a. The prospective lower tier participant is providing the certification set out below.

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

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

d. The terms "covered transaction," "civil settlement," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 C.F.R. 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 Recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a Recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

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

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 System for Award Management website (<https://www.sam.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.

**A-31 EEO CERTIFICATION CLAUSE**

With the submission of their bid, Contractor shall be required to complete the EEO certification clause on the Bid Form.

Additionally, the State of Ohio has the following EEO certification requirement. With the submission of a bid, the Contractor agrees to the following. The hiring of employees for the performance of work under this contract shall be done in accordance with Ohio Revised Code sections 153.59 and 153.591, the Governor's Executive Order of January 27, 1972, including Appendices "A" and "B" and the Governor's amended Executive Order 84-9 of November 30, 1984. The successful contractor shall not discriminate against or intimate any person hired for the performance of the work by reason of race, religion, color, sex (including pregnancy, gender identification and sexual orientation), national origin, ancestry, age, military status, genetic information, or disability as that term is defined in the Americans with Disabilities Act. For any violation the contractor shall suffer such penalties as provided for in Ohio Revised Code section 153.60, the Governor Executive Order of January 27, 1972. The bidder also agrees that upon the award of this contract he shall incorporate this certification in all subcontracts on this project regardless of tier.

**A-32 CERTIFICATION OF NONSEGREGATED FACILITIES**

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

(b) Bidders are cautioned as follows: By signing this bid, the bidder has agreed to the provisions of the "Certification of Nonsegregated Facilities" in this proposal. This certification provides that the bidder does not maintain or provide for his employees

facilities which are segregated on a basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the bidder will not maintain such segregated facilities.

- (c) Bidders receiving Federal-aid construction contract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, will be required to provide for the forwarding of the following notice to prospective subcontractors for construction contracts and material suppliers where the subcontracts or material supply agreements exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

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

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

**A-33 RESERVED**

**A-34 TITLE VI RELATED STATUTES NON-DISCRIMINATION STATEMENT ASSURANCE**

The Contractor in accordance with provision of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. Section 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award. Additionally, no persons in the United States shall, on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Contractor receives Federal financial assistance from DOT, including MARAD.

**A-35 CERTIFICATION OF COMPLIANCE WITH AFFIRMATIVE ACTION PROGRAMS**

In accordance with Ohio Administrative Code §9.47, before any Contract is awarded, the Port Authority 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.

**A-36 RESERVED**

**A-37 ON-THE JOB TRAINING (OJT)**

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 Port Authority will be made to the Contractor for providing this training. However, if the Contractor fails to provide adequate training and cannot show good faith efforts on its part to provide adequate training, it will be subject to a formal compliance review to determine the Contractor's efforts in meeting the EEO laws and regulations.

The Contractor must provide the following reports:

1. CR1 Report
  - A. To be completed on each trainee
  - B. To be filled out at the start of training and finish of training or at the end of the year, whichever comes first
  - C. To be submitted to the Port Authority.

2. Tracking will be on an annual basis. The Contractor must submit the subsequent CR1 to the Port Authority.

The prime or subcontractor conducting the training must be involved in at least one Federal project per calendar year in order to get 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 review and approval, to the Port Authority.

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.

#### **A-38 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.

**A-39 LIMITATION ON USE OF CONTRACT FUNDS FOR LOBBYING**

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

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 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 grant agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or grant agreement.

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 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 grant agreement, the undersigned shall complete and submit Standard Form-LLL (Rev. 7-97), "Disclosure of Lobbying Activities," in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and grant agreements) and that all subrecipients shall certify and disclose accordingly.

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.

**A-40 DRUG-FREE WORKPLACE REQUIREMENTS FY 2019 PIDP GRANTS (49 C.F.R. Part 32)**

The Contractor certifies that it will, or will continue, to provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Recipient's workplace, and specifying the actions that will be taken against employees for violation of such prohibition.
2. Establishing an ongoing drug-free awareness program to inform employees about:
  - (a) The dangers of drug abuse in the workplace;

- (b) The Recipient's policy of maintaining a drug-free workplace;
  - (c) Any available drug counseling, rehabilitation, and employee assistance programs; and,
  - (d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
3. Making it a requirement that each employee to be engaged in the performance of work supported by the grant award be given a copy of the statement required by paragraph 1.
  4. Notifying the employee in the statement required by paragraph 1 that, as a condition of employment supported by the grant award, the employee will:
    - (a) Abide by the terms of the statement; and
    - (b) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.
  5. Notifying the agency in writing, within ten calendar days after receiving notice under paragraph 4(b) from an employee or otherwise receiving actual notice of conviction. Employers of convicted employees must provide notice, including position title, to the Department. Notice shall include the order number of the grant award.
  6. Taking one of the following actions, within 30 days of receiving notice under paragraph 4(b), with respect to any employee who is so convicted:
    - (a) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended, or
    - (b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency.
  7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1–6.
  8. The Recipient may, but is not required to, provide the site for the performance of work done in connection with the specific grant. For the provision of services pursuant to this agreement, workplaces include outstations, maintenance sites, headquarters office locations, training sites and any other worksites where work is performed that is supported by the grant award. If the Recipient does so, please insert in article 7 of this agreement the following:

Identify the Places of Performance by listing the street address, city, county, state, zip code. Also identify if there are workplaces on file that are not identified in this section of this agreement.

#### **A-41 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 Port Authority.

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 Port Authority 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.

#### **A-42 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 Port Authority before the Contract will be executed by the Port Authority.

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

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

#### **A-43 UNRESOLVED FINDING FOR RECOVERY, TAX LIABILITY, OR FELONY CONVICTION**

The Contractor affirmatively represents to the Port Authority 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 Port Authority, or an action for recovery may be immediately commenced by the Port Authority and/or for recovery of said funds.

As required by sections 744 and 745 of Title VII, Division D of the Consolidated Appropriations Act, 2019 (Pub. L. 116-66), and implemented through USDOT Order 4200.6, the Port Authority is unable to enter into an Agreement with corporations that:

(1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a

timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless a Federal agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or

(2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless a Federal agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government.

By submitting a bid, the Contractor therefore agrees:

1. **Definitions.** For the purposes of this exhibit, the following definitions apply:

**“Covered Transaction”** means a transaction that uses any funds under the Federal Grant award and that is a contract, memorandum of understanding, cooperative agreement, grant, loan, or loan guarantee.

**“Felony Conviction”** means a conviction within the preceding 24 months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the United States Code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. 3559.

**“Participant”** means the Port Authority, an entity who submits a proposal for a Covered Transaction, or an entity who enters into a Covered Transaction.

**“Tax Delinquency”** means an unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

2. Prior to Award, the Port Authority will perform a mandatory check in the System for Award Management “SAM” before entering into the Agreement with the Contractor at <http://www.sam.gov/> for an entry describing that entity.

3. **Mandatory Certifications.** Before entering into this Agreement with the Contractor, the Port Authority shall:

- (1) Certify whether the entity has a Tax Delinquency; and
- (2) Certify whether the entity has a Felony Conviction.

4 **Prohibition.** If

- (1) the SAM entry for an entity indicates that the entity has a Tax Delinquency or a Federal Conviction;
- (2) an entity provides an affirmative response to either certification in section 3; or
- (3) an entity’s certification under section 3 was inaccurate when made or became inaccurate after being made

then a Participant shall not enter or continue a Covered Transaction with that entity unless MARAD has determined in writing that suspension or debarment of that entity are not necessary to protect the interests of the Government.



5. **Mandatory Notice to MARAD.**

(a) If the SAM entry for a Participant indicates that the Participant has a Tax Delinquency or a Felony Conviction, the Recipient shall notify MARAD in writing of that entry.

(b) If a Participant provides an affirmative response to either certification in section 1, the Recipient shall notify MARAD in writing of that affirmative response.

(c) If the Recipient knows that a Participant's certification under section 1 was inaccurate when made or became inaccurate after being made, the Recipient shall notify MARAD in writing of that inaccuracy.

6. **Flow Down.** For all Covered Transactions, including all tiers of subcontracts and subawards, the Port Authority requires the Contractor to:

(1) require the SAM check in section 2;

(2) require the certifications in section 3 (See Question 15 On Bid Form);

(3) include the prohibition in section 4; and

(4) require all Participants to notify the Port Authority in writing of any information that would require the Port Authority to notify MARAD under section 5.

**A-44 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 Port Authority. 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 Port Authority 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 Port Authority. The provisions of this article shall become effective at the time the Port Authority 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 Port Authority for all antitrust claims and causes of action regarding subcontractors.

**A-45 PERMITS & PERMIT COMPLIANCE**

The Permits included as reference Contract documents 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 and an assessment or fine, is made or levied against MARAD, Ohio Department of Transportation, or the Port Authority, the Contractor shall reimburse the Department and/or the Port Authority 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.

During the progression of work, the Port Authority will routinely monitor the Contractor's compliance with the permit requirements/commitments and notify the Contractor of any deficiencies. The Contractor will be required to immediately address any deficiencies at no additional cost to the Port Authority.

**A-46 NOTICE OF HIGH WATER & HISTORIC LAKE ERIE ELEVATIONS**

Lake Erie water elevations vary considerably based on long term drainage variations in the Great Lakes basin seasonally and due to short-term weather-related events. Please note that recent Lake Erie water levels have been considerably higher than long term averages and have exceeded historic water elevations and the ordinary high-water mark of +573.4 feet IGLD 1985. As result of the Project's proximity to the Lake and historic water levels, the Contractor should anticipate back flooded drainage infrastructure and higher than normal ground water elevations. Contractor shall be responsible for responsibly managing water on site, this includes dewatering excavations. No additional payments or claims shall be made related to high water elevations experienced on site.

**A-47 AS DIRECTED BY ENGINEER QUANTITIES & BID ITEMS**

This Project contains bid items that are designated "AS DIRECTED BY ENGINEER". Please note, these bid items will be exercised at the discretion of the Port Authority's Authorized Representative. The Contractor shall not assume that these bid items will be exercised by the Port Authority. These bid items may be authorized in whole or in part by the Port Authority. If the quantities underrun, they shall not be considered a "Significant Change" subject to the factors included in Table 104.02-2. If eliminated or not performed, the Port Authority will not provide compensation to the Contractor. Upon determining the final quantities performed in accordance with 109.12.C, any unused balances under "AS DIRECTED BY ENGINEER" will be zeroed out by the Port Authority.

**A-48 PORT AUTHORITY LED PROJECT**

This Project is an Ohio Department of Transportation Locally Administered Transportation Project in which the Cleveland-Cuyahoga County Port Authority is the managing Local Agency. Please note, the documents prepared for this Project are governed by the Port Authority's contract and the project specific PS&E package. These documents are supported by applicable, referenced ODOT specifications and other State and Federal provisions, where applicable. The Contractor shall not assume that the Port Authority's standards and specifications are consistent with the Ohio Department of Transportation. The Contractor shall thoroughly familiarize themselves with the requirements of the Contract documents including all of the notes contained in the PS&E package. Notes detailed in the PS&E package could include embedded Contractor quality control measures and reporting requirements, work items that do not have an itemized bid line items that are captured and rolled up into lump sum work items, or rolled up under other itemized work, maintenance of traffic and the protection of the public, and general condition requirements related to security and access control. By submitting a bid, the Contractor agrees to comply with the requirements of the contract documents and agrees to complete all work included and detailed within the PS&E package.

**A-49 BID ADD ALTERNATES**

Several bid add alternates have been included as part of this Project. Please bid in accordance with the attached Bid Form and the PS&E Package and provide competitive pricing for all add alternates. Add alternates will be awarded and exercised by the Port Authority in the numerical order they are bid. The bid form in its entirety must be fully populated to be considered fully responsive. Upon submission of the bid, the Port Authority will review the submitted bids, the

amount of available funding for the Project, and determine the lowest responsive and responsible bidder based upon the final scope of work. This may or may not include the exercising of the bid add alternates on top of the base bid. Note, upon determining the final scope, it is possible the Contractor with the lowest base bid may not be the determined as the lowest, responsive and responsible bidder if funding is available for the add alternate(s) to be exercised. Failure to not award an add alternate(s) at the time of bid and initial award does not limit or preclude the Port Authority from adding the add alternate through the change order process once the Project has been awarded if alternate funding sources are identified at a later date and the add alternates were deemed competitively bid.

## **A-50 TERMINAL SECURITY & TWIC REQUIREMENTS**

If you are a Contractor working within the secure limits of the Terminal or if you are a TWIC Card applicant or a TWIC Card holder, U.S. law says that you must comply with the Federal rules outlined in MSTTA as well as the Security and Accountability For Every (SAFE) Port Act. These laws establish rules that will prevent any unauthorized persons from getting into a secure or restricted area of a vessel or facility that is required to have a security plan. The TWIC rules are based on these two laws. The laws require a standard, biometric ID (also known as a "credential"), for access control onto a vessel or into a facility. This ID is called the TWIC Card. To get a TWIC Card, a person must pass a Security Threat Assessment that is done by the U.S. Government that will determine if they pose a risk to transportation.

Any person that is required to enter a "Secure" or "Restricted" area that desires to be UN-ESCORTED must have a TWIC Card in their possession; HOWEVER, having a TWIC Card does not give a person the right to access the Port, a "Secure Area" or a "Restricted Area". ALL PERSONS must have official business on the Port or receive permission from the C-CCPA Facility Security Officer (FSO) or his designee, to access "Secure" or "Restricted" areas and move about the terminal un-escorted.

The entire C-CCPA Terminal within the perimeter fence is considered "SECURE" with certain areas designated as "RESTRICTED".

Any person that DOES NOT have a TWIC Card and desires to enter a "Secure Area" or "Restricted Area" on the terminal must have FSO permission and must be escorted by an approved escort whom is a TWIC holder who has thoroughly reviewed the Port Authority's TWIC Escort Acknowledgement Study Guide and signed off that they understand the role and responsibility of being a TWIC Escort. Copies of the Study Guide and acknowledgement form are available from the Port Authority upon request.

### **Other Personal Identification**

If a person DOES NOT have a TWIC Card, they are not eligible for un-escorted access into the facility's "Secure Areas" or "Restricted Areas" and they must show the security staff another ID to enter under escort. The ID must come from a Government Authority.

The ID must have the following traits to be considered:

It must be laminated or otherwise secure against tampering.

It must contain their first and last name and middle initial (if applicable).

It must have a face photo.

It must have the name of the issuing authority.

There are some people who do not need a TWIC Card for un-escorted access into "Secure Areas" or "Restricted Areas". If they are a Federal official, a state or local law enforcement or local emergency responder on official duties and they have a picture ID, as outlined above, they may access those areas without escort.

### **Escorting in a "Secure Area"**

Escorting in a "Secure Area" means that the Non-TWIC Holder being escorted is continually

accompanied while in the "Secure Area" in a manner sufficient to observe that the person remains engaged in the activities for which access was granted.

Escorting a Non-TWIC Holder means requiring that you remain with the individual and can visually observe them for the entire duration of their visit in the "Secure Area". It may also mean "monitoring" a group of individuals (not to exceed 10) when in the "Secure Area" through direct observation by means of a direct line of vision. The Port Authority recommends Contractors not exceed an escort ratio of 5:1 to provide escort redundancy on site.

The method of escort must ensure that the location of the escorted individual is known at all times and that the individual has no opportunity to engage in any activities other than those for which access was granted.

#### Contractor Requirements

The Contractor must be prepared to meet the access requirements for the Site. All personnel working for or on behalf of the Contractor on Site, within the secure perimeter of the Terminal, must either have a TWIC card or have an approved escort. Individuals without a TWIC will need to be escorted from the main gate to the Site, the entire time they are on Site and again when traveling from the Site to the main gate.

If necessary, arrangements can be made with the Port to provide trained escorts at a rate of \$50/hr.

### **A-51 DBE TRUCKING**

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

The DBE trucking firm must be able to quote and negotiate its own prices. The DBE trucking firm must also provide a quote for each project that the firm is to be utilized toward the project DBE goal.

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

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

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

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

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

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

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

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

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

- 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 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**
- o 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 nonbulk 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.
- o If not eligible for 100% or 60% credit, an item may still be eligible for credit toward DBE goals, but only for the **fee or commission the DBE MSV receives for its services**, and only if the following additional criteria are met:
- The DBE MSV must be certified with NAICS code 425120 Wholesale Trade Agents and Brokers
  - The DBE MSV must convincingly explain how the prime contractor benefits by transacting business with it rather than directly with the non-DBE vendor from which the DBE MSV is re-selling.
- The usual good faith efforts process applies.
  - All credit toward DBE goals is conditional. Actual credit will be determined based upon invoices, receipts, and/or transportation documents/bills of lading, which must be submitted to ODOT as they are received throughout the course of the project.

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

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

#### **A-52 AS PER PLAN DESIGNATION**

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.

#### **A-53 OHIO ETHICS LAWS**

By submitting a bid, the Contractor affirms it is currently in compliance and will continue to adhere to the requirements of Ohio Ethics law as provided by Section 102.03 and 102.04 of the Ohio Revised Code.

#### **A-54 BOYCOTTING & FOREIGN MARKET RESTRICTIONS**

By submitting a bid, the Contractor warrants that it is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade, including Israel, and will not do so during the term of this Agreement. Additionally, the Contractor shall now allow funds provided under this Agreement to be used to fund the use of any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

#### **A-55 BULLETIN BOARD MONITORING**

Prior to mobilizing to the site, in an area accessible to the public (adjacent to Port Authority's Main Gate) the contractor shall be required to install a Project specific weather tight Bulletin Board. The Port Authority will initially inspect and periodically monitor this Bulletin. The cost of installation, maintaining, and removal of this Bulletin Board shall be included in the Contractor's general conditions and included in their bid. This Bulletin Board shall include all Federal, State, and Local postings. Minimum requirements include:

- EEO Policy & Officer Contact Information
- Wage Rate Determinations (Accessible by Public/Employees)
- EEO is the Law Poster w/ Supplement
- Pay Transparency Nondiscrimination
- Federal Highway Notice Form 1022 or MARAD Approved Equal Form
- Employee Rights Under Davis Bacon Form 1321
- Job Safety & Health Form 3165
- Your Rights Under USERRA
- Employee Rights Fair Labor Standard Form 1088
- Family Medical Leave Form 1420 Notice Employee Polygraphs Form 1462
- Ohio Minimum Wage 2021
- Ohio Minor Labor Laws
- Ohio Know Your Rights EEO

#### **A-56 RELEASE OF TECHNICAL SPECIALITY DESIGN & MANUFACTURING FIRMS**

As part of the development of the PS&E documents the Engineer of Record consulted with StormwaterRx LLC, who designs and manufactures above grade stormwater treatment systems. StormwaterRx, LLC has been released by the Port Authority to provide services under this Agreement.

#### **A-57 ENGINEER'S ESTIMATE**

The final Engineer's Estimate on this Project has been estimated at \$17.9M - \$18.8M as of pricing determined in April of 2021.

#### **A-58 COVID 19 POTENTIAL IMPACTS & DELAYS**

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

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

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

Notwithstanding any other provisions of the contract documents, in the event of project delay or impacts to performance due to a voluntary or mandatory COVID-19 virus Directives, Orders, quarantine or closure directed by government authorities, either party may, by providing notice to the other party as required under CMS 108.02(F), extend the Completion Date for a period of up to thirty (30) days. Extensions under this paragraph shall be considered an excusable, non-compensable delay in accordance with CMS 108.06(B). If any portion of the Work is still not able to be performed upon the expiration of the extension, either party may provide notice to the other party requesting a termination for convenience under 108.09. The termination for convenience remains at the sole discretion of the LPA's Person in Responsible Charge in conjunction with the Office of Local Programs.

The Contractor and Port Authority 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.

#### **A-59 SUBCONTRACTOR PAYMENTS**

The Port Authority will monitor payments made by Prime Contractors and Subcontractors for compliance with this Proposal Note and ODOT C&MS 107.21. To facilitate this monitoring, the Port Authority 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 shall be submitted monthly to the Port Authority with the monthly payment application. Invoices will not be approved and processed for payment unless this reporting form has been submitted and received by the Port Authority.

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 the Port Authority.

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, the Port Authority 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 Port Authority or ODOT.

## **A-60 LOCAL LETTING REQUIREMENTS & C-92s**

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.

This Project will require that a Request to Sublet (C92) form is completed for each subcontractor working on the Project prior to the start of work. This will include all, Small, DBE, EDGE, and non-EDGE, Material Suppliers being utilized on the project. This process is to affirm the Contractor has included all the applicable flow down State and Federal flow down provisions and assurances which apply across all Contract related to the Project.

ODOT's C-92 template will be accepted by the Port Authority and the Contractor's will be required to incorporate the following provisions and assurances into their contract from the MARAD Grant Agreement:

- Buy American Requirements
- Davis Bacon Prevailing Wage & Reporting Requirements
- MARAD Grant Exhibit(s) B1-B5
- MARAD Grant Appendix A (See B-25 General Conditions)
- MARAD Grant Appendix E

## **A-61 ADDITIONAL APPLICABLE FEDERAL LAWS & REGULATIONS**

By submitting a bid and entering a Contract, the Contractor assures and certifies to the Port Authority that it will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines and requirements as they relate to the Agreement. In addition to the provisions of this Agreement, Contractor shall review and familiarize themselves with the applicable Federal laws and regulations outlined in Exhibit A, Applicable Federal Laws and Regulations in the provided For Reference U.S. Department of Transportation Maritime

Administration (“MARAD”) Grant Agreement.

## **Part B - General Conditions**

### **B-1 CONTRACT DOCUMENTS**

The following shall constitute the Contract Documents and shall be deemed the Contract made pursuant to this Bid Package:

- (1) All provisions required by law or resolution to be inserted in the Contract, whether actually inserted or not.
- (2) The Resolution of the Port Authority awarding the Contract.
- (3) Amendments to the Contract.
- (4) The Form Contract as completed and executed.
- (5) All Addenda issued by the Port Authority prior to Bid Submission.
- (6) Project Specifications and Supplemental General Conditions.
- (7) General Conditions.
- (8) Instruction to Bidders.
- (9) The Contract Drawings.
- (10) Standard Construction Drawings of the Ohio Department of Transportation & City of Cleveland referenced in the Contract Drawings.
- (11) Cleveland Division of Water Construction Standards referenced in the Contract Drawings
- (12) Ohio Department of Transportation Construction & Material Specifications 2019
- (13) Ohio Department of Transportation Supplemental Specifications referenced in the Contract Drawings
- (14) The Resolution authorizing the making of the public improvement.
- (15) All required Policies of Insurance.
- (16) The Bid Affidavit of Non-Collusion.
- (17) The Bid.
- (18) MARAD Categorical Exclusion
- (19) FAA Airspace Determination
- (20) USACE Nationwide & Project Provisional Permit
- (21) ODNR Temporary Shore Structure Permit
- (22) OEPA D.A. & 401 NWP Exceedance Authorization
- (23) OEPA NPDES Permit
- (24) MARAD FY 2019 Port Infrastructure Development Grant Agreement General Terms & Conditions
- (25) Ohio Department of Transportation Maritime Assistance Program Project Agreement
- (26) Geotechnical Report(s).
- (27) Historic Reference Drawings: Dock 24 & Dock 26

### **B-2 CONFLICT BETWEEN CONTRACT DOCUMENTS & LOCAL/FEDERAL REGULATIONS**

In the event there is a conflict between the provisions in various Contract Documents, and it is impossible to reconcile the conflict between the provisions, the provision that is in the Contract Document appearing first in the order set forth above shall take precedence. If there is any language or requirements of the Contract Documents that conflict between local contract language and Federal rules, the Federal rules shall prevail.

### **B-3 TIME OF ESSENCE**

Time is of the essence in the Contract. The Contractor shall begin Work on the day specified in paragraph B-4a and shall prosecute the work diligently so as to assure completion of the Work not later than the time specified in B-4b, or the time of completion as

extended, pursuant to paragraph B-6 hereof.

**B-4 TIME OF COMMENCEMENT AND COMPLETION OF WORK**

- a. A Contract shall be deemed executed when signed by the parties.
- b. Unless provided in the Specifications and Supplemental Conditions, the Bidder shall state in his bid the date by which the Work will be completed including major milestone dates. Where equal bids are received, the date of completion will be used in determining the lowest responsive and responsible bidder. Work shall be complete no later than November 30<sup>th</sup>, 2022. Contractor is not required to mobilize and commence work within a given period, however, once mobilized work shall be complete under one mobilization and work shall be managed to be complete no later than the November 30<sup>th</sup>, 2022 deadline.

**B-5 LIQUIDATED DAMAGES FOR DELAY**

The Contractor will complete the Work on or before the dates and milestones fixed or otherwise agreed to in the Agreement, as it may be extended as provided in paragraph B-6. Damages to the Port Authority will result from the failure of the Contractor to timely complete the Work which will impact the operations of the facility and our site operator. Liquidated damages will be assessed in accordance with CMS 108.07 in the amount of \$900.00 for each Calendar Day of Overrun in Time.

**B-6 DELAY FOR CAUSES BEYOND CONTRACTOR CONTROL**

- a. If the Contractor is delayed in the completion of the Work by any act or omission of the Port Authority, or by any other contractor employed by the Port Authority, or by changes ordered in the Work, or by strikes, lockouts, fire, unusual delay by common carriers, unavoidable casualties, or any cause beyond the Contractor's control, including orders, limitations, or restrictions of any governmental agency having jurisdiction over the Work, or by delay authorized by the Port Authority, or by any cause which the Port Authority decides justifies the delay; then, for all such delays and suspensions, the Contractor shall be allowed one calendar day extension beyond the time herein stated for completion of the Work for each and every calendar day of such delay so caused, the same to be ascertained by the Port Authority.
- b. The Port Authority will consider an extension to the completion date and milestone dates in the event of extended periods of adverse weather or seasonal conditions in accordance with CM&S 108.6. Payment for excusable days will also be considered by the Port Authority and evaluated in accordance with CM&S 108.6.
- c. No extension shall be made for any one or more of such delays unless within ten (10) days after the beginning of such delay a written request for additional time shall be filed with the Port Authority. In case of a continuing cause of delay, only one request will be necessary.
- d. No claims for damages or any claim other than for an extension of time as herein provided shall be made or asserted against the Port Authority by reason of any delay.
- e. When by reason of any of the causes stated herein an extension of time has been allowed for the completion of Work, the Contractor shall not be entitled to a bonus for completion prior to the date so extended, anything in the Contract Documents to the contrary notwithstanding.

**B-7 STORAGE OF MATERIALS & PAYMENT FOR STORED MATERIALS**

- a. The Contractor shall make all necessary arrangements and provisions for the storage of materials and equipment to be used for the Work.
- b. Materials and equipment which are to become the property of the Port Authority shall be stored as to facilitate their prompt inspection and ensure preservation of the quality and fitness of the materials and equipment, including proper protection against damage by freezing and wet weather; and shall be placed under cover on wooden platforms or other hard, clean surfaces, and not on the ground, when so directed. Whenever the best interest of the Port Authority so requires, upon order of the Port Authority, the Contractor shall promptly provide improved storage facilities and methods.
- c. Property other than Port Authority property shall not be used for storage purposes without written permission of the Owner or other person properly in possession or control of such premises.
- d. The Port Authority disclaims all responsibility for loss or damage to stored materials or equipment, or both.
- e. The Port Authority will not pay for stored materials that are located offsite. For materials that are stored on site, which have not been incorporated into the work, the Contractor shall provide proof of the value of stored material if seeking payment for materials stored on site.

**B-8 RESPONSIBILITY OF CONTRACTOR FOR DAMAGE TO WORK**

- a. The Port Authority will not insure the Work until Final Acceptance is issued nor insure against claims for injury to persons or property arising during performance of the Work. The Contractor will be held responsible for all damage to the Work, regardless of cause, until final completion and acceptance, even though partial payments have been made under the Contract. The Contractor will be held answerable for all damages that may occur to persons or property from want of proper shoring, bracing, lighting, watching, boarding or enclosing, and for any accident arising from defective scaffolding or apparatus, or from any negligence on the part of it or its employees.
- b. The Contractor shall provide proper facilities, take all necessary precautions and assume the entire cost for protecting the Work against adverse weather conditions, temporary stability, and for handling all storm and flood water, sewage, seepage, ice or snow that may be encountered during the performance of the Contract. The manner of providing for such contingencies and for carrying on the Work in freezing weather shall meet with the approval of the Port Authority.

**B-9 DUTY AND RESPONSIBILITY OF CONTRACTOR FOR PLANT AND METHODS**

The Contractor shall provide and install such plants and shall use such methods and appliances for the performance of all operations connected with the Work as will secure the safety of the Work and those working on it, a satisfactory quality of the Work and a rate of progress that will ensure the completion of the Work within the time specified. If at any time before the commencement or during the progress of the Work, or any part of it, such methods and appliances appear to be unsafe, inefficient or inadequate for securing the safety of the Workmen, the quality of the Work or the rate of progress required, the Port Authority may order the Contractor to increase safety measures or to improve their character, and the Contractor shall comply with such orders; but the failure of the Port

Authority to make such a demand shall not release the Contractor from its obligation to secure the safe conduct and the quality of the Work, and the rate of progress required. The Contractor alone shall be responsible for the safety, efficiency and adequacy of its plant, appliances and methods.

#### **B-10 STRUCTURES ENCOUNTERED AND PROTECTION OF PROPERTY**

- a. The Contractor shall, at its own expense and as part of their bid, support and protect all new/existing structures, improvements, equipment and fixtures of all kinds and all other property that may be encountered or endangered in the prosecution of the Work. It shall repair and make good any damage caused to any such property by reason of its operations leaving all Work in approved condition at the completion of the Contract. Contractor is responsible for their means and methods and if during their progression of work they elect to take additional risk which results in a failure or damage to existing structures, they shall be responsible for all costs associated with the restoration and repair.
- b. The Port Authority reserves the right to repair any damage to property caused by the Contractor, or its Subcontractors, Laborers or Materialmen and the cost of such repair shall be borne by the Contractor. In the event the Contractor refuses or fails to pay for such repair work, without prejudice to any other remedies available to the Port Authority, the cost of the same shall be deducted from any money that may be due it.

#### **B-11 WATCHMEN & SAFEGUARDS**

- a. As part of the Contractor's bid, it shall provide the necessary watchmen, signage, safeguards, sufficient warning lights, and barricades at its own expense and it shall take such other precautions as are necessary to protect life and property of its workers, the Port Authority, and the workers at the Terminal at all times. Additional measures may be requested of the Contractor by the Port Authority above those shown in the Contract phasing diagrams and these shall be provided at no additional cost to the Port Authority.
- b. The Port Authority or an authorized representative may at any time order the Contractor to provide watchmen or additional safety control measures, in its opinion that may be required, at no additional cost to the Port Authority.
- c. Nothing in this section shall be construed as requiring the Contractor to provide a road patrol.

#### **B-12 SANITARY PROVISIONS**

The Contractor shall provide and maintain in a neat and sanitary condition such accommodations for the use of its employees as may be necessary to comply with the requirements of law and ordinance.

#### **B-13 WATER SUPPLY**

Direct connections to water infrastructure are available at the site. Arrangements may be made with the City of Cleveland, Cleveland Fire, and the Port Authority's Director of Operations & Facilities, to access water at local hydrants on the Terminal. Contractor will be required to obtain permits, meter, and other requirement to use a hydrant as clean source water. If needed, this shall be done at no additional costs to the Port Authority.

#### **B-14 ACCESSIBILITY OF FIRE HYDRANTS AND STOP VALVES**

Fire hydrants and stop valves adjacent to the Work or on or adjacent to the Site shall be kept readily accessible to fire apparatus and no material or other obstruction shall be placed within five (5) feet of any hydrant or stop valve unless by special permission of the proper authorities.

#### **B-15 REMOVAL OF RUBBISH & HOUSEKEEPING**

The Contractor shall, at its own expense, keep the Site and Work, clean during the construction and remove all rubbish as it accumulates. Upon the completion of the Work, the Contractor shall remove all temporary structures and rubbish of all kinds and shall leave the Site and the Work in a clean and neat condition. If at any time, the Port Authority believes that the Contractor's housekeeping efforts, or lack thereof, may result in an increased safety risk or lead to quality of work issues, the Port Authority will request the Contractor immediately address these issues at its own expense.

#### **B-16 PUBLIC LIABILITY, PROPERTY DAMAGE AND AUTOMOBILE INSURANCE**

The Contractor will be required to meet the minimum insurance requirements outlined in CMS 107.12 and further detailed below. The cost of insurance is incidental to all contract items unless specified. The Contractor shall take out and maintain during the life of the Contract such public liability and property damage insurance, with the Port Authority and State of Ohio, named as an additional insured, as shall protect the Contractor, the Port Authority and any Subcontractor performing Work from damage, personal injury, accidental death, and property damage which may arise from operations under the Contract, whether such operations are by the Contractor, Subcontractor or anyone directly or indirectly employed by or operating as an independent contractor for either of them. *If there is an exposure of injury to the Contractor under the U.S. Longshore and Harbors Workers' Compensation Act, the Jones Act, or under laws regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.* An exact copy of such policy or policies shall be deposited with the Port Authority before the commencement of any Work. The amounts of such insurance shall be as follows:

- a. Public Liability Insurance: In an amount not less than \$1,000,000 for injuries, including accidental death to any one person, and subject to the same limit for each person, in an amount not less than \$2,000,000 on account of one occurrence involving injury to more than one person, and property damage insurance in an amount not less than \$1,000,000.
- b. The following special hazards shall be covered during the life of the Contract by rider or riders to the policy or policies above required, or by separate policies of insurance in amounts as follows:
  - (1) Public Liability insurance to cover each automobile, truck, or other vehicle used in the performance of the Contract in an amount not less than \$1,000,000 on account of injury or death of one person and not less than \$2,000,000 on account of injury or death of two or more persons.
  - (2) Property damage liability insurance to cover each automobile, truck or other vehicle used in the performance of the Contract in an amount not less than \$1,000,000 on any occurrence.
- c. The policy shall contain provisions whereby the insurance company agrees that ten (10) days prior to cancellation, change or reduction of the insurance afforded by the policy, with respect to the Contract, written notice will be mailed to the Port Authority.

#### **B-17 ACCESS TO WORK AND PLACE OF MANUFACTURE**

Port Authority staff and authorized representatives shall at all times have access to inspect the Work wherever it is in preparation, progress, being manufactured or fabricated and the Contractor shall arrange and provide proper facilities for such access and inspection to determine whether such Work is being done in accordance with the Contract.

#### **B-18 STANDARDS AND SUBSTITUTIONS**

- a. The type or make of any material, equipment, article, device, fixture or furnishing, or of any form of construction, named in these specifications, whether or not the words "or approved equal" are listed, the Port Authority shall consider "approved equal" material substitutions on this Project. The Port Authority and the Engineer of Record will be required to approve/vet whether an item is a true "Approved Equal" and it is not guaranteed that a submission will be deemed an "Approved Equal". Please note, "Approved Equals" must meet the technical specifications established and the Buy America requirements in this Agreement.
- b. The use of any experimental or untried methods, or the use or installation of any experimental or untried materials or equipment or any combination of either or both, shall not be allowed. Each Bidder, or the Contractor if a Contract has been awarded, shall, if so required by the Port Authority, submit ample proof that the method of doing any of the Work has been successfully used for like work for a period of at least two years; or that the materials or equipment or any combination of either or both proposed to be used on, or furnished for the Work, is of a reliable make and is of a type that has been successfully used in practical service outside of the Bidder or the Contractor's facilities, for a period of not less than two years.

#### **B-19 INSPECTION**

- a. Inspectors as designated by the Port Authority shall be authorized to inspect all Work done and materials furnished. Such inspection may extend to all or any part of the Work, and to the preparation or manufacture of the materials to be used. In case of any dispute arising between the Contractor and the inspector as to materials furnished or the manner of performing the Work, the inspector shall have the authority to stop the use of material or suspend the Work until the question at issue can be referred to and decided by the Port Authority. The inspector shall not be authorized to revoke, alter, enlarge, relax or release any requirements of any specifications, nor to approve or accept any portion of the Work or to issue instructions contrary to the plans and specifications. The inspector shall not act as a foreman or perform other duties for the Contractor or interfere with the management of its Work. Any advice, which the inspector may give the Contractor, shall in no way be constructed as binding the Port Authority in any way or releasing the Contractor from the fulfillment of the terms of the Contract.
- b. The Contractor shall not be entitled to any claims for loss of time, damages or anticipated profit due to any time lost from suspension or rejection of any Work or from disputes with the Port Authority.

#### **B-20 LAWS, PERMITS AND REGULATIONS**

The Contractor shall comply with all applicable Laws and shall be responsible for securing at its own expense any and all licenses, permits and certificates of inspection required by law, or by the Contract Documents.

#### **B-21 BLASTING**



No blasting is permitted unless specifically authorized in writing for any Work.

**B-22 OTHER CONTRACTS**

It is understood and agreed that the Contractor shall execute his Work in such a manner and in such order as will not interfere with work in progress and will permit the Port Authority to perform other work or to enter into other contracts for work and materials to be constructed or placed in, on or about the Work, with the least interference possible and with complete cooperation with the Port Authority and other contractors. The Port Authority shall decide all questions of priority among separate contractors.

**B-23 PATENTS**

The Contractor shall pay all royalties and license fees and shall hold and save the Port Authority and its officers, agents, servants and employees harmless from liability of any nature or kind, including cost and expenses, for or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Contract, including its use by the Port Authority unless otherwise specifically stipulated in the Contract Documents. In this respect the Contractor shall defend all suits or claims for infringement of any patent or license rights by counsel acceptable to Port Authority.

**B-24 INDEPENDENT CONTRACTOR STATUS**

The Contractor is and shall remain an independent contractor with respect to all services performed and agrees to and does hereby accept full and exclusive liability for the payment of any and all contributions or taxes for social security, tax withholding, unemployment insurance, workers' compensation or old age retirement benefits, pensions, or annuities now or hereafter imposed under any Law which are measured by the wages, salaries, or other remuneration paid to persons employed by the Contractor on the Work and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or hereafter may be issued or promulgated under Law and the Contractor also agrees to indemnify and save harmless the Port Authority from any such contributions or taxes or liability therefore.

**B-25 NON-DISCRIMINATION**

During the performance of this Agreement, the Contractor, for itself, its assignees, and successors in interest agree as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Maritime Administration (MARAD), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a 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 Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and 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 Recipient or MARAD to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or MARAD, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or MARAD may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or MARAD may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.
7. During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

**Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 C.F.R. Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 C.F.R. Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 et seq).

**B-26 WAGES, WAGE SCALE, AND HOURS**

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 weekly certified payrolls submitted to the Port Authority. Additionally, please note that the wage modification in effect at the time of the project sale date, shall be used by all contractors.

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

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

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

- 1) The U.S. Department of Labor Regulations, Title 29, Subtitle A, Part 5, Sections 5.5, 5.31, and 5.32, most recent revision at contract execution.
- 2) Davis Bacon Act, 40 U.S.C. 3141-3148, or 23 U.S.C. 113

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 subcontractors 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 Port Authority, certified payrolls each week beginning three weeks after the start of work. These payrolls shall be on a Form WH-347 or equivalent and shall show the following:

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

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

Please be aware 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.

Upon completion of the Project, the Contractor and all subcontractors whom provided labor for this Project shall be required to submit an Affidavit of Compliance. This form is issued by the Ohio Department of Commerce ([https://www.com.ohio.gov/documents/laws\\_Affidavit%20Of%20Contractor%20Compliance.pdf](https://www.com.ohio.gov/documents/laws_Affidavit%20Of%20Contractor%20Compliance.pdf)).

Work hours shall be coordinated with Port Authority.

#### **B-27 STATE OR FEDERAL TAXES**

- a. The Contract price or prices for the materials contained in the contract are subject to increase or decrease by the amount of any additional tax or reduction of tax, as the case may be, affecting such commodity imposed by or under authority of the Federal Government or the State of Ohio, which may be enacted after the Bid Opening Date and such changes shall continue in effect during the existence of such change in the taxes, provided, however, that in the event of any increase in cost, a claim shall be presented by the Contractor within thirty (30) days and provided that such claim is supported by evidence showing such additional tax, satisfactory to the counsel for the Port Authority. Reductions in taxes will be deducted from the contract price.
- b. The Port Authority is exempt from all sales, excise and transportation taxes, except State of Ohio gasoline tax. The price or prices bid, whether a unit price, lump sum price, lot price, or a trade discount from catalogue list prices, shall be exclusive of all such taxes and will be so construed.

#### **B-28 LABOR AND MATERIAL MEN**

- a. The Contractor shall promptly pay or satisfy proper claims of all persons who have performed labor or furnished material for the Contractor in the execution of the

Contract, including those who have previously filed attested accounts of such claims with the Port Authority, and all bills, costs or claims of whatever kind which might in law or equity become a lien upon the Work or against the fund from which the same is to be paid or a charge against the Port Authority.

- b. The Port Authority may retain out of any moneys at any time due Contractor a sum sufficient to pay all Laborers, Subcontractors or Materialmen who have filed an attested account of such claim with the Port Authority within one hundred twenty days from the performance of last labor or the delivery of last materials, stating that any balance for said work or materials is still due and unpaid, which amount may be retained by the said Port Authority until satisfactory evidence is furnished to counsel for the Port Authority that said balance has been fully paid, and if said evidence is not furnished before the next estimate becoming due to the Contractor under the Contract, the Port Authority may pay said balance to the person claiming it and charge such payment to the Contractor as payment on the Contract, unless the Contractor shall have previously filed with the Port Authority written notice that such claim is in dispute. In the event of such dispute, the Port Authority will retain the amount until the claim has been adjusted or the money paid into court on proceedings in the nature of an interpleader. Notwithstanding any of the above Port Authority is permitted at any time to take all steps and actions authorized to it under state mechanics lien and similar or related statutes.

#### **B-29 ASSIGNMENT**

The Contractor shall not assign, transfer, convey or otherwise dispose of the Contract, or its right to execute it, or its right, title or interest in or to it or any part thereof, or assign, any of the moneys due or to become due under the Contract, except by written consent of the Port Authority, and the giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignments. Any such assignment contrary to these provisions shall be null and void and of no effect on the Port Authority. Any assignment, transfer, or conveyance permitted by the Port Authority in writing shall not be valid until the actual assignment, transfer or conveyance is filed in the office of the Port Authority.

#### **B-30 SUBCONTRACTORS**

- a. The Contract will be made pursuant to the bid submitted by the Contractor and in reliance upon the Contractor's qualifications and responsibility, therefore the Contractor shall not sublet nor shall any Subcontractor commence performance of any part of the Work without the previous written consent of the Port Authority. In making application for subletting any portion of the Work, the Contractor shall state in writing the portion of the Work which each Subcontractor is to do or the material which it is to furnish, its place of business, and such other information as may be required in order to ascertain whether such Subcontractor is responsible, reliable and able to perform the work or to furnish the materials as called for in the specifications. Subletting, if permitted, shall not relieve the Contractor, nor its surety of any of its obligations under the Contract. If at the time the bid is made the Contractor knows of parties it may identify as potential Subcontractors it shall list them as potential Subcontractors in the bid.
- b. Any subcontract for Work must conform to the requirements of the Contract.
- c. The Contractor shall be and remain solely responsible to the Port Authority for the acts and omissions of its Subcontractors and of such Subcontractors' agents. The Contractor shall promptly, upon request of the Port Authority file a conformed copy of the subcontract, as a condition precedent to the approval of a Subcontractor. The Contractor and subcontractor jointly and severally agree that no obligation upon the Port Authority is thereby created to pay to, or see to the payment of any sums to any Subcontractor.

**B-31 CHANGES OR MODIFICATIONS OF CONTRACT**

When in the prosecution of any Work it becomes convenient, in the opinion of the Port Authority, to make alterations or modifications in the Contract, such alterations or modifications shall be within the general scope of the Work and shall be made in writing by the Port Authority, subject, however to authorization by its Board of Directors, MARAD, and ODOT, if required, under law or Port Authority regulations or resolutions. The alteration or modification may either be a Change Order, Change Directive or Minor Change. If the alteration or modification the Contractor has been directed to perform does not involve an adjustment to the amount due under the Contract, or the time the Contractor has to complete the Work ("Minor Change"), then such alteration or modification shall immediately become binding on Contractor upon the written order of the Port Authority.

If the matter involves an adjustment to the amount due under the Contract, or the time for completion of the Work, then the written order received from Port Authority shall be binding on the Contractor as a Change Order, if the Contractor enters into a written change order agreeing to the change in the Work, the adjustment to the amount due under the Contract and/or adjustment to the time for completion of Work. The Port Authority shall negotiate with the Contractor prices for Change Order work if not already established in the Bid. These prices shall be comparable to prices that would have resulted from a competitive bid contract and will be determined in accordance with Section 109.05 of C&MS 2019.

A Port Authority Authorized Representative will measure the quantities of Work and calculate payments based on the method of measurement and basis of payment provisions provided in the Specifications. The Port Authority will keep a master list of quantities from which payment will be authorized and paid against. During the progression of work, at no time will quantities over and above those listed in the Project will be paid out unless a Change Order is authorized during the progression of work by the Port Authority. Upon Final Acceptance of the Project a final quantity Change Order shall be issued on the Project to modify the Contract for the actual quantities installed.

If a Change Order has not been signed the written order for the Port Authority shall become effective on the Contractor as a Change Directive which the Contractor shall be bound to do and the Contractor will be paid an amount based on unit prices stated in the Contract Documents or in the absence thereof based on actual cost incurred by the Contractor, as evidenced by detailed records kept by Contractor of all expenditures for the changed Work, plus reasonable overhead and profit. The Port Authority shall determine reasonable overhead and profit using C&MS 109.05C under Force Account work.

All amounts due Contractor for changes in the Work shall take into account savings realized by the Contractor. No such alterations shall be valid unless the price to be paid for the Work or material, or both, under the altered or modified Contract, shall have been authorized by the President or said Board where necessary. Authorized Representative is not authorized to change, modify or amend the Contract.

**B-32 PORT AUTHORITY RIGHTS UPON CONTRACTOR'S DEFAULT**

a. Termination of Contract

In addition to the rights Port Authority may otherwise have, the Port Authority shall have the right to terminate the Contractor's right to continue the Work on the Contract upon (1) the failure of the Contractor to begin on or within 14 days of the notice to proceed with physical preparation at the Site for the Work; (2) the failure of the Contractor to begin the Work on or within 14 days of the notice to proceed; (3) the failure of the Contractor to cure any unexcused delay in performance within three

days after written notice is given if it appears to the Port Authority that the Work has been so unreasonably delayed as to tend to indicate the likelihood of failure of completion within the time specified; (4) failure to replace any Work, material or equipment not meeting the Contract specifications within three days after receipt of written notice of the Contractor's failure to properly provide conforming Work, material or equipment; (5) failure to complete the Work by the Completion Date with any extensions which may have been granted; (6) any other default not cured by the Contractor on or within ten days of notice, and if the default is of the type that cannot be cured in that time period, then the Contractor has begun to cure said default and diligently and continuously pursues cure; or (7) if the Contractor shall become insolvent, or shall be adjudged as bankrupt, or shall make any assignment for the benefit of its creditors, or if a receiver of its property shall be appointed. The Port Authority's right to terminate the Contract shall be without prejudice to any other right or remedy, and Port Authority may enter upon the premises and take possession of all materials, tools and appliances thereon, and finish the Work by whatever method it may deem expedient.

b. Delivery of Material

The delivery of any material, equipment, or the performance of any labor hereunder which does not in all respects conform to the Contract, may be rejected and the Contractor shall be notified by the Port Authority of such rejection and the reason therefore, which notice shall be confirmed in writing. If the Contractor fails to effect immediate replacement of such rejected materials, equipment and labor with material, equipment and labor meeting the requirements of the order and of the Contract, the Port Authority may purchase material, equipment and hire labor of the character required under the order up to the amount rejected and the Contractor and its surety shall be liable to the Port Authority for any excess cost and expense occasioned the Port Authority thereby. The Port Authority shall have the right to suspend the whole or any part of the Work, when the Contractor is not doing the Work in accordance with the Contract. No extension of time for completion of the Work or claim for damages will be allowed by reason of such suspension.

c. Contractor's Liability for Damages

In case of such discontinuance of the employment of the Contractor, it shall not be entitled to receive any further payment under the Contract until the Work is wholly completed, at which time, if the unpaid balance of the amount to be paid under the Contract shall exceed the expenses incurred by the Port Authority in finishing the work, such excess shall be paid by the Port Authority to the Contractor, but if such expenses shall exceed such unpaid balance, the Contractor shall pay the difference to the Port Authority. If the right of the Contractor under the Contract is terminated, the Contractor shall only be paid for work actually performed and material incorporated into the project at the agreed to rate. The Contractor shall remain liable to Port Authority for any damages suffered by Port Authority regardless of the termination of the right to continue performing Work.

d. Rights of Port Authority in Case of Nonperformance:

If the Contractor shall refuse or neglect to supply a sufficient number of properly skilled Workmen, or materials of the proper quality, or shall fail in any respect to prosecute the Work or any part thereof with promptness and diligence, or fail in the performance of any of its agreements, the Port Authority may, after 48 hours written notice to the Contractor, provide such labor or materials, and deduct the

cost thereof from any monies then due or thereafter to become due to the Contractor under the Contract.

**B-33 ACCEPTANCE OF PERFORMANCE**

It shall be understood and agreed by the parties hereto that the Port Authority shall determine if the quality of the Work and the material and equipment furnished under the Contract is satisfactory.

**B-34 GUARANTEE**

- a. The Contractor guarantees that the Work done and all material used in the Project under Contract are in all respects new, first-class, and of the proper kind and quality necessary for the Work and the Work will be done in a good and workmanlike manner and in accordance with the Contract Documents. The Contractor guarantees that the improvement constructed will remain in good condition for and during the entire period of guarantee.
- b. The period of guarantee shall begin upon the date of Final Acceptance of the Work, and shall continue for one year thereafter or as otherwise provided in the Specifications and Supplemental Conditions.
- c. If at any time before or during said period of guarantee, any defects appear in the Work, or if any of the Work is not in accordance with the requirements of the Contract Documents, or for any other cause which is not attributed to unusual causes such as damage by others, or unusual casualty or natural disaster, all as determined by the Port Authority. Port Authority will notify the Contractor to rectify such defects or omissions, or to make the repairs so required.
- d. If the Contractor shall fail to begin to rectify such defects or omissions or to start such repairs within five (5) days from the date of such notification, or if such repair work is not made in a manner satisfactory to the Port Authority, the Port Authority shall have the right to purchase any necessary materials, rent any necessary tools and equipment and to employ such other person or persons as it may deem proper to make such repairs, and to recover said amounts from the Contractor by paying the expense thereof out of the monies then due, or which may thereafter become due to the Contractor, or out of the amount retained for that purpose by the Port Authority.
- e. In case of an emergency, as deemed by the Port Authority, the Port Authority shall have the right to purchase any necessary materials, rent any necessary tools and equipment and to employ such other person or persons as it may deem proper to make such repairs, and to recover the expenses from the Contractor and/or its sureties including paying the expense thereof out of the moneys then due, or which may thereafter become due to the Contractor, or out of the amount retained for that purpose by the Port Authority.
- f. If any retained or unpaid moneys are not sufficient to meet such expense, the Contractor and/or its sureties shall pay the difference immediately upon request.
- g. If it is necessary to remove any part of the Work to repair defects in materials or workmanship, or if any part of the Work becomes damaged due to such rectification or repairing, all such Work shall be replaced or repaired, all to the satisfaction of the Port Authority. The guarantee provisions shall also apply to all rectified or repaired work.

**B-35 TERMS OF PAYMENT**



- a. The Contractor will make current requests for payment using the AIA Document G702, "Application and Certificate for Payment", not more than once each month ("Payment Request(s)"), and submit them to the Port Authority for approval. All Payment Requests shall be dated the last working day of the month and shall be submitted to the Port Authority by the tenth day of the following month. Signed and notarized payment requests and associated back up shall be sent electronically to the Port Authority's accounting department at the following email address: Accounting@PortofCleveland.com. All Payment Requests shall include copies of certified payroll, a partial waiver of lien and claims from the Contractor, updated DBE reporting, updated EEO reporting, OJT reporting, and a lien waiver from each subcontractor listed on the previous Payment Request (collectively the "Lien Waivers"). Prior to submission of the monthly payment application, a pencil copy Payment Request shall be submitted by the Contractor to the resident engineer in charge of the Project for approval/consideration. The Payment Request shall cover installed materials, the amount and value of Work performed in accordance with the Contract during the preceding payment period, and a complete list of all subcontractors hired by the Contractor that performed work on the project during the period of time covered by the Payment Request. At the discretion of the Port Authority, allowances may be made for nonperishable materials, which are to be incorporated into the Work, when delivered and properly stored upon the Site. Upon approval of the Contractor's Payment Request, the Port Authority will make estimates in writing, once each payment period, of the material in place complete, and the amount of Work performed, all in accordance with the Contract. Upon approval of the Payment Request and the Lien Waivers by the Port Authority, the Contractor shall be paid the amount of each such estimate and less all prior payments less a deduction of five percent (5%) which shall be retained until Final Acceptance of all Work. Retainage will be held on the total value of the Project until Final Acceptance has been issued, this includes the value of permanent materials.
- b. Contractor shall not, directly or indirectly, create, incur, assume or suffer to be created by it or by any subcontractor, laborer, materialman or other suppliers of goods, services, labor or materials, any claim, lien, charge or encumbrance against the funds for the public improvement or any part thereof or upon the project. Furthermore, Contractor shall promptly pay or discharge, and discharge of record any such claim, lien or encumbrance for labor, materials, supplies or other charges, that if unpaid, might be or become a lien against the funds for the public improvement or any component of the public improvement.
- c. Upon the Final Acceptance of the Work, the Port Authority shall pay the Contractor the whole amount of the money then due the said Contractor under the contract less amounts which may be withheld, and less a deduction of ten percent (10%) to be retained for a further period of ninety (90) days of receipt of invoice. See details related to the final quantity change order.
- d. Ninety (90) days after the Final Acceptance, the Contractor shall be paid the sums retained less proper deductions so long as the Contractor has provided all relevant documentation to close out the Project.
- e. The payment of the moneys provided for herein shall constitute a full and complete discharge of all the duties and obligations of the Port Authority under the Contract.

#### **B-36 NO WAIVER OF LEGAL RIGHTS**

Neither acceptance of nor payment for the Work, or any part of the Work, nor any extensions of time, nor any possession taken by the Port Authority shall operate as a waiver of any portion of the Contract, nor shall a waiver of any breach of the Contract be held to be a waiver of any

other or subsequent breach.

**B-37 INDEMNITY CLAUSE**

The Contractor shall indemnify, keep and save harmless the Port Authority and its respective Directors, agents and employees against all suits or claims that may be based upon any injury to persons or property that may occur, or that may be alleged to have occurred in the course of the performance of the Contract by the Contractor, or as a result of the performance of the Contract by the Contractor, whether or not it shall be claimed that the injury was caused through a negligent act or omission of the Contractor or its agents, and whether or not the persons injured or whose property was damaged were third parties, employees of the Contractor or employees of an authorized Subcontractor; and the Contractor shall at its own expense defend the Port Authority in all litigation through counsel of Port Authority's choice, pay all attorneys' fees and all costs and other expenses arising out of the litigation or claim or incurred in connection therewith; and shall, at its own expense, satisfy and cause to be discharged such judgments as may be obtained against the Port Authority, or any of its officers, agents or employees.

**B-38 DRAWINGS AND SPECIFICATIONS**

ODOT'S 2019 CONSTRUCTION AND MATERIAL SPECIFICATIONS  
(CM&S) 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 is not intended to 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" 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.

<b>Excluded 2019 Specifications</b>			
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			

ODOT's 2019 Construction and Material Specifications section 614.03, fifth 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.

Should any error or inconsistency appear in the drawings, specifications or Contract, or should the Contractor be uncertain as to the Work, the Contractor, before proceeding with the Work, shall inform the Authorized Representative of the same in writing, and then proceed with the Work as directed by the Authorized Representative in writing.

When measurements are affected by conditions already established, the Contractor shall take and be responsible for field measurements notwithstanding the giving of scale or dimensions on any Contract Drawings.

### **B-39 CONTRACTOR'S DRAWINGS**

The Contractor shall prepare all necessary detail drawings, designs, and data giving full and complete information, and it shall commence Work immediately upon receipt of the necessary information, priority being given to those drawings, necessary for fabrication of the material or equipment in the order of its required delivery.

Unless otherwise specified, not less than three (3) copies of all the Contractor's and Subcontractors' drawings shall be submitted for approval. The Contractor shall submit all drawings to the Port Authority at the proper time so as to prevent delays in delivery of materials and equipment. All Contractor's drawings submitted for approval by the Port Authority shall be sent directly to the Port Authority's office, and shall be addressed as follows: Cleveland-Cuyahoga County Port Authority, 1100 West 9th Street, Suite 300, Cleveland, Ohio 44113. All shipments shall be clearly marked.

All drawings submitted by Subcontractors, for approval by the Port Authority, shall first be sent by the Subcontractors directly to the Contractor, who shall keep a record of the drawing numbers and dates of receipt. The Contractor shall check thoroughly all Subcontractors' drawings as regards measurements, sizes of members, materials and details to satisfy itself that they conform to the Port Authority's Plans and Specifications. Drawings found to be inadequate or otherwise in error shall be returned to the Subcontractors for correction before submitting them to the Port Authority. After the Contractor has checked and approved such drawings, it shall place thereon the date of approval and signature of the reviewer, and then submit them to the Port Authority for approval.

All Contractor's and Subcontractors' drawings shall be submitted in the order in which materials and equipment are needed at the Site without necessarily waiting for completion of all drawings before submitting part of them for approval. The Port Authority's approval of the Contractor's and Subcontractors' drawings shall not relieve the Contractor from responsibility for errors or omissions, which may exist, even though work is done in accordance with such approved drawings. Where such errors or omissions are discovered later, they will be remedied by the Contractor without requiring any approval by the Port Authority.

No fabrication shall be started nor working drawings used on the Work until applicable drawings have been approved by the Port Authority. This approval, however, is for general design only and shall not relieve the Contractor of its responsibility for the sufficiency of detail design or correctness of detail dimensions.

After approval, the Contractor shall furnish the Port Authority with one reproducible copy of each final approved drawing unless otherwise specified.

All drawings prepared or furnished by the Contractor shall be marked with the title of the work and the name of the Contractor, as well as the Port Authority. Each shipment of drawings shall be accompanied by a letter of transmittal giving list of the numbers and titles of drawings.

All drawings, including detail shop drawings supplied by the Contractor, shall become the property of the Port Authority and the Port Authority shall be entitled to use all or any portion of such drawings for any purpose including the duplication of facilities under construction or the construction of new facilities.

### **B-40 SUSPENSION OF WORK FOR THE CONVENIENCE OF THE PORT AUTHORITY**

The Port Authority may by written order direct the Contractor to suspend all or any part of the Work for such period of time as may be determined by the Port Authority to be necessary or desirable for the convenience of the Port Authority. Any extension of time to be made because of such order to suspend Work shall be made in accordance with Section B-6 of the General Conditions. Any claim by the Contractor for an adjustment hereunder must be asserted within 30 days from the date such suspension is ordered.

**B-41 SUPERVISION BY AUTHORIZED REPRESENTATIVE OR PRESIDENT**

- a. President, and unless it expressly appears otherwise in this document, Authorized Representative, shall be the sole authorized individuals to act for or on behalf of Port Authority, unless otherwise appearing herein.
- b. Only the President shall have the authority to suspend Work (unless it is an emergency in which case Authorized Representative is authorized to act), terminate the Contract, terminate Work under the Contract, modify or amend the Contract, or waive compliance with any term of the Contract.
- c. The President shall have authority to stop the work at any time whenever such stoppage may be necessary to insure the proper execution of the Contract. The President shall have the right to order the removal and replacement of Work failing to meet the requirements of the Contract.
- d. It shall be the responsibility of the Authorized Representative to make written recommendations to the Port Authority in regard to all claims and other matters relating to the execution and progress of the Work and interpretations of the Contract Documents. The decisions on all such shall be made by the President, or his representative.
- e. Any notice to be supplied the Port shall be addressed to the Port Authority offices to the attention of the Authorized Representative unless it is a matter that only the President can act upon in which event it shall be to the attention of President with a copy to the Authorized Representative.

**B-42 DUST OR FUME CONTROL**

Whenever work of any kind creates nuisance or harmful dust or fumes, equipment for the complete protection of all personnel and property against dust and fumes shall be installed, maintained and effectively operated by the Contractor.

**B-43 TEMPORARY POWER AND LIGHT**

The Contractor will provide for electrical service as required for Work, this includes temporary electrical connections for the Contractor's facilities and a temporary electric power drop for the relocated temporary gate during construction.

The Contractor shall furnish, install and remove its service cables from the designated electrical distribution point and shall further furnish, install and remove any accessory electrical equipment, such as fused switches, transformers, control devices and lighting required for the proper functioning of its equipment.

All temporary power cable shall be supported on insulators and spaced in accordance with all local and national electric Codes. High-voltage safety signs shall be located on cable and distribution panels. Upon completion of the construction, or as otherwise directed by the Port Authority, the Contractor shall dismantle completely, or any portion thereof, its temporary light

system at its own expense.

**B-44 HEAT AND COMPRESSOR AIR**

The Contractor shall supply all heat for such periods of time and at such temperatures as required for the proper protection and execution of the Work. The Contractor shall supply all compressed air for construction purposes.

**B-45 HANDLING AND PROTECTION OF MATERIAL**

If requested by the Port Authority the planned method of moving or placing of materials shall be submitted for approval. This approval shall not relieve the Contractor of responsibility for the safety of the material and personnel.

The Contractor shall be responsible for unloading, uncrating and handling all equipment and material to be erected by it, whether furnished by the Contractor or others. The salvage materials and scrap resulting from such Work shall be disposed of by the Contractor in the manner prescribed, for removal of rubbish, unless otherwise directed by the Port Authority.

Any salvaged material considered usable by the Port Authority shall be stored and disposed in such a manner as the Port Authority may direct. Such usable material shall belong to the Port Authority if it results from material ordered directly by the Port Authority, and consigned to the Port Authority, or it is material removed from the existing facilities by the Contractor during the course of its Work. It shall be deemed to belong to the Contractor if it results from equipment or material ordered directly by the Contractor and consigned to the Contractor.

**B-46 CONTRACTOR'S OFFICE**

If an office is required to be maintained at the Site per the Specifications and Supplemental Conditions, the Contractor shall maintain an office at the Site during the construction period at which it or its authorized agent shall be present at all times while the Work is in progress. A copy of the Contract, and working drawings and the specifications for the Work shall be kept in the office where they will be readily available. A job posting board shall also be installed/present prior to the commencement of work in an area accessible by the public.

**B-47 USE OF PREMISES AND PARKING**

The Contractor shall confine its apparatus, storage of materials and the operations of its workmen to the limits indicated by the Port Authority and shall not unreasonably encumber the premises with its materials.

The Contractor shall use designated access roads for equipment, trucks and other vehicles.

Parking of Contractor's vehicles shall be limited to areas designated by the Port Authority. Parking space at the Site is limited and space for the parking of the personal vehicles of the Contractor's work force may not be provided by the Port Authority.

**B-48 CONTRACTOR'S SUPERINTENDENCE**

The Contractor shall at all times have a competent superintendent in charge of the Work, who is thoroughly familiar with the class of work covered by the specifications. The superintendent shall not be transferred or relieved without one week's prior written notice to the Port Authority.

The Contractor's superintendent shall represent the Contractor and all instructions given to him shall be binding as if given to the Contractor. He shall have authority to execute such instructions.

The Contractor's superintendent shall at all times cooperate with the Port Authority and other contractors in all matters, including labor relations.

The President may direct that the superintendent be replaced if his work is not satisfactory.

#### **B-49 LABORRELATIONS**

- a. The Contractor shall be responsible for its own labor relations with any trade or union represented among its employees, and it shall negotiate and seek to adjust all disputes between itself and its employees or anyone representing such employees. The same responsibility shall extend to the Subcontractors.
- b. If any dispute (other than disputes affecting wage rates, hours or conditions of employment) arises with any person discharged for cause by one Contractor or Subcontractor may not be re-employed on the job site by another, without the Port Authority's approval. trade or a union which, in the opinion of the Port Authority, affects more than a single Contractor or which threatens, unless resolved, to delay the Work generally or to postpone the completion of the Work beyond the contemplated or scheduled completion date, then the Port Authority shall have the right to intervene and to attempt to effect a solution or adjustment of such dispute which will permit the uninterrupted continuation of the Work.
- c. The Port Authority, may by written notice, request the Contractor dismiss forthwith any superintendent, foreman or watchman of the Contractor or its Subcontractor, that the Port Authority may deem incompetent, or careless or a hindrance to the proper completion of the Work. The Contractor shall comply with such notice as promptly as practicable without detriment to the Work.
- d. Any additional cost or expense incurred by any Contractor under the provisions of the preceding paragraphs shall not form the basis of any claim for an extra, or for any compensation over and above, or in addition to, the contract price previously agreed upon between such Contractor and the Port Authority.

#### **B-50 SCHEDULES, PROGRESS REPORTS, AND WORK COORDINATION**

In general, it is the intent to allow the Contractor to choose its own methods and procedures consistent with good practice. However, all coordination and scheduling of Work and all other Contractors will be done in consultation with the Port Authority and other critical stakeholders. The Contractor shall furnish to the Port Authority for its approval, upon award of the Work, a baseline schedule of expected progress for Work which will be discussed and reviewed at the Project kick off meeting. The Contractor shall be prepared to discuss this schedule with the Port Authority and to make any changes required to fit its Work into the overall program.

The Contractor shall provide updated copies of the baseline schedule at a minimum of once per month at the biweekly Project update meetings for discussion. The baseline schedule shall include updates on the status of all submittals and other critical preconstruction activities, allow for sufficient review/return time from Project stakeholders, Project milestones, mobilization, completion dates, and a detailed breakdown of the Scope of Work.

The Contractor shall furnish to the Port Authority no later than noon on the following day, a detailed daily force report covering all craft labor and supervision of the Contractor, and each of its Subcontractors with a general description of the work performed by each craft.

The Contractor shall submit, upon request, to Port Authority its purchase order list showing its various suppliers, purchase order number, date, a description of the material involved and the

delivery date specified. Such information is to be submitted at regular intervals so that the Port Authority will be aware of the progress being made by the Contractor in the placing of orders. The Contractor shall be solely responsible for expediting the delivery of all material to be furnished by it so that construction progress shall be maintained according to the schedule in effect.

During the course of the Work, the Contractor must confer on a regularly scheduled basis with the Port Authority and with the other Contractors' superintendents and Project stakeholders for the purpose of formulating the detailed work in accordance with the schedules and coordinating the Work with the work of other Contractors and Project stakeholders.

The Contractor shall have its trades afford all other trades under the control of other Contractors every reasonable opportunity for the installation of their work, as well as for the storage of their material and equipment.

When the Contractor is required to place or install material or equipment furnished by others, the Contractor shall notify the Port Authority, in writing from time to time when such equipment or material will be needed, and the Contractor shall cooperate with the Port Authority in arriving at the best workable overall scheduling of such work.

#### **B-51 SAFEGUARDS IN CONSTRUCTION**

The Contractor shall provide and maintain as directed by the Port Authority at its own cost and expense, adequate, safe and sufficient walkways, platforms, scaffolds, barriers, handrails, ladders, hoists, alarms, supports of excavation, safety signs and all necessary and proper equipment, apparatus and appliances useful in carrying on the Work and to make the site and free from avoidable danger, and to comply with all requirements of public authorities with respect thereto.

When requested by the Port Authority the Contractor shall provide, at no extra charge, scaffolds or ladders in place as may be required by the Port Authority or its inspectors for examination of the Work in progress.

The Contractor in all its operations shall be governed by codes in general acceptance throughout the construction industry and perform all work in accordance with same.

The Contractor shall take all reasonable steps and precautions to protect health and minimize danger from all hazards to life and property and shall make all reports and permit all inspections deemed necessary by the Port Authority.

#### **B-52 CUTTING AND PATCHING**

The Contractor shall not do any cutting and patching in connection with the Work unless otherwise specified or directed.

#### **B-53 MANUFACTURERS' STANDARD CLAUSES**

The applicable items of these General Conditions or the Specification and Supplemental Conditions shall control in case of any variance between any provision or provisions thereof and any provision or provisions contained in any standard sections of manufacturers' proposals, unless otherwise agreed to by both parties and so stated in the Contract.

#### **B-54 DISPUTE RESOLUTION**

The inclusion of the Dispute Resolution clause in this Contract does not relieve the Contractor's Mitigation and Notice requirements of 108.2F of the C&MS. Whenever an issue is elevated to a

dispute, the parties shall exhaust the Port Authority's Dispute Resolution and Administrative Claim process as set forth below prior to filing an action in any court of competent jurisdiction. If the Port Authority's Dispute Resolution and Administrative Claim process is exhausted, prior to filing an action in any court of competent jurisdiction, the claim shall be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The following procedures do not compromise the Contractor's right to seek relief in any court of competent jurisdiction.

All parties to the dispute must adhere to the Dispute Resolution and Administrative Claim process. Do not contact Port Authority personnel who are to be involved in a Step 2 or Step 3 review until a decision has been issued by the previous tier. Port Authority personnel involved in Step 2 or Step 3 reviews will not consider a dispute until the previous tier has properly reviewed the dispute and issued a decision.

Failure to meet any of the timeframes outlined below or to request an extension may terminate further review of the dispute and may serve as a waiver of the Contractor's right to file a claim.

Disputes and claims by subcontractors and suppliers may be pursued by the Contractor on behalf of subcontractors or suppliers. Disputes and claims by subcontractors and suppliers against the Port Authority but not supported by the Contractor will not be reviewed by the Port Authority. Disputes and claims of subcontractors and suppliers against the Contractor will not be reviewed by the Port Authority.

Contractor will continue with all work, including that which is in dispute. The Port Authority will continue to pay for work not in dispute.

The Port Authority will not make the adjustments allowed by 104.02.B, 104.02.C, and 104.02.D of the 2019 ODOT Construction and Materials Specifications if the Contractor did not give notice as specified above. This provision does not apply to adjustments provided in Table 104.02-2 of the 2019 ODOT CMS.

**Step 1 (On-Site Determination):** An Authorized Representative of the Port Authority will meet with the Contractor's superintendent within two (2) working days of receipt of the Contractor Written Early Notice set forth in 108.02.F of the 2016 ODOT CMS. They will review all pertinent information and contract provisions and negotiate in an effort to reach a resolution according to the Contract Documents. The Port Authority will issue a written decision of Step 1 within fourteen (14) calendar days of the meeting and receipt of substantiating documentation. If the dispute is not resolved, either abandon or escalate the dispute to Step 2.

**Step 2 (Port Authority Dispute Resolution Committee):** The Port Authority Dispute Resolution Committee will be responsible for hearing and deciding disputes at the Step 2 level. The committee will consist of the Port Authority's CFO, CCO, and President/CEO or designees (other than the project personnel involved).

Within seven (7) calendar days of receipt of the Step 1 decision, submit a written request for a Step 2 meeting to the Port Authority's Authorized Representative. The Port Authority's Authorized Representative will assign the dispute a dispute number. Within fourteen (14) calendar days of receipt of the request for a Step 2 meeting, submit the dispute documentation as follows:

- a) Submit three (3) complete copies of the documentation of the dispute to the Port Authority's Authorized Representative.
- b) Identify the dispute on a cover page by county, project number, Contractor name, subcontractor or supplier (if involved in the dispute), and dispute number.
- c) Clearly identify each item for which additional compensation and/or time is requested.



- d) Provide a detailed narrative of the disputed work or project circumstance at issue. Include the dates of the disputed work and the date of early notice.
- e) Reference the applicable provisions of the plans, specifications, proposal, or other contract documents in dispute. Include copies of the cited provisions in the dispute documentation.
- f) Include the dollar amount of additional compensation and length of contract time extension requested.
- g) Include supporting documents for the requested compensation stated in letter (f) above.
- h) Provide a detailed schedule analysis for any dispute involving additional contract time, actual or constructive acceleration, or delay damages. At a minimum, this schedule analysis must include the Schedule Update immediately preceding the occurrence of the circumstance alleged to have caused delay and must comply with accepted industry practices. Failure to submit the required schedule analysis will result in the denial of that portion of the Contractor's request.
- i) Include copies of relevant correspondence and other pertinent documents.

Within fourteen (14) calendar days of receipt of the Contractor's dispute documentation, the committee will conduct the Step 2 meeting with the Contractor personnel who are authorized to resolve the dispute. The committee will issue a written decision of Step 2 within fourteen (14) calendar days of the meeting. If the dispute is not resolved, either abandon or escalate the dispute to Step 3.

**Step 3 Hired Neutral Third Party (Mediation):** Submit a written Notice of Intent to File a Claim to the Port Authority's Authorized Representative, who will serve as the Dispute Resolution Coordinator (DRC), within fourteen (14) calendar days of receipt of the Step 2 decision.

The dispute becomes a claim when the DRC receives the Notice of Intent to File a Claim.

Submit six (6) complete copies of the claim documentation to the DRC within thirty (30) calendar days of receipt of the Notice of Intent to File a Claim. This timeframe may be extended upon mutual agreement of the parties and with approval of the DRC.

In addition to the documentation submitted at Step 2:

- a) Enhance the narrative to include sufficient description and information to enable understanding by a third party who has no knowledge of the dispute or familiarity with the project.
- b) Certify the claim in writing and under oath using the following certification:

*"I, (Name and Title of an Officer of the Contractor) certify that this claim is made in good faith, that all supporting data is accurate and complete to the best of my knowledge and belief, and that the claim amount accurately reflects the contract amendment for which (Contractor Company name) believes the Port Authority is liable."*

Sign and date this claim certification and have the signature notarized pursuant to the laws of the State of Ohio. The date the DRC receives the certified claim documentation is the date of the Port Authority's Receipt of the Certified Claim for the purpose of the calculation of interest as defined in 102.02.G.4 of the 2016 ODOT CMS.

- c) An overview of the project.
- d) Response to each argument set forth by the Contractor.
- e) Any counterclaims, accompanied by supporting documentation, Port Authority wishes to assert.

The Port Authority's Authorized Representative will then choose Mediation in the manner in which those methods are practiced by the Port Authority's Authorized Representative and allowed by law. The DRC will coordinate the agreement of the parties to the Mediation, and the selection of a Mediator. The fees of the Mediator will be shared equally between the Port

Authority and the Contractor. The DRC will obtain a written agreement, signed by both parties, that establishes the Mediation process. The Mediator will have complete control of the claim upon execution of the Mediation agreement.

The decision of the Mediator is the final step of the Port Authority's Dispute Resolution Process. The decision may be appealed by the Port Authority who is not bound by any offers of settlement or findings of entitlement made during Steps 1, 2, and 3 of the Dispute Resolution Process.

**Cleveland-Cuyahoga County Port Authority**

**BID FORMS**

**SEE ATTACHED BID  
FORM**

**PROJECT BID FORM**

**Master Modernization & Rehabilitation Project  
Dock 24 & 26  
PID 113698  
Grant No. 693JF71910010**



Item	ODOT Item	Item Description	Quantity	Unit	Unit Price	Item Total
<b>Dock 24 &amp; 26 Master Modernization &amp; Rehabilitation Project</b>						
<b>ROADWAY</b>						
1	202	STRUCTURE REMOVED, FOUNDATIONS	25	CY		
2	202	PAVEMENT REMOVED, AS PER PLAN	1000	SY		
3	202	PAVEMENT REMOVED, ASPHALT, AS PER PLAN	48400	SY		
4	202	PIPE REMOVED, 24" AND UNDER	1462	FT		
5	202	PIPE REMOVED, OVER 24"	50	FT		
6	202	MANHOLE REMOVED	2	EACH		
7	202	CATCH BASIN REMOVED	10	EACH		
8	202	REMOVAL MISC.:LOADING DOCK REMOVED	1	LS		
9	202	REMOVAL MISC.:BOLLARD REMOVED	44	EACH		
10	202	REMOVAL MISC.:BUILDING REMOVED, STORED AND RESET	3	EACH		
11	202	REMOVAL MISC.:RAIL STOP REMOVED	4	EACH		
12	202	REMOVAL MISC.:SWITCH REMOVED AND STORED	1	EACH		
13	202	REMOVAL MISC.:DOWNSPOUT REMOVED	28	EACH		
14	202	REMOVAL MISC.:OUTFALL ABANDONED, UNDER 13"	5	EACH		
15	202	REMOVAL MISC.:OUTFALL ABANDONED, 13" TO 25"	1	EACH		
16	202	REMOVAL MISC.:TIMBER CURB REMOVED AND STORED	3000	FT		
17	202	REMOVAL MISC.:PORTABLE CONCRETE BARRIER REMOVED	633	FT		
18	202	REMOVAL MISC.:RAIL REMOVED	1450	FT		
19	202	REMOVAL MISC.:BURIED RAIL REMOVED	1800	FT		
20	203	ROADWAY, MISC.:ENHANCED SUBGRADE (LIGHTWEIGHT CELLULAR CONCRETE FILL, CLASS II)	4200	CY		
21	203	ROADWAY, MISC.:SINKHOLE INVESTIGATION	3	EACH		
22	204	SUBGRADE COMPACTION	49400	SY		

<b>ROADWAY (CONT.)</b>						
23	690	SPECIAL - BOLLARD	149	EACH		
24	690	SPECIAL - BOLLARD, REMOVABLE	3	EACH		
25	690	SPECIAL - WORK INVOLVING SOLID WASTE	20	TON		
26	690	DUMPSTER RELOCATED	2	EACH		
27	900	SPECIAL -RAILROAD TRACK	750	FT		
<b>DRAINAGE</b>						
28	605	6" BASE PIPE UNDERDRAINS	720	FT		
29	611	4" CONDUIT, TYPE B	110	FT		
30	611	18" CONDUIT, TYPE B, 706.02	1158	FT		
31	611	24" CONDUIT, TYPE B, 706.02	1476	FT		
32	611	42" CONDUIT, TYPE B, 706.02	154	FT		
33	611	48" CONDUIT, TYPE B, 706.02	707	FT		
34	611	CONDUIT, MISC.:DRAINAGE INSPECTION	1	LS		
35	611	8' X 4' CONDUIT, TYPE A, 706.05	1460	FT		
36	611	CATCH BASIN, NO. 2-2B, AS PER PLAN	4	EACH		
37	611	CATCH BASIN, NO. 2-2B, AS PER PLAN A	8	EACH		
38	611	CATCH BASIN, NO. 2-3, AS PER PLAN	6	EACH		
39	611	CATCH BASIN, NO. 2-3, AS PER PLAN , DOUBLE STRUCTURE	4	EACH		
40	611	CATCH BASIN, NO. 2-4, AS PER PLAN	1	EACH		
41	611	CATCH BASIN, NO. 2-5, AS PER PLAN	2	EACH		
42	611	MANHOLE, NO. 3, AS PER PLAN	19	EACH		
43	611	DRAINAGE STRUCTURE, MISC.:PUMP STATION	2	EACH		
44	611	DRAINAGE STRUCTURE, MISC.:WATER QUALITY TREATMENT BMP, UNDERGROUND	1	LS		
45	611	SPECIAL - BACKFLOW PREVENTER, IN LINE CHECK VALVE	1	EACH		
46	832	STORM WATER POLLUTION PREVENTION PLAN	1	LS		
47	832	EROSION CONTROL	30000	EACH		
48	839	TRENCH DRAIN WITH STANDARD GRATE, AS PER PLAN, 12" WITH HEAVY DUTY GRATE	1340	FT		
<b>PAVEMENT</b>						
49	304	AGGREGATE BASE	8250	CY		
50	407	TACK COAT	400	GAL		
51	441	ASPHALT CONCRETE INTERMEDIATE COURSE, TYPE 2, (446)	150	CY		
52	441	ASPHALT CONCRETE SURFACE COURSE, TYPE 1, (448), PG64-22	150	CY		

PAVEMENT (CONT.)						
53	451	, 16" REINFORCED CONCRETE PAVEMENT, CLASS QC1	48530	SY		
54	452	15" NON-REINFORCED CONCRETE PAVEMENT, CLASS QC1 WITH QC/QA, AS PER PLAN	860	SY		
WALL						
55	202	REMOVAL MISC.:MOORING BOLLARD	4	EACH		
56	202	REMOVAL MISC.:CLEAT	10	EACH		
57	504	STEEL SHEET PILING LEFT IN PLACE, PZ40	78340	SF		
58	511	CONCRETE, MISC.:GRADE BEAM	1000	FT		
59	511	CONCRETE, MISC.:CAP, 26W	1100	FT		
60	511	CONCRETE, MISC.:CAP, 24	1900	FT		
61	513	STRUCTURAL STEEL, MISC.:WALER & TIEBACK SYSTEM	1100	FT		
62	513	STRUCTURAL STEEL, MISC.:SAFETY LADDER 10'	8	EACH		
63	513	STRUCTURAL STEEL, MISC.:SAFETY LADDER 14'	14	EACH		
64	690	SPECIAL -MOORING BOLLARD DOCK 24	11	EACH		
65	690	SPECIAL -MOORING BOLLARD DOCK 26	1	EACH		
66	690	SPECIAL - RECONSTRUCT BOLLARD 75T DOCK 24	4	EACH		
67	690	SPECIAL - RECONSTRUCT BOLLARD 75T DOCK 26	8	EACH		
68	690	SPECIAL - RECONSTRUCT BOLLARD 150T DOCK 24	2	EACH		
69	690	SPECIAL -RECONSTRUCT CORNER BOLLARD 150T DOCK 24	2	EACH		
70	690	SPECIAL -RECONSTRUCT CORNER BOLLARD 150T DOCK 26	1	EACH		
71	690	SPECIAL - FENDERS	1	LS		
72	511	CONCRETE, MISC.: RECONSTRUCT DOOR SILL	435	FT		
PAVEMENT MARKINGS AND SIGNS						
73	642	EDGE LINE, 6", TYPE 1	0.8	MILE		
74	642	EDGE LINE, 8" RED, TYPE 1, AS PER PLAN	0.8	MILE		
75	642	CENTER LINE, TYPE 1	0.4	MILE		
76	642	RAILROAD SYMBOL MARKING	2	EACH		
77	642	PARKING LOT STALL MARKING, TYPE 1	599	FT		
78	642	WORD ON PAVEMENT, 48", NO LOADING ZONE	28	EACH		
79	642	WORD ON PAVEMENT, 72", NO CARGO	2	EACH		

PAVEMENT MARKINGS AND SIGNS (CONT.)						
80	642	PAVEMENT MARKING, MISC.:LIGHT POLE FOUNDATION PAINTING	8	EACH		
81	690	SPECIAL - CONCRETE PARKING BLOCK	17	EACH		
UTILITY WORK						
82	611	4" CONDUIT, TYPE B	55	FT		
83	611	6" CONDUIT, TYPE B	605	FT		
84	611	8" CONDUIT, TYPE B	1746	FT		
85	611	8" CONDUIT, TYPE B, 707.42	92	FT		
86	611	12" CONDUIT, TYPE B	8	FT		
87	611	30" CONDUIT, TYPE B	237	FT		
88	611	36" CONDUIT, TYPE B	37	FT		
89	611	54" CONDUIT, TYPE B	32	FT		
90	611	MANHOLE, NO. 3	20	EACH		
91	611	MANHOLE ADJUSTED TO GRADE	17	EACH		
92	611	DRAINAGE STRUCTURE, MISC.:SANITARY CLEANOUT	13	EACH		
93	625	LIGHT POLE FOUNDATION REMOVED, AS PER PLAN	1	EACH		
94	625	LIGHTING, MISC.: COLD IRONING	1	LS		
95	638	VALVE BOX ADJUSTED TO GRADE	22	EACH		
96	638	SPECIAL - 6" WATER MAIN DIP CLASS 52 PUSH ON JOINTS AND FITTINGS	190	FT		
97	638	SPECIAL - 8" WATER MAIN DIP CLASS 52 MECHANICAL JOINTS AND FITTINGS	2010	FT		
98	638	SPECIAL - 6" GATE VALVE WITH VALVE BOX	6	EACH		
99	638	SPECIAL - 8" GATE VALVE WITH VALVE BOX	3	EACH		
100	638	SPECIAL - 6" FIRE HYDRANT RELOCATED	1	EACH		
101	638	SPECIAL - FIRE HYDRANT REMOVED AND DISPOSED OF	1	EACH		
102	638	SPECIAL - FIRE HYDRANT ADJUSTED TO GRADE	6	EACH		
103	638	WATER WORK, MISC.: RECONSTRUCT WATER STATION	4	EACH		
104	638	WATER WORK, MISC.:REMOVE STAND PIPE	1	EACH		
105	638	WATER WORK, MISC.:REMOVE AND REPLACE WATERLINE	44	FT		
106	690	SPECIAL -ELECTRICAL WORK BASE	1	LS		
107	804	SPECIAL - FIBER OPTIC CABLE AND COMPONENTS, BACKBONE AND CONNECTIONS	1	LS		

<b>INCIDENTALS</b>						
107	614	MAINTAINING TRAFFIC	1	LS		
108	623	CONSTRUCTION LAYOUT STAKES AND SURVEYING	1	LS		
109	624	MOBILIZATION	1	LS		
110	690	SPECIAL - AS-BUILT CONSTRUCTION PLANS	1	LS		

**TOTAL PROJECT COST BASE BID:** \_\_\_\_\_

<b>ADD ALTERNATE 1: STORMWATER TREATMENT BMP</b>						
115	607	FENCE, TYPE CL	248	FT		
116	607	GATE, TYPE CL	2	EACH		
117	611	DRAINAGE STRUCTURE, MISC.: PUMP STATION INTERIOR COMPONENTS	2	EACH		
118	611	DRAINAGE STRUCTURE, MISC.: WATER QUALITY TREATMENT BMP	1	LS		
119	690	SPECIAL - ELECTRICAL WORK ADD ALTERNATE	1	LS		

**TOTAL COST ADD ALTERNATE 1: STORMWATER TREATMENT BMP** \_\_\_\_\_

<b>ADD ALTERNATE 2: TIMBER CURB</b>						
120	610	SPECIAL -TIMBER CURB RECONSTRUCTED	1,810	FT		

**TOTAL COST ADD ALTERNATE 2: TIMBER CURB** \_\_\_\_\_



**MASTER MODERNIZATION REHABILITATION PROJECT  
DOCK 24 26  
PID 113698**

**BID FORM CONT.**

Please provide a list of all major Subcontractors, Scope of Work, Estimated Contract Dollar Value, & Past Project Experience:

<u>Company</u>	<u>Scope of Work</u>	<u>Estimated Contract Dollar Value</u>	<u>Past Project Experience &amp; ODOT Prequalifications</u>
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**BIDDER AFFIDAVITS:**

**EEO CERTIFICATION:**

The bidder hereby certifies that by signing and submitting this bid 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.**

**BIDDER:**

Signature: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Company: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City/State/Zip Code: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 E-Mail: \_\_\_\_\_

**ADDITIONAL BID INFORMATION & QUESTIONS:**

- 1.) Does General Contractor Have Experience Working on Similar Types of Projects? **YES / NO**  
 \* REQUIRED- Please supply experience w/ client reference contact information.
  
- 2.) Does Contractor Have Experience Working on Active Maritime Transportation & Cargo Handling Facilities? **YES / NO**  
 \* REQUIRED- Please supply experience w/ client reference contact information.
  
- 3.) Total Estimated Small, DBE, & EDGE Participation Percentage (SEE A-25 & A-26): \_\_\_\_\_  
 \*Note: The total participation must meet or exceed the minimum goal established for the Project, include the EDGE participation goal.  
 \*Contractor must submit participation plan with their bid to Port Authority to be considered responsive & responsible.
  
- 4.) Please confirm that the Project was estimated using Davis Bacon prevailing wage rates. **YES / NO**
  
- 5.) Do you have experience working with the Cleveland-Cuyahoga County Port Authority? **YES / NO**  
 \*If yes, please provide a list of projects.
  
- 6.) Do you have experience working on sites with elevated ground water conditions or adjacent to Lake Erie? **YES / NO**
  
- 7.) Please confirm if the Contractor or any major subcontractors are "ODOT Prequalified". **YES / NO**  
 \* If yes, please provide a list of the applicable qualifications for this Project.

**MASTER MODERNIZATION REHABILITATION PROJECT  
DOCK 24 26  
PID 113698**

**BID FORM CONT.**

8.) Verify the Contractor reviewed the geotechnical report & historic dock drawings? **YES / NO**

9.) Contractor understands the Project Buy American requirements and does not anticipate needing any waivers. **YES / NO**

10.) Does the Contractor have Standard Form 100 (EEO-1) on file with the Federal government for last period? **YES / NO**

\* If yes, please record/verification, see Section A-30 of the Bid Instructions.

11.) Contractor complies with Ohio Administrative Code §9.47 regarding Affirmative Action Programs? **YES / NO**

\* Contractor is required to submit a valid Certificate of Compliance w/ Affirmative Action Programmes issued by the State EEO Coordinator with Bid in accordance with A-35.

12.) Please confirm Contractor is in good standing with an OBWC-approved Drug Free Workplace Program? **YES / NO**

\* Contractor must provide record of enrollment and good standing with bid.

13.) Please verify the Contractor understands the Terminals TWIC access credential requirements? **YES / NO**

14.) Please confirm the prime Contractor will perform a minimum of 30% of work. **YES / NO**

15.) Contractor certifies no Unresolved Findings for Recovery, Tax Delinquencies, or Felony Convictions (A-43 & A-30). **YES / NO**

16.) Please provide the Port Authority with the Contractor's EEO Officer's Contact Information.

Name: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

17.) Please provide completion deadline for the Project:

SUBSTANTAIL COMPLETION: \_\_\_\_\_  
FINAL COMPLETION: \_\_\_\_\_

18.) I acknowledge receipt of the following addenda (if any):    1            2            3            4            5

# AGREEMENT

## Project: Dock 24 & 26 Master Modernization & Rehabilitation Project

THE CLEVELAND-CUYAHOGA COUNTY PORT AUTHORITY ("Port Authority"), a body corporate and politic and port authority organized and operating pursuant to Chapter 4582.01 et seq. of the Ohio Revised Code, hereby agrees with \_\_\_\_\_ ("Contractor"), an Ohio corporation, that Contractor will perform the work described below for the price and upon the terms and conditions hereinafter set forth.

The aforementioned Port Authority and Contractor, in consideration of the payment, covenants and conditions hereinafter mentioned, hereby agree as follows:

### 1. PROJECT

The purpose of the Agreement is to establish the terms and conditions whereby the Contractor agrees to perform and accomplish the following:

#### Dock 24 & 26 Master Modernization & Rehabilitation Project

**The successful Bidder will perform the work outlined in the Contract Documents. The work includes the reconstruction of 1098' of bulkhead on Dock 26W. The work also includes the rehabilitation and reconstruction of the marine fenders and bollards on Docks 24 and 26. The elevations of Docks 24 and 26 will be increased and include new concrete pile caps and pavement. Drainage improvements include rerouting/consolidation of stormwater collection infrastructure, outfalls and the installation of water quality and subsurface water storage devices.**

### 2. CONTRACT DOCUMENTS

The Contract between Port Authority and Contractor consists of this agreement and the following documents ("Contract Documents") which are incorporated by reference:

- (1) All provisions required by law or resolution to be inserted in the Contract, whether actually inserted or not.
- (2) The Resolution of the Port Authority awarding the Contract.
- (3) Amendments to the Contract.
- (4) The Form Contract as completed and executed.
- (5) All Addenda issued by the Port Authority prior to Bid Submission.
- (6) Project Specifications and Supplemental General Conditions.
- (7) General Conditions.
- (8) Instruction to Bidders.
- (9) The Contract Drawings.
- (10) Standard Construction Drawings of the Ohio Department of Transportation & City of Cleveland referenced in the Contract Drawings.
- (11) Cleveland Division of Water Construction Standards referenced in the Contract Drawings
- (12) Ohio Department of Transportation Construction & Material Specifications 2019
- (13) Ohio Department of Transportation Supplemental Specifications referenced in the Contract Drawings
- (14) The Resolution authorizing the making of the public improvement.
- (15) All required Policies of Insurance.
- (16) The Bid Affidavit of Non-Collusion.
- (17) The Bid.
- (18) MARAD Categorical Exclusion

- (19) FAA Airspace Determination
- (20) USACE Nationwide & Project Provisional Permit
- (21) ODNR Temporary Shore Structure Permit
- (22) OEPA D.A. & 401 NWP Exceedance Authorization
- (23) OEPA NPDES Permit
- (24) MARAD FY 2019 Port Infrastructure Development Grant Agreement General Terms & Conditions
- (25) Ohio Department of Transportation Maritime Assistance Program Project Agreement
- (26) Geotechnical Report(s).
- (27) Historic Reference Drawings: Dock 24 & Dock 26

**3. TIME OF COMPLETION**

The Contractor acknowledges that TIME IS OF THE ESSENCE in this Agreement and that the work contemplated in the Contract Documents will be completed in accordance with the following project delivery milestones:

Substantial Completion: November 30<sup>th</sup>, 2022  
 Final Completion: December 31<sup>st</sup>, 2022

**4. PAYMENT**

The Port Authority agrees to pay the Contractor an amount not to exceed \$XX,XXX,XXX.00. The total contract price is for all labor, overhead, profit, supervision, materials and miscellaneous work requirements necessary for completion of the work.

**5. NOTICES**

All notices permitted or requested to be given hereunder shall be delivered or mailed to:

Cleveland-Cuyahoga County Port Authority  
 1100 West Ninth Street, Suite 300  
 Cleveland, OH 44113  
 ATTN: Nicholas A. LaPointe

IN WITNESS WHEREOF, the parties hereto have caused their names to be signed hereto by a duly authorized officer, as of this \_\_\_\_ day of \_\_\_\_\_, 2021.

**CLEVELAND-CUYAHOGACOUNTY  
 PORT AUTHORITY**

By: \_\_\_\_\_  
 Its: President

**TBD**

By: \_\_\_\_\_  
 Its: President

**SUBMIT COPY w/ BID**  
**DISCLOSURE OF PERSONAL PROPERTY TAXES**

STATE OF OHIO

COUNTY OF CUYAHOGA

The undersigned, being first duly cautioned and sworn, says that:

1. He/She is the \_\_\_\_\_ of \_\_\_\_\_ who made a bid for an improvement project or for the purchase of services and supplies for the Cleveland-Cuyahoga County Port Authority, involving the competitive bid process;
2. He/She is familiar with RC 5719.042, copies of which are available in the offices of the Cleveland-Cuyahoga County Port Authority, and that he/she submits to the Cleveland-Cuyahoga County Port Authority this statement under oath, that as the person with whom the contract is to be made was not charged at the time the bid was submitted with any delinquent personal property taxes on the general tax list of personal property of any county in which the Cleveland-Cuyahoga County Port Authority has territory or that such person was charged with delinquent personal property taxes on any such tax list.
3. This statement sets forth in full, the amount of such due and unpaid delinquent taxes and any due and unpaid penalties and interest thereon as specified by RC 5719.042.
4. If this statement indicates that the taxpayer was charged with any such taxes, a copy of the statement shall, with the permission of the taxpayer, which is hereby given, be transmitted by the Cleveland-Cuyahoga County Port Authority to the County Treasurer with thirty (30) days of the date this statement was submitted.
5. A copy of the statement shall also be incorporated into the contract between the Cleveland-Cuyahoga County Port Authority and the undersigned, and no payment shall be made with respect to any contract to which RC 5719.042 applies unless such statement has been so incorporated as a part thereof.

By \_\_\_\_\_

Title \_\_\_\_\_

# Ohio Personal Property Taxes

## Exhibit A

(Complete if taxes are owed)

**NON COLLUSION AFFIDAVIT**

**SUBMIT COPY w/ BID**

STATE OF OHIO )  
 )SS  
CUYAHOGACOUNTY )

**AFFIDAVIT**

\_\_\_\_\_ being first duly sworn deposes and says:

Individual only: That he is an individual doing business under the name of \_\_\_\_\_ at \_\_\_\_\_ in the City of \_\_\_\_\_, State of \_\_\_\_\_.

Partnership only: That he is the duly authorized representative of a partnership doing business under the name of \_\_\_\_\_ in the City of \_\_\_\_\_, State of \_\_\_\_\_.

Corporation only: That he is the duly authorized, qualified and acting \_\_\_\_\_ of \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_; and that he, said partnership or said corporation, is filing herewith a bid to the Cleveland-Cuyahoga County Port Authority in conformity with the foregoing specifications;

Individual only: Affiant further says that the following is a complete and accurate list of the names and addresses of all persons interested in said proposed contact:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Affiant further says that he is represented by the following attorneys:  
\_\_\_\_\_  
and is also represented by the following resident agents in the county of Cuyahoga:  
\_\_\_\_\_  
\_\_\_\_\_

Partnership only: Affiant further says that the following is a complete and accurate list of the names and addresses of the members of said partnership:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Affiant further says that said partnership is represented by the following attorneys: \_\_\_\_\_ and is also represented by the following resident agents in the County of Cuyahoga:  
\_\_\_\_\_

Corporation only: Affiant further says that the following is a complete and accurate list of the officers, directors and attorneys of said corporation:

President  
Vice President  
Secretary  
Treasurer  
Cuyahoga County Manager or Agent  
Attorneys  
Directors:

And that the following officers are duly authorized to execute contracts on behalf of said corporation:

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

Affiant further says that the bid filed herewith 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, or that anyone shall refrain from bidding; that 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; 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, or to fix any overhead, profit, or cost element of such bid price or that of any other bidder, or to secure any advantage against the Cleveland-Cuyahoga County Port Authority or anyone interested in the proposed contract; that all statements contained in such bid are true; that said bidder has not, directly or indirectly, submitted his bid price or any break-down thereof or the contents thereof, or divulged information or data relative thereto, or paid or agreed to pay, directly or indirectly, any money, or other valuable consideration for assistance or aid rendered or to be rendered in procuring or attempting to procure the contract above referred to, to any corporation, partnership, company, association, organization, or to any member or agent thereof, or to any other individual, except to such person or persons as herein above disclosed to have a partnership or other financial interest with said bidder in his general business; and further that said bidder will not pay or agree to pay, directly or indirectly, any money or other valuable consideration to any corporation, partnership, company, association, organization or to any member or agent thereof, or to any other individual, for aid or assistance in securing contract above referred to in the event the same is awarded to

\_\_\_\_\_  
\_\_\_\_\_  
(name of individual, partnership or corporation)

Further affiant saith not.

(Sign Here) \_\_\_\_\_

Sworn to before me and subscribed in my presence this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 2021.

\_\_\_\_\_  
Notary Public

**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 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.