

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:

General Cargo Terminal Oleo Direct to Rail Transfer Station Project

The successful Bidder will perform the work outlined in the Contract Documents. The work consists of all site preparation, civil infrastructure, piping manifolds, the furnishing and installation of rail car access and metering platforms, the furnishing and installation of necessary hardware and software to monitor the transfer of the cargo from the ship into the rail cars, and the complete commissioning, testing, certifying, and training of personnel on the operation of the system as specified in the Contract documents.

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 11:00 a.m. local time on October 6, 2021.

Electronic drawings and specifications ("Bid Packets") 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 upon special appointment or direct from the Port Authority's website: <https://www.portofcleveland.com/doing-business/>.

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Any Bid may be withdrawn or amended prior to the closing time for the receipt of the Bids.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 419-349-7553, or email 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

Cleveland-Cuyahoga County Port Authority

Project: General Cargo Terminal Oleo Direct To Rail Transfer Station Project

Bid Deadline: 11:00 a.m. local time on October 6th, 2021

Instruction to Bidders (A), General Contract
Conditions (B),
Bid Form, and Form Contract Agreement

Part A - Instruction to Bidders & Special Conditions

A-1 ADVERTISEMENT

An advertisement for bids for the Project appears 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://www.portofcleveland.com/doing-business/>. The Project will be advertised for a minimum of 14 days.

A-2 PRE-BID MEETING & QUESTIONS

An optional pre-bid meeting will be held on September 30th at 10:00 am at the General Cargo Terminal, located at 775 West 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. Pre-registration is requested to attend this meeting and shall be made to the attention of Nicholas LaPointe at Nicholas.LaPointe@PortofCleveland.com on or before close of business, the day before the scheduled meeting.

Pre-bid questions shall be submitted in writing to the attention of Nicholas LaPointe at Nicholas.LaPointe@PortofCleveland.com on or before close of business on October 1st. Questions will be responded to via Addendum and will be posted to the Port Authority's website. All questions will be responded to and posted to the Port Authority's website by close of business on October 4th, 2021.

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 11:00 a.m. 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. As result of the COVID-19 virus and in place social distancing measures, bids shall be delivered to the office no sooner than 30 minutes in advance of the public bid opening. A member of the Port Authority's staff will receive and log the bid from the first-floor conference room where the public bid opening will occur. Contractors shall send no more than one person to attend the public bid opening and Contractors shall maintain social distancing measures while attending the public bid opening.

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. 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, or both, by the Port Authority prior to the receipt of bids and are official Contract documents.
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 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. "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.
16. "President" shall mean the President of the Port Authority.
17. "Port Authority" shall mean the Cleveland-Cuyahoga County Port Authority.
18. "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.
19. "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.
20. "Specifications" shall mean all of the directions, requirements, standards of performance applying to the Work as hereinafter detailed.
21. "Standard" shall have the meaning given to it in Section B-18.
22. "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.
23. "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.
24. "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, personnel and pecuniary resources to deliver the material and complete the Work in a satisfactory manner and within the time

specified. This information shall include the submission of baseline schedule outlining the Bidder's anticipated scheduled to meet the schedule outlined for this Project. Material lead times, submittals, etc. should also be accounted for in the provided schedule. It is important for the Contractor to understand that there are ships currently scheduled for the Spring 2022 and this facility must be fully commissioned and in service prior to their arrival. 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.

A-15 EXAMINATION OF SITE OF WORK

- a. Bidders are strongly encouraged to satisfy themselves to all of the relevant existing conditions of the Site, including existing improvements, access in and out of the Terminal, historic use, utilities, cargo operations, Lake and groundwater elevations/trends, standing water, proximity of the active rail track, ship traffic, and pay particular attention to any geotechnical, 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. Bidders submission of a bid is the acknowledgment of Bidder that it has inspected the Site, including existing improvements, 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 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:**

- (1) The experience of the Bidder. The Contractor must provide the evidence that they have experience performing the following work types and working in the following environments:
 - Work within active industrial terminals/facilities with multiple modes of transportation
 - Excavation & Ground Improvements On Sites w/ Elevated Water Tables or in close proximity to Lake Erie
 - Furnish, installing, and commissioning bulk loading direct to rail transfer equipment.
- (2) Submitted Baseline Schedule (See A-13)
 - Bidder's Readiness & Ability To Commence Work In Timely Manner
 - Milestone & Completion Dates
- (3) Bidder's Financial Condition
- (4) Bidders conduct and performance on previous contracts including references,
- (5) Bidders facilities, resources, its qualified management skills and its ability to execute a contract properly

A-17 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-18 WITHDRAWAL OF BID

No bid may be withdrawn after it has been deposited with the Port Authority.

A-19 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 May Board meeting. Presently scheduled for October 14th.

A-20 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-21 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.

A-22 RELEASE OF BOND

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

A-23 PREVAILING WAGE & PAYROLL REQUIREMENTS

Note, this Project is prevailing wage, see section B-26 (Wages & Hours) under the General Conditions of the Contract.

A-24 MINORITY & FEMALE BUSINESS PARTICIPATION

The Port Authority is committed to economic inclusion of minority and female-owned businesses in its capital program. The Port Authority has an established participation goal of 30%. The Port Authority understands that as result of market limitations and details specific to each project, that a 30% participation goal may be a difficult goal to attain on specific Projects. As result, please indicate the level of anticipated FBE/MBE Project participation percentage on the Bid Forms. The participation level will be evaluated as part of an overall bidder's responsiveness. **The Port Authority requires a minimum participation of 5% on this Project.** Prior to awarding the Contract, the Port Authority will request an MBE/FBE participation plan outlining how the Bidder intends on achieving the participation level listed on their Bid Form. Additionally, with monthly payment applications the Port Authority will require progress reports to track MBE/FBE participation percentage on the Project and a close out report upon completion. If the minimum goal is not obtained the Project, the Port Authority may request GFE documentation and other justification for not meeting the minimum goal established on the Project. It is the expectation of the Port Authority that all minority and female firms working on the project will perform a commercially useful function and that the contractor will exercise its best efforts to utilize certified Minority Business Enterprises ("MBE") and Female Business Enterprises ("FBE") businesses in the construction of the Project at a level of 30% or greater.

The Port Authority adheres to the following definition of commercially useful function:

A Minority or Female-Owned Enterprise performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. The company must also be responsible, with respect to materials and supplied used on the contract, for negotiating price, determining quality and quantity, ordering materials and installing (where applicable) and paying for the materials itself.

A-25 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-26 DRUG-FREE WORKPLACE

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

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

A-27 OHIO WORKERS' COMPENSATION COVERAGE

The Contractor must secure and maintain valid Ohio workers' compensation coverage until the project has been finally accepted by the Port Authority. 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-28 UNRESOLVED FINDING FOR RECOVERY

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.

A-29 GENERAL CARGO TERMINAL RAIL TRACK

The rail track within the General Cargo Terminal is an active rail track and it must remain in service during the progression of work. The track is privately owned and controlled by the Cleveland-Cuyahoga County Port Authority and is serviced through a partnership by OmniTRAX. No additional railroad insurance is required for this Project and no railroad flaggers are required. Rail movement within the Terminal occurs on average, less than twice weekly.

A-30 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 consistently 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 the historic water levels, the Contractor should anticipate higher than normal ground water elevations. Contractor shall be responsible for managing water on site in a manner which doesn't impact Terminal operations or discharge pump water directly into cargo inventory. No additional payments or claims shall be made related to high water elevations experienced on the Project.

A-31 MATERIAL SUPPLIER & CONTRACTOR RELEASE

During the development of the design and project scoping package, the Port Authority consulted with Safe Rack, a leading industry expert in the design, fabrication, installation, and commissioner of bulk transfer access and metering equipment. Safe Rack has been released and is eligible to participate as a supplier and specialty contractor on this Project. The contact at Safe Rack is Travis McCraine and he can be reached at tmccraine@saferack.com and 803-410-0512.

Please note, Contractors are not required to use Safe Rack and can submit Approved Equal equipment for consideration by the Port Authority. Contractors are encouraged do so if there is value to the Port Authority. Other companies that produce similar systems include Carbis Solutions and Green Access & Fall Protection. Green Access & Fall Protection, manufactured by Benko Products, Inc. is located in Sheffield Village, OH and is a local company to northeast Ohio. The point of contact is Doug Ingram at d Ingram@benkoproducts.com and his direct line is 440-773-1404.

A-32 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 MSTA 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-33 AS PER PLAN DESIGNATION

The absence of an “As Per Plan” designation on 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-34 AS DIRECTED BY ENGINEER

Items described as “As Directed By Engineer” shall be performed at the direction of the Port Authority’s Engineer. Contractor shall not be eligible for any additional compensation if item is not exercised and or only partially exercised. Bid/Pay Item 21 is designated “As Directed By Engineer”.

A-35 ENGINEER’S ESTIMATE

The cost magnitude for this Project established by the Engineer of Record is in the \$1.5M-\$2M range. For additional information related to the Engineer’s estimate please contact the Port Authority.

A-36 BID ITEM DESCRIPTIONS

The bid items detailed below and included on the bid form are intended to capture 100% of the Contracted work whether explicitly stated or not. If there is any question of how or where a work item or activity is paid under the Contract, the Contractor shall ask a pre-bid question prior to submitting a bid to seek clarity. By placing a Bid, Prospective Bidder certifies they have captured all of the Contract work.

Item 01 - Mobilization / Demobilization, Site Controls, & General Conditions

This Pay Item consists of preparatory work and operations for assembling and mobilizing and demobilization personnel, equipment, supplies, and incidentals to the project site including but not limited to preparation of shop drawings, action/information submittals, schedules, safety plans, equipment laydown areas, temporary office space (as required) including restroom facilities, safety controls, TWIC and security, personal protective equipment (PPE) and safety equipment, etc. This item shall also include the cost of bonds, project supervision, insurance, erosion and sediment control measures, general trash removal, electronic as-builts, layout, and surveying. This item shall be paid for at the contract lump sum price which shall include the cost of all materials, labor, tools, and equipment to perform this item. The Port Authority will progress this Pay Item at a prorated monthly rate based upon the anticipated duration of the Project based upon the Contractor's baseline schedule submitted with the Bid.

Item 02 – Clearing & Grubbing

This Pay Item includes the clearing and grubbing work outlined in the Project documents, and vegetation control work highlighted. The work area includes the areas highlighted on sheet C200 of the plan set. All clearing and grubbing should be performed in a manner consistent with ODOT's 2019 C&MS standard specifications and should more specifically require the following:

- All existing armor stone that remains between the rail track and bulkhead should be piled in designated areas immediately adjacent to the bulkhead near the north and southern limits of the site. This includes any pieces of armor stone or remnants from previous USACE activities on the dock.
- Following performance of the clearing and grubbing work and the stockpiling of the ruminant USACE armor, stone the dock shall be graded and compacted to establish a hard-working surface free of vegetation.
- The existing concrete bin blocks shall be relocated from the northern area of the dock and placed adjacent to the newly installed stainless steel pipe rack and foundations to protect the piping from damage. The stone located within the bin blocks shall be graded out on the dock.
- All woody debris and misc. trash located within the clearing and grubbing areas shall be removed and disposed of offsite. This includes woody debris and trash located along the armored rock revetment on the north end of the dock extending down to the water line. Port Authority also requests the USACE pier head be cleaned of any trash and woody debris.
- All brush and tree vegetation less than 6" in diameter located adjacent to or within the armored rock revetment at the north end of the Project site shall be cut down and removed from site. Removal to the existing ground line is required. Stumps shall be chemically treated to ensure that vegetation that is able to propagate at or near the root does not regrow.
- Trees that remain at the top of the stone revetment shall be trimmed.

Following Substantial Completion and prior to Final Acceptance, the Contractor shall return in May of 2022 to treat the cleared and grubbed hatched areas with herbicide to knock down and treat any new vegetation that grows or tried to fill back in. Vegetation that is killed with herbicide should then be cleared to the ground line through mechanical methods or controlled burning

following herbicide treatment.

This Pay Item shall include all necessary labor, equipment, materials, fees, expenses, disposal, and costs and shall be paid out as a Lump Sum. Pay Item will be progressed as follows:

- 40% Clearing & Grubbing, Armor Stone Stockpiling, Grading, & Compaction
- 10% Concrete Barrier Repositioning Pipe Rack Protection
- 20% Brush & Small Tree Removal w/ Trunk Treatment
- 15% Woody Debris & Trash Removal
- 15% May 2022 Herbicide Treatment & Clearing/Clean Up

Item 03 – Ballast Removal & Reuse

This Pay Item includes the select removal of existing rail ballast stone and it's reuse for the installation of the storm sewer drain connections from the proposed spill containment track pans and the future track pan for a contemplated fourth access and metering platform.

This Pay Item shall include all necessary labor, equipment, materials, fees, expenses, disposal, and costs and shall be paid out as a Lump Sum.

Item 04 – Track Stone Removal

This Pay Item includes the select removal of existing compacted stone fill from in and around the existing rail tracks to facilitate the installation of the proposed rail track pans and it's permitted reuse and compaction to keep the newly installed rail pans confined and installed on station. Any excess stone shall be regraded out on the dock.

This Pay Item shall include all necessary labor, equipment, materials, fees, expenses, disposal, and costs and shall be paid out as a Lump Sum.

Item 05 – Excavation & Embankment, As Per Plan

This Pay Item includes the performance of the work necessary to regrade the Project area in accordance with the proposed final grading plan as outlined on sheets CS300 and CS301. It is anticipated suitable embankment material will need to be imported to build up the area. Engineers estimated 75 CY of embankment material is required. Contractor shall verify volume and bid accordingly. This work shall be performed in accordance with ODOT's 2019 C&MS specification.

This Pay Item shall include all necessary labor, equipment, materials, fees, expenses, and costs and shall be paid out as a Lump Sum.

Item 06 – Storm Sewer (4" to 12")

This Pay Item includes the performance of the work necessary to install the storm sewer service lines to tie the 3 EA. proposed rail drip pan stations to the ODOT #3 48" diameter manhole and the future drip pan contemplated for fourth transfer station per the requirements of the contract documents. This work shall be performed in accordance with ODOT's 2019 C&MS specification.

This Pay Item shall include all necessary labor, equipment, materials, fees, expenses, inspection, and costs and shall be paid out as a Lump Sum.

Item 08 – ODOT No. 3 48" Dia. Manhole

This Pay Item includes the performance of the work necessary to install the ODOT No. 3 48" Manhole structure as detailed in the plans. This structure will serve as a detention vault to This work shall be performed in accordance with ODOT's 2019 C&MS specification. Additional Port Authority requirements: Any joints or penetrations in the structure at or below elevation +576 must be watertight and sealed using gaskets to prevent water infiltration from elevated Lake Erie elevations. All other joints above this elevation are to be silt tight.

This Pay Item shall include all necessary labor, equipment, materials, fees, expenses, inspection

and costs and shall be paid out per EACH unit installed.

Item 08 – 6” Dia. Cleanout

This Pay Item includes the performance of the work necessary to install 6” dia. cleanouts in accordance with the plans. This work shall be performed in accordance with ODOT’s 2019 C&MS specification.

This Pay Item shall include all necessary labor, equipment, materials, fees, expenses, and costs and shall be paid out per EACH installed.

Item 9 – Spill Containment Track Pans w/ Lids

This Pay Item includes the performance of work necessary to furnish and install the 3 EA. track pan stations as detailed in the plan set. The rail car track pans shall be 20’ polyethylene, composite, or stainless-steel stations. Each station shall consist of a central pan between the tracks and 2 EA. side pans. Each pan shall be self-draining to the below grade piping system and each pan shall be outfitted with rain covers or drain plug to plug the pans when not in use. Each pan shall be outfitted with a bar grating walk surface. See Pay Item 04 for additional requirement related to backfilling in and around track pan stations.

This Pay Item shall include all necessary labor, equipment, materials, fees, expenses, and costs and shall be paid out per EACH complete station installed.

Item 10 – Subgrade Compaction Including Proof Roll

This Pay Item includes the performance of the subgrade compaction work and shall include a proof roll to be observed by the Port Authority’s Engineer. This work shall be performed in accordance with ODOT’s 2019 C&MS specification.

This Pay Item shall include all necessary labor, equipment, materials, fees, expenses, and costs and shall be paid out as a Lump Sum

Item 11 – Aggregate Base (6” Min. Lift)

This Pay Item includes the performance of work to install, grade, and compact the 6” minimum lift of 304 Aggregate Base in accordance with the details of the plan set. This Pay Item shall also include final grading and compacting in of 304 aggregate to tie in the final concrete pavement with the surrounding grades. This work shall be performed in accordance with ODOT’s 2019 C&MS specification.

This Pay Item shall include all necessary labor, equipment, materials, fees, expenses, and costs and shall be paid out as a Lump Sum

Item 12 – 8” Concrete Pavement, As Per Plan

This Pay Item includes the performance of work to install the 8” wire mesh reinforced concrete pavement in accordance with the details of the plan set. This work shall be performed in accordance with ODOT’s 2019 C&MS specification. An approved JMF air entrained QC1 mix shall be used along with products on ODOT’s QPL. This pay item is inclusive of all aggregate base pre pour preparation, forming, wire mesh furnishing/installation, doweling, pouring, stripping, finishing, jointing and curing work. The Port Authority will require a pre-pour meeting to be held in advance of the pour and the Port Authority reserves our right to perform QA inspection and testing on the concrete.

This Pay Item shall include all necessary labor, equipment, materials, fees, expenses, and costs and shall be paid out as a Lump Sum

Item 13 – Concrete Pier Foundation (24” Diameter)

This Pay Item includes the performance of work to install the concrete foundations accordance with the details of the plan set. This work shall be performed in accordance with ODOT’s 2019

C&MS specification and concrete mix designs. An approved JMF air entrained QC1 mix shall be used along with products on ODOT's QPL. This pay item is inclusive of all excavation, excavation preparation/cleaning, forming, reinforcement furnishing/installation, pouring, stripping, finishing, painting, backfilling, and grading clean up surrounding the foundation. The Port Authority will require a pre-pour meeting to be held in advance of the pour and the Port Authority reserves our right to perform QA inspection and testing on the concrete.

This Pay Item shall include all necessary labor, equipment, materials, fees, expenses, and costs and shall be paid out per EACH complete foundation installed.

Item 14 – Stainless Steel Pipe Rack Manifold System Including Foundation Mounting System & Cable Trays

This Pay Item includes the performance of work to furnish and install the stainless-steel piping manifold system as detailed in the plan set. This Pay Item shall include all hardware, anchorages, shoe brackets & saddles, supports, clamps, fittings, reducers, shut offs, clean outs, expansion joints, and end caps for the complete installation of the system. Contractor shall be responsible of the coordination connection details (type, location, and elevation) from this manifold to the 3 EA. units furnished and installed under Pay Item 015. Caps with lanyards shall be provided at all hard piping termination locations to cap the pipes while not in use to prevent line contamination in between ships and during the off season.

This Pay Item shall also include the furnishing and installation of the cable tray as detailed in the plan set. The cable tray and its support anchorage bracket shall be shop painted prior to installation in the field. The coating system shall include preparation work in accordance with the manufacture, a prime coat, and two coats of high visibility yellow paint. The channels shall have drain holes at 5' increments in the web for drainage. The cable tray will be used to keep electrical cabling and communication cabling off of the ground. Shop drawings shall be prepared for the cable tray system which should be inclusive of the coating system.

This Pay Item shall include all necessary labor, equipment, materials, fees, expenses, pressure testing, inspection, cleaning of piping, and costs and shall be paid out as a Lump Sum.

Item 15 – Rail Skid/Trailer Transloaders with Metering & Monitoring, Lighting, Access Gangways, Fall Protection, & Loading Arms

This Pay Item includes the performance of work to furnish and install the 3 EA. direct to rail trans loader units detailed in the plan set. Safe Rack's system and specifications were used as the basis of design. For Safe Rack contact information and additional manufactures that produce similar systems please see A-31 of the Bid Instructions. While a Safe Rack system was used as the basis of the design, Contractor's are not required to use the Safe Rack system. Critical system performance requirements include the following which must be met to be considered an Approved Equal:

- Each unit must be skid or trailer mounted to allow for winter storage off site in the off season. The active shipping season is April-December.
- Unit(s) will not require line heat tracing as the ship will be responsible for preheating fluid prior to discharge into the rail cars.
- Unit(s) will need to accommodate the ship forcing air through their lines at the completion of load out to clear material form the lines. All lines shall be capped when not in use. All caps shall be provided on tethers to keep them from being misplaced.
- Unit(s) are not anticipated to need any booster pumps. It has been determined the ship has sufficient pump capacity to convey the material from the ship, through the transload units, into the rail cars.
- Unit(s) must be able accommodate the transport of all types of food grade oils with the primary material upon initial commissioning being palm oil.
- Each unit shall have the ability to meet the minimum flow rates outlined in the plans set.

- This flow rate was established to meet the following transload objectives:
- Max Vessel Transport Volume: 15,000 Tonnes (33,069,339 lbs)
 - Rail Car Capacity: 200,000 lbs.
 - Total Rail Cars Per Ship = 166 EA.
 - Load Schedule = 56 Rail Cars/12 Hour Shift (3 EA. 12 Hour Shifts Total)
 - Time Devoted To Active Rail Car Pumping Per 12 Hour Shift = 6
 - Rail Cars Loaded Concurrently = 3 EA.
 - Load Out Time Per Car = No More Than 19 Minutes of Active Pump Time To Load 3 Rail Cars Concurrently
- Each unit must provide safe personnel access, no less than 500 lbs. rated capacity, to facilitate the transloading process and eliminate fall hazards to permit the top side load out of the rail car at each station. Access platforms must be lockable.
 - Unit loading arms and access platforms shall be safe and easy to use by a single worker with spring counter balanced operation
 - Unit finishes shall be all weather hot dip galvanized, stainless steel, aluminum or powder coated painted surfaces.
 - Safe lighting to permit the operation of the units 24/7.
 - Unit(s) shall be cable of withstanding and performing in accordance with the City of Cleveland Climatic and Geographic Design Criteria:
 - Snow Load: 30 psf
 - Wind Speed: 90 miles per hour & exposure category D
 - Stabilizing Outriggers, Leveling Jacks, & Tie Down Anchorages must be provided and installed by the Contractor. If system is not capable of withstanding the Design Criteria wind speeds and exposure category listed, this must be disclosed to the Port Authority with specific upper limit operating parameters when the systems must be folded down and not operated. Warning labels must also be provided on the units highlighting these parameters.
 - Seismic Category: B
 - Winter Design Temperature 5 degrees F
 - Unit(s) shall be outfitted with the necessary mechanical systems to safely convey and regulate the follow of material into the rail cars including valves, strainers, vents, gauges, drain lines, and sight glasses.
 - Unit(s) shall be able to be powered off of a central generator that will supply power to the Central Monitoring Station and the 3 supplied trans loader units. Each unit shall be equipped with necessary plug set, chording, junction box, transformer, and quick disconnect. All wiring shall be code compliant and suitable for weather exposure.
 - Unit(s) shall have controls to monitor, meter, and regulate the flow of material being delivered to into the rail car. The unit shall automatically slow the fill rate of fluid into the cars when the capacity of the car is close to being reached and automatically shut off once the car is full.
 - Unit(s) shall have automatic shut offs and emergency shut offs with overflow monitoring.
 - Unit(s) shall be set up to operate independently of one another in parallel with local control and monitoring at the trans loader unit and remotely from the Central Monitoring Station.
 - Unit(s) Warranty/Performance Period: 24 months from Final Acceptance (12 Months More Than Standard Period of Guarantee)
 - Unit(s) must connect directly to stainless steel pipe rack manifold installed under Pay Item 014
 - Each unit shall be outfitted with control and communication capabilities via hard wire connections run in the cable tray or via wireless communication with a central CPU/PLC to be housed in the Central Monitoring Station. The CPU/PLC in the Central Monitoring Station shall have the ability to remotely operate and provide permissives to each unit through an HMI. The CPU/PLC shall also track and monitor performance metrics including flow rate, pressures, and load times. The CPU/PLC shall have the ability shut

down the operation in the event of an emergency and monitor of overfilling. From the PLC/CPU the Terminal Operator shall be able to roll up and send reports upon the completion of a work shift the completion of a vessel load out. The Safe Rack basis of design system highlights these requirements through their Terminal Automation System. Contractor will be responsible for furnishing the controls, programming, communications systems, hardware, and software. The cost for the furnishing of these shall be included under this Pay Item. The costs for the set up, commissioning, testing, calibration, certification and training of personnel and the installation of the PLC/CPU in the Central Monitoring Station shall be included in Pay Items 017 and 019.

- Each trans loader unit shall be outfitted with an observation/monitoring camera located on the loading arm/access platform (viewable in all light conditions) which will allow the person stationed at the Central Monitoring Station to visually monitor and observe the load out operation at each of the rail car. The cameras shall be viewable at the Central Monitoring Station and will aid the operator in monitoring conditions in real time to be able to communicate via radio with the ship. The data recorded on the cameras shall be stored for a minimum of 60 days on a DVR in the Central Monitoring Station or on the hard drive of the PLC/CPU.
- Unit loading arms and access platforms shall have ability to accommodate standard geometry variances between rail cars.

Contractor shall submit shop drawings and informational submittals outlining the compliance with the above requirements and the requirements in the plans. This Pay Item shall include all necessary labor, equipment, materials, fees, expenses, and costs and shall be paid out on a per EACH for each unit installed.

Item 16 – 36” Wide Pipe Crossover Stairway w/ Handrails

This Pay Item includes the furnish and installation of a 36” wide crossover platform with handrails to provide safe access over the pipe manifold and cable tray. This unit can be a premanufactured system or a custom designed system. This platform shall have grated stairs and decking, shall be constructed of aluminum or galvanized steel, and shall be anchored into its final position into the concrete slab using galvanized anchorages. Additional specifications have been included in the plan set. The Port Authority will require shop drawings or cut sheets on this item.

This Pay Item shall include all necessary labor, equipment, materials, fees, expenses, and costs and shall be paid out per EACH unit fully installed.

Item 17 – Furnish & Install Central Monitoring Station (10’x8’ Conex)

This Pay Item includes the furnishing and installation of a new insulated 10’x8’ finished mobile field office conex to serve as the Central Monitoring Station. The minimum furnishing requirements include those highlighted in the General Notes. As part of this Pay Item the Contractor shall be responsible for the installation of the central monitoring CPU/PLC and any and all supporting wiring/communication infrastructure.. The CPU/PLC shall also have the ability to communicate with the Terminal Operator’s main office located in Warehouse A using the direct point to point communication antenna specified in the plans set. The Central Monitoring windows-based PLC/CPU shall have two monitors, one with dedicated camera feed display and the other displaying the HMI and system monitoring interface which shall have the abilities highlighted in Pay Item 015. Contractor shall take steps to isolate and protect sensitive electrical equipment within the Central Monitoring Station from the power supplied by the generator using surge protection devices.

This Pay Item shall include all necessary labor, equipment, materials, fees, expenses, and costs and shall be paid out on a Lump Sum basis.

Item 18 – Electrical Generator Wiring, Start Up, & Fueling

This Pay Item includes the wiring, cabling, termination, start up, fueling, and maintenance of the Port Authority furnished generator to power the 10’x8’ Central Monitoring Station and the 3 EA.

Trans Loader Units through notice of Final Acceptance. Contractor shall wire each device in a neat and clean professional manner using waterproof connections. It is anticipated during the winter shut down period the trans loader units will be disconnected and stored. Quick disconnects are requested. The Contractor will be responsible for specifying the required size and configuration of the generator to be provided by the Port Authority.

This Pay Item shall include all necessary labor, equipment, materials, fees, expenses, and costs and shall be paid out on a Lump Sum basis.

Item 19 – System Start Up, Programming, Commissioning, Testing, Calibration, Certification, & Training

This Pay Item consists of the final set-up, programming, commissioning, and start-up of installed equipment. Specifically, the trans loader units and the ability to monitor/control the trans loader units from the Central Monitoring Station. Prior to finalizing the HMI interface and display at the PLC/CPU located in the Central Monitoring Station, the Contractor shall be required to set up a meeting with the Port Authority and our Terminal Operator to review display outputs, real time information monitored, camera views, controls, and generated report formats. Please note that between Pay Items 015, 017, and the work outlined in this Pay Item, a complete turnkey system shall be furnished and installed by the Contractor. Following the completion of work under this Pay Item the entire system shall be ready to be put into service upon the arrival of the first ship.

Commissioning and start up activities shall include the full-scale testing of the system in advance of the first ship's arrival. All emergency stops, overflow systems, local controls at each trans loader unit, and the remote controls/permissives and video monitoring from the Central Monitoring Station shall be fully commissioned, tested, and calibrated. The Contractor will be required to pump fluid into and through the system to perform testing. The contractor will be responsible for any cleaning or sanitizing of system following the testing, if required, depending on the material that is used for testing. Waiting to fully test the system until the first ship's arrival in the Spring of 2022 is not acceptable to the Port Authority.

The Contractor shall coordinate the testing with the Port Authority a minimum of 45 days in advance. It is recommended that leading up to final testing/commissioning the Contractor, the Port Authority, and the Terminal Operator meet to coordinate the final testing, training, and the completion of work in the field on a weekly basis. The Port Authority will attempt to get several rail tank cars on site in March to aid within start up and commissioning. Contractor should not assume the rail cars will be present and should have a backup contingency plan to commission the equipment if the rail cars are unavailable.

The Contractor shall be responsible for scheduling an inspection from the City of Cleveland's Weights and Measures Bureau. They can be reached at 216-664-2260. Devices used to sell products to consumers by weight, measures, volume, or length are required to be tested by the City of Cleveland's Weights and Measures Bureau.

The Contractor will be required to train the Port Authority and the Port Authority's Terminal Operator while the system is in full scale production and test mode. Training shall be scheduled a minimum of 10 days in advance with the Port Authority and the Port Authority's Terminal Operator. Training shall occur during normal business hours M-F. The Contractor will be responsible for training the Terminal Operator in the local control/operation of each trans loader, Central Stationing Monitoring, and preventative maintenance. As part of this Pay Item the Contractor will be required to provide an electronic copy of all Warranty and O&M Manuals for the new equipment installed.

Start up, programming, commissioning, testing, calibration, and training shall all be performed by a qualified trans loader supervisor who specializes in the commissioning of these systems. As necessary, the Contractor shall hire a specialized commissioning agent familiar with facilitating

the startup, programming, commissioning of these types of systems. All costs for the hiring of the commissioning agent to perform all start up, programming, commissioning, testing, calibration, certification and training shall be included in the cost of this Pay Item.

Substantial completion will be issued on the Project upon the completion of this Pay Item in full. Substantial completion must be achieved on or before April 1st, 2022.

This Pay Item will be paid out upon completion of the work outlined in this Pay Item on a Lump Sum basis.

Item 20 – Transloader Supervisor Additional Commissioning Agent Time On Site, As Directed By the Engineer

This Pay Item, which is to be exercised at the discretion of the Port Authority's Engineer, is for additional commissioning agent time on site requested directly by the Port Authority. This is above and beyond the time necessary to perform the work outlined in Pay Item 019 and is unrelated to any Warranty obligations/requirements. It is anticipated that the Port Authority may request the presence of a Transloader Supervisor/Commissioning Agent to be on site to troubleshoot issues that may arise with the first ship transload scheduled for the Spring of 2022. A workdays can be considered Monday-Sunday (10) hours on site, as it is anticipated the Agent's time will need to align with the ship schedule which the Port Authority does not have the ability to control. The Agent must have the ability to trouble shoot any issues related to the operation of the trans loaders and any programming/communication issues with the Central Monitoring Station.

This Pay Item shall include all necessary labor, equipment, tools, travel expenses, lodging, fees, and costs and shall be paid out per Day authorized by the Port Authority.

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 & Sheet Specifications.
- (10) The Resolution authorizing the making of the public improvement.
- (11) All required Policies of Insurance.
- (12) The Bid Affidavit of Non-Collusion.
- (13) The Bid.
- (14) Ohio Department of Transportation Construction & Material Specifications 2019.
- (15) Historic Dock 20N USACE Drawings (Available Upon Request).

B-2 CONFLICT BETWEEN CONTRACT DOCUMENTS & LOCAL/STATE 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 State and Federal rules, the Federal rules shall prevail. Please note that while the ODOT C&MS 2019 is referenced as a contract document, the terms of this Agreement shall take precedence over the terms of the ODOT C&MS.

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 with the supporting baseline schedule will be used in determining the lowest responsive and responsible bidder.
 - **Substantial Completion Milestone: April 1st, 2022**
 - Contractor must be complete with all work included in Pay Item 19 which is necessary to commission the new transloading equipment

to facilitate the arrival of the first ship scheduled for the Spring of 2022. .

- **Final Acceptance Milestone: June 1st, 2022**

B-5 LIQUIDATED & DISINCENTIVE 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. Liquidated and disincentive damages will be assessed at \$2,500.00 for each Calendar Day of Overrun in Time. LD's & DD's will be assessed if the Contractor fails to meet either the Substantial Completion Milestone or the Final Acceptance Milestone highlighted in Section B-5 of the Agreement.

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, unavoidable casualties, State declared health pandemics, 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. These will be deemed and defined as Excusable, Non-Compensable Delays. For unscheduled Terminal Operator cargo disruptions that completely inhibit the Contractor's work progression please see A-40, a special bid item has been established for this.
- 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.
- 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

- 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 insure 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 unless authorized under special arrangement with the Port Authority.

B-8 RESPONSIBILITY OF CONTRACTOR FOR DAMAGE TO WORK

- a. The Port Authority will not insure the Work until Final Acceptance 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 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 insure 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 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.

- 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

- a. As part of the Contractor's bid, it shall provide the necessary watchmen, signage, 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 public at all times.
- 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 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 insurance coverage naming the Erie International Group, LLC, Port Authority, its officers, agents, and employees named as an additional insured, as shall protect the Contractor, the Port Authority, Erie International Group, LCC 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. Each policy shall provide a waiver of subrogation in Erie International Group, LCC and the Port Authority's favor. 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. Employer's Liability Insurance: The minimum limits for liability insurance are as follows:
 - (1) \$1,000,000 bodily injury by accident per accident
 - (2) \$1,000,000 bodily injury by disease policy limit
 - (3) \$1,000,000 bodily injury by disease per employee
- b. Commercial General Liability Insurance: The minimum limits for liability insurance are as follows:
 - (1) General Aggregate Limit = \$10,000,000
 - (2) Products – Completed Operations Aggregate Limit = \$10,000,000
 - (3) Personal & Advertising Injury Limit = \$10,000,000
 - (4) Each Occurrence Limit \$10,000,000

Obtain the above minimum coverages through primary insurance or any combination of primary and umbrella insurance. In addition, the Port Authority will require the General Aggregate Limit on a per project basis.

- c. 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) Business Automobile Liability insurance to cover each automobile, truck, or other vehicle used in the performance of the Contract in an amount not less than \$2,000,000 per accident.
- d. 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.
- e. Insurance coverage in the minimum amounts set forth neither relieves the Contractor from liability in excess of such coverage, nor precludes the Port Authority from taking such other actions as are available to it under any other provisions of this Contract or otherwise in Law.

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 RESERVED

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 RESERVED

B-26 WAGES, WAGE SCALE, AND HOURS

- a. **The Contractor shall comply with the prevailing wage requirements described under ORC Chapter 4115.**
- b. The Contractor shall pay to laborers and mechanics performing Work on the Project the prevailing wage rates of the Project locality, as determined by the Ohio Department of Commerce, Wage, and Hour Bureau.
- c. The Contractor shall post in a prominent place readily accessible by all workers on the Site, a legible listing of the current classifications of laborers, workers, and mechanics employed under this Contract. The Contractor shall ensure the rates posted are current and remain posted in legible condition during the period of the Contract.
- d. The Contractor shall not be entitled to an increase in the Contract Sum on account of an increase in prevailing wage rates. The Contractor may access the Ohio Department of Commerce, Wage, & Hour Bureau at its website below to obtain current wage rates.

<http://198.234.41.198/w3/webwh.nsf/pages/PrevailingWageBid>

- e. Work hours shall be coordinated with Port Authority. Contractor shall plan to work the hours necessary to complete the work on schedule.
- f. Contractor and its subcontractors are required to submit weekly certified payroll applications with each payment application. At the time of project close out the Contractor and associated subcontractors will be required to submit an affidavit of compliance indicating compliance with the prevailing wage requirements of Chapter 4115 of the Ohio Revised Code. A copy of this affidavit can be found at the following link.

http://www.com.ohio.gov/documents/laws_Affidavit%20Of%20Contractor%20Compliance.pdf

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, 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 Inspection & Completion 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. Note, the trans loader systems have a 24 month period of guarantee which shall begin upon the date of Final Acceptance.
- 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 certified payroll, a partial waiver of lien and claims from the Contractor, updated MBE/FBE reporting, and a lien waiver from each subcontractor listed on the previous Payment Request (collectively the "Lien Waivers"). Prior of 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 ten percent (10%) which shall be retained until Final Acceptance of all Work.
- 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.
- 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

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, all documents shall be electronically submitted for approval via the Project SharePoint site. 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 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.

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 ,FUMES, & PUMP WATER CONTROL

Whenever work of any kind creates nuisance or harmful dust, fumes, or excess pump water, the complete protection of all personnel and property against dust, fumes, and flooding 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. Power shall be provided to the temporary main gate security command center 24-7.

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 in the plan set 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.

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 not 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

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, 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.

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. Contractors will be expected to in advance of entering the Dispute Resolution process to have followed ODOT's Mitigation and Notice provisions outlined in Section 108.02(F) of the C&MS. Failure to provide initial oral notification and written early notice will serve as a waiver of the Contractor's right to file a claim and advance and issue into and through the Dispute Resolution Process.

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

**General Cargo Terminal
Oleo Direct To Rail Transfer Station Project
Dock 20N**



Item	ODOT Item	Item Description	Quantity	Unit	Unit Price	Item Total
BULK LIQUID TRANSFER						
ROADWAY						
1	-	GCs, SITE CONTROLS, & MOBILIZATION	1	LS		
2	201	CLEARING AND GRUBBING	1	LS		
3	202	BALLAST REMOVAL & REUSE	1	LS		
4	202	TRACK STONE REMOVAL & REUSE	1	LS		
5	203	EXCAVATION & EMBANKMENT, AS PER PLAN	1	LS		
6	611	STORM SEWER (4" TO 12")	1	LS		
7	611	ODOT NO. 3 48" DIA. MANHOLE	1	EA		
8	611	6" DIA. CLEANOUT	4	EA		
9	-	SPILL CONTAINMENT TRACK PANS W/ LIDS	3	EA		
10	204	SUBGRADE COMPACTION INCL. PROOF ROLL	1	LS		
11	304	AGGREGATE BASE (6" MIN. LIFT)	1	LS		
12	452	8" CONCRETE PAVEMENT, AS PER PLAN	1	LS		
13	-	CONCRETE PIER FOUNDATION (24" DIA.)	17	EA		
14	-	STAINLESS STEEL PIPE RACK MANIFOLD SYSTEM INCLUDING FOUNDATION MOUNTING SYSTEM AND CABLE TRAY	1	LS		
15	-	RAIL SKID/TRAILER TRANSLOADERS w/ METERING & MONITORING, LIGHTING, ACCESS GANGWAYS, FALL PROTECTION, & LOADING ARMS	3	EA		
16	-	36" WIDE PIPE CROSSOVER STAIRWAY w/ HANDRAILS	1	EA		
17	-	FURNISH & INSTALL CENTRAL MONITORING STATION (10'x8' CONEX)	1	LS		
18	-	ELECTRICAL GENERATOR WIRING, START UP, & FUELING	1	EA		
19	-	SYSTEM START UP, PROGRAMMING, COMISSIONING, TESTING, CALIBRATION, CERTIFICATION, & TRAINING	1	LS		
20	-	TRANSLOADER SUPERVISOR ADDITIONAL COMISSIONING AGENT TIME ON SITE, AS DIRECTED BY ENGINEER	5	DAYS		

TOTAL PROJECT COST BID: _____

**GENERAL CARGO TERMINAL
OLEO DIRECT TO RAIL TRANSFER STATION
DOCK 20N**

BID FORM

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</u>
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BIDDER AFFIDAVITS:

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 MBE & FBE Participation Percentage: _____
*Note: Total participation must meet or exceed the minimum goal established for the Project, including the EDGE participation goal (if any).
*Contractor must be prepared to submit participation plan to the Port Authority upon request.

- 4.) Please confirm that the Project was estimated using State of Ohio 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.) 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.

- 7.) Please verify the Contractor understands the Terminal's TWIC access credential requirements? **YES / NO**

- 8.) Contractor certifies no Unresolved Findings for Recovery, Tax Delinquencies, or Felony Convictions. **YES / NO**

**GENERAL CARGO TERMINAL
OLEO DIRECT TO RAIL TRANSFER STATION
DOCK 20N**

BID FORM

9.) Please provide completion deadline for the Project:

SUBSTANTAIL COMPLETION: _____
FINAL COMPLETION: _____

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

FORM AGREEMENT

General Cargo Terminal Oleo Direct to Rail Transfer Station 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:

The successful Bidder will perform the work outlined in the Contract Documents. The work consists of all site preparation, civil infrastructure, piping manifolds, the furnishing and installation of rail car access and metering platforms, the furnishing and installation of necessary hardware and software to monitor the transfer of the cargo from the ship into the rail cars, and the complete commissioning, testing, certifying, and training of personnel on the operation of the system as specified in the Contract documents.

1. PROJECT

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

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 & Sheet Specifications.
- (10) The Resolution authorizing the making of the public improvement.
- (11) All required Policies of Insurance.
- (12) The Bid Affidavit of Non-Collusion.
- (13) The Bid.
- (14) Ohio Department of Transportation Construction & Material Specifications 2019.
- (15) Historic Dock 20N USACE Drawings (Available Upon Request).

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 Milestone: April 1st, 2022
Final Acceptance Milestone: June 1st, 2022

4. PAYMENT

The Port Authority agrees to pay the Contractor an amount not to exceed \$X,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

SAMPLE

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 _____ whomade 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
- Directors:

Attorneys

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 highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.