



REQUEST FOR BIDS

RFB #2025-001

BATTERY ELECTRIC REACH STACKER EQUIPMENT

PORT OF CLEVELAND

Port of Cleveland Background & History

The Cleveland-Cuyahoga County Port's (Port) General Cargo Terminal (Terminal) is the international gateway for cargo entering/exiting the region via maritime transport through the Saint Lawrence Seaway System. The shipping terminal pre-dates the construction of the Saint Lawrence Seaway. In 1956, Dock 28 was constructed in its current location and configuration. Since that time, additional docks have been constructed moving east to west towards the Cuyahoga River.

The General Cargo Terminal routinely handles a diverse mix of cargo, primarily cargo imported from Europe, including specialty breakbulk cargo, such as steel coil, tin plate, and various steel shapes/plate, and specialty project cargos, including oversized heavy machinery. The General Cargo Terminal is also home to a regularly scheduled containerized cargo liner service, the Cleveland-Europe Express (CEE), which has regularly scheduled sailings between Cleveland and Antwerp. On the west end of the Terminal are two cement silos that distribute cement imported from Canada to local ready-mix concrete companies. In 2023, the Port received over 40 Great Lakes cruise ship day stop calls at the Terminal and started a new operation involving the transfer of oleochemicals from ship direct to rail through a newly constructed facility within this Terminal.

Project Background

The Port was awarded funding under the United States Environmental Protection Agency (USEPA) Clean Ports program to deploy zero-emission (ZE) equipment and renewable energy that will improve air quality for Cleveland communities, reduce greenhouse gas (GHG) emissions, and build a foundation for the Port to rapidly decarbonize in the coming years, while achieving significant cost and time savings by leveraging the Port's extensive work to prepare its facilities for emission-free infrastructure. The overall project consists of the following:

- Electric forklifts, reach stackers, and associated charging equipment
- Electric mobile harbor crane
- Electric tugboats and associated charging equipment
- Shore power
- Warehouse A Rooftop Solar and Microgrid —solar power and battery energy storage

By leveraging partners and implementing innovative ZE equipment through many different areas of port operations, the Port will serve as a catalyst for transformational change for local freight operations, benefiting communities both adjacent to the Port and throughout the region.

This effort leverages the Port's current preparation of its facilities for emission-free infrastructure, chief of which is the Port's "electrification hub," a medium-voltage central connection point for all energy entering and leaving the Port's premises. The hub will provide the Port with reliable and modern connections for shore power, vehicle and equipment charging, and renewable energy. The hub also includes site work that will provide direct cost savings to the Clean Ports project, including conduit duct banks in support of proposed shore power and mobile harbor crane (MHC) infrastructure and a 6.6kV switchgear connecting to the proposed shore power installation. The hub is funded by FY22 Port Infrastructure Development Program (PIDP) and Ohio Maritime Assistance Program (MAP) funds and is currently undergoing detailed design to finish construction by 2026.

Equipment Technical Specifications and Requirement Summary

As part of this procurement, the Port will procure two battery-electric reach stackers to replace existing diesel powered 2015 Hyster 45-31 CH Series reach stackers. The reach stackers will be used for both container shuttling and loading of trucks, as well as shuttling, loading, and stacking of steel coil. Each new battery-electric model shall meet Clean Ports replacement criteria, be compliant with the Build America, Buy America (BABA) Act, and meet the detailed technical specifications attached. In addition, Optional Accessories, as listed in the RFB, shall meet BABA requirements. Optional Accessories means that purchasing the item is budget dependent.

The extended and detailed Equipment Specifications are available in Attachment A.

In this section a summary of the main features is described below:

General Requirements

- Lifting Capacity: 45T – 50T (ISO containers)
- Max Stacking Height: 5-high (adjustable)
- Battery Capacity: ≥ 400 kWh (LFP/NMC)
- Charging Time (0-80%): ≤ 1.5 hrs. (150 kW DC minimum)
- Operational Duration: 8-12 hrs. per charge
- Travel Speed (Loaded): ≥ 18 km/h
- Gradeability: $\geq 10\%$ fully loaded

Structural and Safety

- High-strength steel, corrosion-resistant coating.
- Operator Cabin: air-conditioned, 360° visibility, <70 dB noise.
- Safety Systems: anti-collision, overload sensors, emergency stop.
- Fire protection system: thermal propagation mitigation, agent types, monitoring.

Telematics and Connectivity

- Real-time battery monitoring, GPS tracking, remote diagnostics.
- Integration with Port's fleet management software (API/SDK provided).

Optional Accessories (Refer to Attachment A Equipment Specifications)

- Coil Hook designed for the handling of one sheet metal coil in the eye horizontal position.
- Coil Hook designed for the handling of two sheet metal coils (in parallel) in the eye horizontal position.
- Multi Wire Coil Spreader designed for the handling of round, wire coils with several horizontal prongs or cradles that allow it to securely pick up multiple coils at once

BABA Compliance Documentation (2 CFR 184)

- Manufacturer Self-Certification Letter:
 - Product was manufactured in the US (include location(s): City and State)
 - Cost of the components that are mined, produced, or manufactured in the US is greater than 55% of the total cost of all components
 - List of foreign-sourced components (e.g., battery cells).

- Signature of qualified manufacturer representative
- Steel/Iron Mill Certificates (proving US melting/pouring).
- Example Manufacturer Certification Letter:

<https://www.epa.gov/system/files/documents/2024-12/example-manufacturer-certification-letter.pdf>

Certification Letter Template for Manufactured Products

<https://www.epa.gov/system/files/documents/2025-01/baba-manuprod-cert-letter-template.pdf>

Certification Letter Template for Iron and Steel Products

<https://www.epa.gov/system/files/documents/2025-01/baba-ironsteel-cert-letter-template.pdf>

Submission Instructions and Questions

This RFB is open to any qualified individual or firm with experience in supplying, configuring, and integrating specialized marine equipment and components relevant to achieving the specifications listed in the Technical Requirements Evaluation Sheet (Attachment D).

The Grant agreement and corresponding federal regulations require that all procurement for materials and services be in compliance with federal procurement standards set forth in 2 CFR Sections 200.318 thru 200.327, which, among other things, require competitive processes, prohibition of conflicts of interest, non-discrimination, equal opportunity, and the inclusion of certain provisions in the award of contracts, as provided in Appendix II to 2 CFR part 200. The Port incorporates by reference all the requirements in 2 CFR Sections 200.318 through 200.327 and Appendix II to 2 CFR Part 200.

RFB Schedule
RFB Issuance: October 18, 2025
Deadline for Vendor Questions: November 3, 2025 @ 5:00pm EST. Responses will be returned to all Bidders via Addendums posted to the Port Authority's website on or before close of business on November 10, 2025. If no Addendums are posted, then no questions shall be assumed to have been tendered.
RFB Submission Deadline: November 18, 2025 @ 4:00pm EST
Anticipated Award Date: December 9, 2025

Late submittals will not be considered. Statements not meeting the requirements of this RFB may be deemed non-responsive at the sole discretion of the Port.

Submission Requirements

- a) Electronic Submission: PDF + Excel files via email to: Bryan Celik at bryan.celik@portofcleveland.com with copy to Mandy Bishop via email at mbishop@forward-momentum.com.
- b) Point of Contacts: Questions and inquiries sent to Mandy Bishop at mbishop@forward-momentum.com with copy to Bryan Celik. at bryan.celik@portofcleveland.com.

Instructions to Vendors and Bid Structure- Vendors shall submit:

1. Qualification documents

- a. Cover Letter with Company Profile: Provide the company name, headquarters address, supplying location (if different) general telephone number, and primary contact person for your organization. Include a brief history of your organization, specifying the type of business entity and listing Corporate Officers or Owners. Follow the order as presented below. Information may span multiple pages and must be on the company letterhead.

- i. Company Name:
- ii. Corporate Headquarters (HQ) Address:
- iii. Supplying Location Address (if different than HQ):
- iv. General Telephone Number:
- v. Primary Contact:
- vi. Primary Contact Telephone Number:
- vii. Primary Contact Email Address:
- viii. Company History
 1. Include year of formation
 2. Overview
- ix. Business Entity Type (e.g., LLC, Corporation, etc.):
- x. State of Registration for Business Entity:
- xi. Corporate Officers:
- xii. Signature of Officer with authority to Bind the Vendor into a Contract

- b. Past projects (relevant references): Describe your firm's experience with battery electric container handling equipment procurement projects. At a minimum the vendor shall demonstrate at least 2 successful deliveries of battery electric container handling equipment within the last three years. Include relevant details such as project description, equipment type, quantity, total cost, client name, order date, delivery date, and client contact information. Follow the order as presented below. Information may span multiple pages. The Port shall contract client references to verify successful deliveries of the products. Failure to submit this information may be grounds for bid rejection or determination that a Vendor is unresponsive and irresponsible.

- i. Brief Project Description:
- ii. Equipment Type(s):
- iii. Quantity(ies):
- iv. Total Cost:
- v. Month/Date Ordered:
- vi. Month/Date Delivered:
- vii. Client Contact Information:
 1. John Smith
 2. Title
 3. Organization
 4. Phone: Country Code + XXX-XXX-XXXX
 5. Email: john.smith@port.com
 6. Physical Address

c. Financial stability

The vendor does not need to submit all of these items but simply choose one (1) that is the best fit for the company and best represents your financial stability.

i. Audited or Reviewed Financial Statements

1. What to submit: Your most recent audited financial statements (balance sheet, income statement, cash flow).

ii. Bank Reference Letter

1. What to submit: A letter from your bank confirming the length of your relationship, average balance, and that your accounts are in good standing.

iii. Bonding or Line of Credit

1. What to submit: Documentation of bonding capacity or an available line of credit. We do not need a bond submitted with this project.

2. Executed non-collusion affidavit forms (Attachment B)

3. Tax disclosure documentation (Attachment C)

4. Technical Requirements:

a. Technical Requirements Evaluation Sheet (Attachment D)

b. Supporting BABA documentation

5. Bid Pricing:

- a. Pricing: Submit a Lump Sum Fixed Fee (Stipulated Sum) for the proposed equipment, inclusive of all procurement, delivery, and applicable coordination costs. Utilize the pricing schedule below:

Item #	Item Description	Price
Base Bid		
1	Battery Electric Reach Stacker Base Model (2 each)	\$
2	Extended Warranty (5 yrs) (2 Each)	\$
	Total Base Bid	\$
Alternate Bid		
3	Coil Hook for handling one coil (Optional Purchase) (1 Each)	\$
4	Coil Hook for handling two coils (Optional Purchase) (1 Each)	\$
5	Multi Wire Coil Spreader (Optional Purchase) (1 Each)	\$
	Total Alternate Bid	\$
	Total Bid Cost (Base Bid plus Alternate Bid)	\$

Optional Purchase means that line item is budget dependent, and the Port may choose to purchase zero (0) items or any combination thereof for Items #3-5.

b. Payment terms

- i. 30% downpayment/deposit
- ii. 70% on delivery
- iii. Warranty: Provide a minimum 5- year warranty for all equipment and associated services.

Project Schedule

The selected vendor shall adhere to the Project schedule identified below unless noted otherwise in the submitted bid. These dates are the maximum allowed delivery timeline.

- a) Factory Tests Date: May 3, 2028
- b) Delivery Date: June 30, 2028

Vendors shall submit a schedule for equipment procurement, delivery, and any required coordination.

Site Security & Safety

A project health, safety, and security plan shall be required for this Project and will be included as a requirement of the Contract. All vendors shall familiarize themselves with the safety and security requirements of the Port 's Tariff and the Health, Safety, & Environment plan: [Port Tariff and HS&E.pdf](#)

A copy of the Port 's health and safety plan is available upon request for review.

The vendor shall be responsible for complying with the Terminal's security plan, which requires all personnel to obtain their TWIC credentials to obtain access: [Security - Port of Cleveland](#)

Legal and Disclaimers

1. Any potential conflicts of interests shall be clearly communicated prior to the submission of a bid and these conflicts may be considered by the Port when RFBs are evaluated. Please attach executed non-collusion affidavit forms (Attachment B) & tax disclosure documentation (Attachment C) with submitted bids.
2. Potential responders are cautioned not to communicate with Board Members or employees of the Port during the pendency of this RFB until an award is made. Violations of this requirement could result in disqualification of the firm or individual involved.
3. The Port reserves the right to reject any or all responses to this RFB and to waive any informalities or irregularities in the submission process. All materials submitted in response to this RFB become the property of the Port and may be subject to public disclosure. The Port assumes no liability to any person or entity for the costs incurred in responding to this RFB.
4. All responsible and responsive bids shall be considered. The Port reserves the right to meet with any Vendor after the Bid Opening Date but prior to the awarding of the Contract to ascertain the responsiveness of the bid and responsibility of the Vendor.
5. For reference, the Port's draft agreement is included in Attachment F.

Buy America, Build America Requirements The procurement shall comply with the Build America, Buy America (“BABA”) Act provisions incorporated into the Grant Agreement and provided in full text below. The BABA provisions -are subject to any waivers that the EPA has granted, or may grant in the future, with respect to the applicability of BABA to the Clean Ports Program.

All projects under this competition are subject to the domestic sourcing requirements under the Build America, Buy America (BABA) provisions of the Infrastructure Investment and Jobs Act (IIJA) (P.L. 117-58, §§70911-70917) when using federal funds for the purchase of goods, products, and materials on any form of construction, alteration, maintenance, or repair of infrastructure in the United States. The BABA preference requirement applies to all of the iron and steel, manufactured products, and construction materials used for the infrastructure project under an award for identified EPA financial assistance funding programs.

These sourcing requirements require that all iron, steel, manufactured products, and construction materials used in Federally funded infrastructure projects must be produced in the United States, as defined in P.L. 117-58 § 70912(6). The recipient must implement these requirements in its procurements, and this article must flow down to all subawards and contracts. For legal definitions and sourcing requirements, the recipient must consult the EPA's Build America, Buy America website.

Clean Ports Program grants are subject to the requirements of BABA, which requires applicants to comply with Buy America preference requirements or apply for a waiver for each infrastructure project. The following potentially eligible projects under this competition meet the definition of “infrastructure” and are subject to Buy America preference requirements under BABA:

- *Structures, facilities, and equipment that generate, transport, and distribute energy - including electric vehicle (EV) charging equipment.*
- *Any other permanent public structure that meets the qualifies as “infrastructure” as addressed in OMB Memorandum M-24-02 and 2 C.F.R. section 184.4(c).*

Questions regarding BABA applicability to this procurement should be directed to the Port. See EPA’s “Build America, Buy America” general term and condition for additional requirements: <https://www.epa.gov/grants/grant-terms-and-conditions>.

The Vendor acknowledges that it understands the procurement shall comply with BABA which requires all the iron and steel, manufactured products, and construction materials used in the project to be produced in the United States including iron and steel, manufactured products, and construction materials provided by the Vendor pursuant to this Agreement.

The Vendor hereby represents and warrants to the Port that:

1. the Vendor has reviewed and understands the Build America, Buy America Requirements,
2. all of the iron and steel, manufactured products, and construction materials used in the project will be and/or have been produced in the United States in a manner that complies with the Build America, Buy America Requirements and
3. the Vendor will provide any further verified information, certification or assurance of compliance with this paragraph as may be requested by the Port or the EPA.

Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Vendor shall permit the Port, or the EPA to recover as damages against the Vendor any loss, expense, or cost (including without limitation attorney’s fees) incurred by the Port, or the EPA resulting from any such failure (including

without limitation any impairment or loss of funding, whether in whole or in part, from the EPA or any damages owed to the EPA by the Port).

Supplemental General Conditions

DEFINITIONS The word “Buyer” means the Port identified as the “Bill To” entity on the face of this purchase order. The word “goods” as used herein shall mean, without limitation, the products, articles, services, materials and/or equipment described on the face hereof. The term “Customer” refers to the Customer of the Buyer, who may be the end user of the goods. All references to Buyer in this Agreement will be deemed to be references only to the Port identified as “Buyer” herein. Vendor acknowledges that Buyer will be solely responsible for its own obligations and performance under any purchase order or other agreement entered into under these terms and Vendor will look solely to Buyer with respect to rights and remedies under this Agreement.

ACCEPTANCE The first to occur of Vendor’s acceptance of this Order or shipment of goods pursuant to this Order shall constitute Vendor’s agreement to the terms and conditions set forth on the face and the back of this Purchase Order. No other terms, whether or not contained in any bid, estimate, acknowledgement, agreement confirmation or invoice given by Vendor, shall in any way modify or supersede any of the terms of this Order or otherwise be binding on Buyer, and Buyer hereby explicitly rejects all such other terms unless it has accepted such other terms by a written instrument signed by its authorized representative.

QUALITY Vendor warrants that all goods will conform to specifications furnished by Vendor and approved by Buyer or furnished by Buyer. Vendor acknowledges the receipt of a copy of all such specifications furnished by Buyer. Vendor warrants that all goods have been tested for their safety, will be of merchantable quality and of good material and workmanship, free from defect and suitable for their intended use. If applicable, Vendor will assign to Buyer all warranties applicable to any portion of the goods obtained by Vendor from third parties, or if not assignable, will assert such warranties on behalf of Buyer at Buyer’s request. Vendor warrants that the goods shall comply with all applicable federal, state, and local laws, statutes, rules and regulations. In the event that Vendor becomes aware or has reason to believe that a condition exists, within the manufacturing facility or goods themselves, which does or may adversely impact any of the above warranties, Vendor shall promptly notify Buyer of same. All deliveries of goods to countries outside the United States shall conform to and comply in every respect to the provisions of the laws and regulations of the countries into which the goods are delivered and countries where the goods will be used (provided Buyer has advised Vendor which countries are involved), to the extent such laws and regulations are applicable to such goods.

REJECTION Payment for goods delivered hereunder shall not constitute acceptance thereof. Buyer reserves the right to inspect and test such goods and to reject, and return to Vendor at Vendor’s expense, goods (a) delivered in excess of the quantity ordered, (b) which do not conform to specifications or are defective, or (c) which in any way violate applicable law. Buyer’s failure to inspect goods prior to use shall not constitute acceptance of such goods, regardless of the passage of a reasonable period of time. Buyer, at its option may require replacement of defective or rejected goods or a refund of the purchase price as well as payment of damages. Nothing contained in the Order shall relieve the Vendor in any way from the obligation of testing, inspection, and quality control.

PRICES Vendor warrants that prices shown on this Order shall be complete, and no additional charges of any type (e.g., shipping, packaging, labeling, custom duties, taxes, etc.) shall be added or borne by Buyer without

its expressed written consent. Any cash discount periods will be calculated from receipt of invoice or receipt of acceptable goods, whichever occurs later. On invoices returned for correction, the cash discount period will be calculated from receipt of the corrected invoice.

SHIPPING Unless indicated to the contrary on the face of this Order, all shipments shall be made F.O.B. destination, freight prepaid. Vendor shall deliver all goods to a carrier for shipment by carrier to Buyer and shall own, and shall bear the risk of loss for, such goods until the goods are received by Buyer. Claims for loss and/or damage to goods shall be filed by the Vendor. The Vendor shall be responsible for paying all carrier's freight charges. Delivery shall not be deemed complete until the goods have been actually received by Buyer. All deliveries must be on weekdays during normal business hours to the address indicated on the face hereof, unless otherwise agreed to by Buyer.

Time of the Essence

1. Time limits stated in the Agreement are of the essence of the Agreement and all obligations under the Agreement. By signing the Agreement, the Vendor acknowledges that those time limits are reasonable.
 - a. The Vendor acknowledges that the Port will enter into other contracts based upon the Vendor properly providing the Services in a timely manner.
 - b. The Vendor shall perform the Work in a reasonable, efficient, and economical sequence, and in the order and time as provided in the Project Schedule.
 - c. Time is of the essence of this Order, and if delivery of goods is not completed by the time promised, Buyer reserves the right, without liability and in addition to other rights and remedies, to:
 - i. Terminate this Order by notice effective when received by Vendor as to goods not yet shipped;
 - ii. Purchase substitute items; and/or,
 - iii. **Charge Vendor \$8000/day per vehicle for every day after the delivery date, unless waived by the Port.**

Termination for Convenience

1. Right to Terminate
 - a. The Port may terminate this Contract, in whole or in part, at any time for its convenience by giving written notice to the Vendor. The termination will be effective on the date stated in the notice.
2. Vendor's Duties
 - a. When the Vendor receives a termination notice, it shall:
 - i. Stop work as specified,
 - ii. Cancel any subcontracts and purchase orders related to the terminated work,
 - iii. Protect and preserve any property or materials in which the Port has an interest, and
 - iv. Deliver all completed and partially completed equipment, parts, materials, and related documents to the Port .

3. Payment

a. The Port will pay the Vendor for:

- i. Equipment, materials, or services completed and accepted before the termination date,
- ii. Reasonable costs for work in progress and materials purchased that are identified to this Contract and delivered to the Port, and
- iii. Reasonable costs of settling terminated subcontracts.
- iv. No payment will be made for anticipated profits, loss of business, or other indirect damages.

4. Finality of Payment

- a. Payment under this Section will fully satisfy all obligations of the Port to the Vendor arising out of a termination for convenience.

Termination for Cause

1. Right to Terminate

a. The Port may terminate this Contract, in whole or in part, if the Vendor:

- i. Fails to deliver equipment, materials, or services as specified,
- ii. Fails to perform any provision of the Contract, or
- iii. Otherwise breaches the Contract in a material way.

- b. Before termination, the Port will provide written notice describing the failure or breach and allow the Vendor a reasonable period, not less than ten (10) calendar days, to cure the default. If the Vendor does not cure the default within the time allowed, the Port may terminate the Contract for cause.

2. Vendor's Duties

a. Upon receipt of a termination for cause notice, the Vendor shall:

- i. Stop work as directed,
- ii. Cancel subcontracts and purchase orders related to the terminated work,
- iii. Protect and preserve any property in which the Port has an interest, and
- iv. Deliver all completed and partially completed equipment, parts, and related documents to the Port.

3. Payment

- a. If termination is for cause, the Port will pay the Vendor only for equipment and services that are completed, delivered, and accepted prior to the effective termination date.
- b. The Port may withhold payment for costs the Vendor incurs in correcting or curing its default, and may pursue any additional rights or remedies available at law or in equity.

4. Excess Costs

- a. If the Port procures substitute equipment or services as a result of termination for cause, the Vendor shall be liable for any additional costs the Port incurs.

5. Finality of Payment

- a. Payment, if any, under this Section does not limit the Port 's right to recover damages or other remedies available due to the Vendor's default.
- b. The Vendor is only paid for **accepted work**, not for incomplete or defective work.

Vendor's Termination for Cause

1. The Vendor may terminate this Agreement for cause if the Port fails to pay undisputed amounts owed to the Vendor when required under this Agreement.
2. If the Vendor elects to terminate this Agreement for cause, the Vendor must give the Port written notice of (1) the Vendor's intention to terminate the Agreement and (2) an accounting of the undisputed amounts owed to the Vendor and the date(s) on which the Vendor believes payment of those amounts was due. If the Port does not cure the cause for termination by initiating the process to pay the undisputed amounts owed to the Vendor within 30 days after receiving the notice, the termination will take effect upon the Port's receipt of the Vendor's written notice of termination, which is in addition to the Vendor's notice of intention to terminate.
3. If the Vendor properly terminates this Agreement for cause, but subject to other provisions of this Agreement, the Port must pay the Vendor for Services performed by the Vendor before the date of termination. In no event will the Port be obligated to pay anything on account of Services the Vendor does not perform.
4. If the Vendor improperly terminates this Agreement under this Section (Vendor's Termination for Cause), the Vendor shall be obligated to the Port as described under Section Termination for Cause.

CHANGES Buyer shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation. If any changes cause an increase or decrease in the cost or the time required for performance of this Order, an equitable adjustment shall be made and this Order shall be modified in writing accordingly.

CONFIDENTIALITY Vendor shall consider all information furnished by Buyer, including the existence of this Order, to be confidential and shall not disclose any such information to any other person, or use such information itself for any purpose other than performing this Order, unless Vendor obtains written permission from Buyer. Upon the termination of this Agreement, or upon Buyer's request, Vendor agrees promptly to return to Buyer all documentation or other tangible materials containing and/or embodying any of the Information (including, without limitation, all copies, reproductions, summaries and notes of the contents thereof), and to certify that all such Information has been returned to Buyer or disposed of in a manner approved by Buyer.

FORCE MAJEURE Each party will be excused from performance under this Agreement while and to the extent that it is unable to perform, for a cause beyond its reasonable control. Force majeure will not include labor shortages or work stoppages. If either party is rendered unable wholly or in part by force majeure to carry out its obligations under this Agreement, then the party affected by force majeure will give written notice with explanation to the other party immediately. The affected obligations of the party giving notice will be suspended only during the continuance of the events giving rise to the force majeure provided that the affected party is acting with due diligence to remedy the delay caused by the force majeure. If Vendor is

unable to perform for a period of more than fifteen (15) business days due to any force majeure event, Buyer may terminate this Agreement.

INFRINGEMENT Vendor warrants that the goods and/or their use, sale and/or consumption, pursuant to this Order do not and will not infringe any patent, trademark, copyright, or other intellectual property right and there is no unauthorized use of proprietary rights of another party. Vendor agrees, upon receipt of notification, to promptly assume all responsibility for defense of any suit or proceeding which may be brought against Buyer or its agents, customers or vendors for alleged intellectual property infringement and/or alleged unfair competition resulting from similarity in design, trademark or appearance of goods furnished hereunder, and Vendor further agrees to indemnify Buyer, its agents, vendors and customers against any and all expenses, losses, royalties, profits and damages, including court and/or settlement costs and attorneys' fees resulting from any such suit or proceeding.

INDEMNIFICATION/INSURANCE Vendor shall defend, indemnify and hold Buyer harmless against all damages, claims, liabilities and/or expenses (including attorneys' fees) arising out of or resulting in any way from any defect in the goods purchased hereunder, from any wrongful act or omission of Vendor, its employees, agents or subVendors, or from Vendor's breach of any warranty as provided herein or otherwise provided by law. Vendor shall maintain comprehensive liability insurance, including products liability coverage, contractual liability and broad form vendor's endorsements covering Vendor's obligations under this Order, such insurance to have aggregate limits of at least five million dollars (\$5,000,000), and to be with an insurance carrier reasonably satisfactory to Buyer. Vendor shall furnish certificates of insurance evidencing such coverage to Buyer at Buyer's request.

INSPECTION RIGHTS Upon reasonable notice to Vendor, Buyer or Buyer's independent service may inspect Vendor's plants where goods are manufactured. In accordance with Foth's Inspection Rights, as it pertains to the goods or services ordered herein, Buyer or Buyer's client's review or inspection of the goods or services ordered under this Purchase Order, either by physical examination or review of drawing or technical documents, do not constitute acceptance nor shall such review or acceptance affect or release any of Vendor's obligations with respect to the ordered goods or services.

DISPUTE RESOLUTION Any dispute between the parties relating to this Agreement or the breach thereof shall be resolved by binding arbitration in Cleveland, Ohio, pursuant to the Commercial Arbitration Rules then obtaining of the American Arbitration Association. The arbitrator(s) shall have no power to add to or modify the terms of this Agreement. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitrator(s) shall apply the substantive law of Ohio except that the interpretation and enforcement of this arbitration provision shall be governed by the Federal Arbitration Act. The arbitrator(s) shall not award either party punitive damages, and the parties shall be deemed to have waived any right to such damages. The proceedings shall be confidential and the arbitrator shall issue appropriate protective orders to safeguard both parties' confidential information. The fees of the arbitrator and the American Arbitration Association shall be split equally between the parties.

ASSIGNMENT No part of this Order may be assigned or contracted by Vendor without the prior written approval of Buyer. With the consent of Vendor, which shall not be unreasonably withheld, Buyer may, at its option, either terminate or assign a portion or all of this Order in the event of a sale, transfer, or other disposition of any operating unit or business of Buyer participating in this Order, provided that such termination or assignment shall relate only to the requirements of such operating unit or business. In the

event of assignment, Vendor agrees that Buyer shall have no further obligations with respect to the assigned portion of the Order after the date of such assignment.

WARRANTY ASSIGNMENT It is understood that Buyer is purchasing goods for the purpose of resale to Buyer's Customer. Accordingly, all warranties provided by the Vendor or other third parties under this agreement shall be transferable to Buyer's Customer. If requested by Buyer, Vendor will assist in transferring warranty/warranties to Buyer's Customer.

SETOFFS All claims for money due or to become due from Buyer shall be subject to deduction or setoff by the Buyer by reason of any counterclaim arising out of this or any other transaction with Vendor.

WAIVER Buyer's failure to insist on performance of any terms or conditions herein or to exercise any right or privilege or Buyer's waiver of any breach hereunder shall not thereafter waive any other terms, conditions or privileges, whether of the same or similar type.

GOVERNMENTAL REGULATIONS Vendor's obligations hereunder shall be subject to and comply with all applicable governmental laws, rules, regulations, and executive orders, including but not limited to Equal Opportunity/Affirmative Action clauses contained in Executive Order 11246 (60-1.4(a)), as amended, 41 CFR 60-300.5(a) (Veterans) and 41 CFR 60-741.5 (Rehabilitation Act), which requires a written Affirmative Action Plan, annual EEO-1 and Vets-100 reports, and adherence to all relevant rules, regulations and orders of the Secretary of Labor.

INDEPENDENT VENDOR While delivering goods hereunder, Vendor shall, at all times and for all purposes, be an independent Vendor, and nothing contained herein shall be construed to create the relationship of principal and agent, or employer and employee, between Buyer and Vendor or its personnel. The personnel of Vendor shall not be deemed employees of Buyer for any purposes, but rather, shall be solely the employees of Vendor, and Vendor shall have sole responsibility to counsel, discipline, review, evaluate, set pay rates of, and terminate such Vendor personnel. Vendor assumes full responsibility for all contributions, taxes, state and local laws (including obligations under the Patient Protection and Affordable Care Act), and for purposes of withholding from wages of Vendor personnel, where required. Vendor shall have discretion on whether to obtain health, disability, life, or other personal insurance for Vendor and Vendor's employees. Buyer shall not provide such insurance to Vendor or any person employed by Vendor. In addition, neither Vendor nor any employee of Vendor shall be eligible for any pension, savings, investment or retirement plan offered by Buyer to its employees. Vendor acknowledges that, for all purposes, including for purposes of the individual mandate and/or the employer shared responsibility ("play or pay") provisions of the Patient Protection and Affordable Care Act ("ACA"), it is self-employed and the exclusive employer of any person employed by the Vendor, and that Buyer is not, in any way, the common-law employer or "co-employer" of Vendor nor any employee of Vendor. Vendor also acknowledges and agrees that it is solely responsible to provide "minimum essential coverage" to self and any employee of Vendor (as required by the ACA), or to pay any taxes/penalties that might arise under the ACA pertaining to self or any employees of Vendor. If any agency of the federal or state government assesses any tax/penalty against Buyer under the ACA pertaining to Vendor or employee of Vendor, then Vendor will indemnify and reimburse Buyer for any and all taxes/penalties assessed against Buyer pertaining to Vendor or employee of Vendor. Vendor will also reimburse Buyer for any reasonable attorneys' fees incurred by Buyer in connection with the assessment of such tax/penalty.

GOVERNING LAW This Order shall be governed and constructed by the substantive federal and state law of the state of Ohio as it applies to contracts made and to be performed wholly within such state.

ENTIRE AGREEMENT This Order, and any documents referred to on the face hereof, constitutes the entire agreement of the parties.

TOTAL COST is not to exceed the price listed on this purchase order without prior written authorization as evidenced by issuance of a written change order by Buyer.

INVOICES Any invoices submitted 45 days after goods are received or services rendered will not be eligible to be paid and any exceptions must be approved by the Buyer prior to invoice submission.

The Vendor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The vendor shall carry out applicable requirements of [40 CFR part 33](#) in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the vendor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

Lobbying Restrictions.

Recipients of federal financial assistance may not pay any person for influencing or attempting to influence any officer or employee of a federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress with respect to the award, continuation, renewal, amendment, or modification of a federal grant, loan, or contract. These requirements are implemented for USEPA in 40 CFR Part 34, which also describes types of activities, such as legislative liaison activities and professional and technical services, which are not subject to this prohibition. By signing and submitting this bid, the Vendor certifies, to the best of its knowledge and belief that:

- a. No Federal appropriated funds have been or will be paid, by or on behalf of Vendor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, or any employee of a Member of Congress in connection with this Federal grant or cooperative agreement, Vendor shall complete and submit Attachment E [Standard Form -- LLL](#), "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

Debarment and Suspension.

Vendor certifies that it will not knowingly enter into a contract with anyone who is ineligible under the 2 CFR part 180 and part 1532 (per Executive Order 12549, 51 FR 6370, February 21, 1986) or who is prohibited under Section 306 of the Clean Air Act or Section 508 of the Clean Water Act. Suspension and debarment information can be accessed at <http://www.sam.gov>. Vendor represents and warrants that it has or will include a term or conditions requiring compliance with this provision in all of its subcontracts under this Agreement.

By signing and submitting this bid, the Vendor certifies to the best of its knowledge and belief, that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;.
- b. Have not within a three-year period preceding this bid been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and
- d. Have not within a three-year period preceding this bid had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

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