INVITATION TO BID (ITB)

State of Ohio, Department of Transportation
Office of Contract Sales, Purchasing Services
Jack Marchbanks, Ph. D., Director

Bid Submission Deadline (Bid Opening Date):
March 18, 2021 at 1:00 p.m. eastern time

Submitted by:

Company Name: ________________________________

Federal Tax ID No.: ________________________________

<table>
<thead>
<tr>
<th>Physical/Mailing Address:</th>
<th>Remit to Payment Address:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Street Address:</td>
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<tr>
<td>P.O. Box:</td>
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<td>City:</td>
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</tbody>
</table>

Contact Person and Phone Number:
(authorized to answer questions about your company’s bid)

E-Mail Address (required):
(person who filled out bid)

E-Mail Address (required):
(for notification of future bid opportunities)

Telephone Number | 800 Number | Fax Number |
---------------------------------------------------------------------

Return Properly Marked, Complete Bid Packages To:
contracts.purchasing@dot.ohio.gov - Paper bids will NOT be accepted.

VENDORS MUST SUBMIT ANY QUESTIONS, CLARIFICATIONS, OR INQUIRIES REGARDING THIS PROCUREMENT VIA THE FOLLOWING WEBSITE:
http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/Pages/PurchasePBQ.aspx
INTRODUCTION

The Ohio Department of Transportation (ODOT) is requesting proposals from qualified firms to provide State Safety Oversight (Rail Transit) technical assistance services to the Office of Transit. The ODOT Office of Transit operates Federal and State funded programs designed to assist Ohio’s public transportation service providers and human service transportation providers to address complex administrative and operating issues and comply with a myriad of Federal and State program rules, regulations and requirements.

ODOT has maintained a Rail Transit State Safety Oversight (SSO) program since 1997. This program is required by the Federal Transit Administration (FTA) and applies to rail transit agencies (RTAs) not regulated by the Federal Railroad Administration (FRA) in the State of Ohio. The authorization for FTA’s and ODOT’s SSO programs was initially published in 49 U.S.C. Section 5330 (State Safety Oversight). FTA published their state safety oversight rule, Rail Fixed Guideway Systems; State Safety Oversight; Final Rule, on December 27, 1995, codified as 49 CFR Part 659. On April 29, 2005, the FTA published a revised version of 49 CFR Part 659.

In 2012 as part of Moving Ahead for Progress in the 21st Century (MAP-21), the FTA safety programs were changed with significantly higher expectations and responsibilities for safety oversight and safety performance for the FTA, states, and the transit agencies (for all modes, not just rail), authorized as 49 U.S.C. Section 5329. The new FTA safety programs are in the process of being developed to follow a transit-specific safety management system (SMS) that is the basis of changes to the transit safety programs. SMS is maintained under the Fixing America’s Surface Transportation (FAST) Act, signed into law on December 4, 2015, and the first Federal-aid law in over a decade to provide long-term funding certainty for surface transportation infrastructure planning and investment.

The FTA completed rulemaking in March 2016 for a new SSO regulation as 49 CFR Part 674 based on 49 U.S.C. Section 5329 instead of Section 5330. This new regulation for SSO went into effect on April 15, 2016 and states had three years to complete development and gain approval from FTA, through a certification process, for their Part 674 compliant SSO program. After this three-year period, the current SSO regulation, 49 CFR Part 659, was repealed along with its authorization, Section 5330. In August 2017, the FTA certified the ODOT SSO program under the new SSO regulation (Part 674 – the Rule). ODOT’s SSO Program was the first SSO agency in the nation to be certified under Part 674.

SCOPE OF SERVICES

The successful proposer must demonstrate a thorough understanding of the Rule and FAST Act requirements and the respective roles and responsibilities of both ODOT, Greater Cleveland Regional Transit Authority (GCRTA) and the City of Cincinnati (CoC). Under the direction of staff from ODOT, and acting on behalf of ODOT, the successful proposer would be responsible for the following activities:

The successful firm will be required to perform a variety of technical assistance services through task orders determined and identified later by ODOT. A task order may include, for example:

FTA Annual Report and Periodic Submissions
  • Assist ODOT with the FTA SSO Annual Report summarizing its oversight activities for the preceding twelve months, including a description of the causal factors of investigated accidents, status of corrective actions, updates, and modifications to GCRTA and CoC’s program documents, and the level of effort used by the oversight agency to carry out its oversight activities
  • Assist ODOT in preparing periodic program information including status reports of accidents, hazardous conditions, Safety Advisory (SA) submission and Corrective Action Plans (CAP), if requested by FTA
  • Ensure ODOT’s System Safety Oversight Program Standard (SSOPS) is reviewed and updated as necessary

GCRTA and CoC Annual Reports
  • Review and approve or disapprove the checklist or procedures that GCRTA/ CoC will use during the reviews and/or audits
  • Review the internal safety and security reviews and issue a written response either approving or disapproving the Annual Report
• Review GCRTA/ CoC’s CAP report and issue a written response of acceptance or rejection

Investigations of Accidents and Significant Hazardous Conditions
• Assist ODOT SSO in the investigation of accidents and significant hazardous conditions that occur or exist at GCRTA and CoC
• Serves as the initial contact for accident notification and hazardous conditions by GCRTA/ CoC
• Receive and review reports of significant safety and security incidents
• Monitor and review accidents and investigation activities conducted by GCRTA/ CoC
• Conduct periodic on-site investigation activities and produce a final accident investigation report
• In the event of a National Transportation Safety Board (NTSB), serve as a primary contact on NTSB activities including meetings, interviews, request for data, etc.
• Receive and review reports of significant hazardous conditions, gather data and information necessary to characterize and report conditions and provide the initial briefing to ODOT
• Monitor and review significant hazardous conditions investigation activities conducted by GCRTA and CoC.
• Conduct actual on-site significant hazardous conditions investigation activities, upon ODOT request
• Prepare both interim investigation status reports and a final accident investigation report

Quarterly Meetings, Corrective Actions Plan, Public Transportation Agency Safety Plan (PTASP) and System Security Plan (SSP) Updates
• Meet jointly with ODOT and GCRTA/CoC at least quarterly in GCRTA/CoC offices to review open investigations, corrective action activities and other open or resolved issues
• Review the PTASP and SSP and perform any necessary updates or modifications to ensure the PTASP and SSP are current
• When changes are necessary, review and recommend approval or disapproval to ODOT

FTA SSO Audit and ODOT Triennial Audit of CoC and GCRTA
• GCRTA and CoC Triennial Audits (CoC Audit- November 2020 and GCRTA- September 2018)
  ○ Provide written notifications to transit agency of the scheduled audits, identifying the objectives of the audit, and the key documents to submit to ODOT for review.
  ○ Perform an On-Site Triennial audit, along with ODOT personnel, focusing primarily on assessing the transit agencies compliance with the internal safety and security policies, with a major emphasis on the organizational and procedural aspects of their operations as they relate to system safety and security.
    ▪ System Safety Policies and Procedures
    ▪ Corrective Action Plan Implementation
    ▪ Management
    ▪ Spot Checks
  ○ Develop the audit evaluation criteria by which GCRTA/CoC will be reviewed and evaluated
  ○ Issue a final audit report with any recommendations and findings for improving agency’s safety and security programs
• FTA Audit of ODOT SSO Program (December 2019)
  ○ Assist ODOT by gathering information requested by FTA and preparing for the review
  ○ Attend the review and provide assistance in responding to FTA’s report of findings and recommendations.

ODOT/CONSULTANT RESPONSIBILITIES
• Submit a monthly report by the 15th of each month summarizing their work activities from the previous month.
  ○ GCRTA and CoC plan updates, audits, investigations, CAPs hazard logs, and significant events
• Regularly monitor or attend GCRTA and CoC’s Executive Safety Committee meeting and report the results of those meetings to ODOT.
• Coordinate and conduct quarterly meetings at GCRTA and CoC headquarters to discuss the status of safety and security plans, investigations, and CAPs
• Submit an annual schedule of the quarterly meetings to ODOT for review at the beginning of the calendar year and notify ODOT promptly if the meeting dates need to be rescheduled.
• Provide guidance to ODOT for providing comments to FTA during the rule making process
• Update ODOT SSO Program documents to comply with changes resulting from the full implementation of the FAST Act/FTA Transit Safety Office requirements
• Assist in any SSO related activities related to a rail extension or new startup
• Attend the FTA On-Site Rail Safety and Security Program and aid in responding to FTA’s report of findings and recommendations
• Provide general support for implementation of the Program

New task orders may also be necessary to address a variety of management, technical, financial and operating issues which may require immediate solutions.

Based on the above, the successful firm must demonstrate, either through existing staff or partnerships with other consultants, a level of expertise and experience in relevant related disciplines to assure that Ohio’s SSO Program is following FTA requirements in a timely, prudent, and fiscally responsible manner. Known tasks will reflect the listed Scope of Services but new tasks have yet to be identified for the proposed contract. However, a successful respondent will, at minimum, identify their proficiencies in each of the areas listed in the scope of services within the body of their proposal.

Firms will be evaluated on completeness of submission, knowledge, skills, and abilities to perform known tasks, experience of the firm or team to complete the Scope of Services tasks, timely availability of appropriate personnel (including technical support) to respond to ODOT’s needs, a commitment to work within a budget and efficiently and effectively contain costs, and thorough knowledge of FTA SSO policies, procedures, and requirements.

PROPOSAL RESPONSE FORMAT

I. Description of Proposer

Proposers must identify themselves any partner firms or subcontractors in accordance with the following document:
• Name:
• Address:
• Telephone:
• Contact Person:
• Contact Person Email Address:
• Contact Person Phone Number:
• Areas of Expertise for this Response:
• Major Clients Served (particularly identify any State ODOTs for whom contract services were provided):
• Is this firm a certified DBE firm in Ohio:

II. Understanding of the Scope of Work

Proposers must complete the proposal and address their qualifications for completing the Scope of Services. An appropriate response to this section will include a completed description of areas in which the proposer’s firm or a firm in the proposer’s consulting team has expertise. Please include a listing of the location of past work performed in each area, names of specific employees proposed to perform work in the identified area, and an indication of the firm’s and employee’s availability to perform work on this contract. If copies of past individual studies are needed, they will be requested as the respective submissions are reviewed. Please do not include them in your proposal. Please note in addressing this
element, the contract to be awarded comprise a major level of work with the potential for many hundreds of hours of effort. Include your response to this section as the Work Plan.

III. Management and Organization Support

Submit no more than ten (10) resumes of individuals who will be assigned to the proposed contract, including the project manager. List each individual’s qualifications, familiarity with and understanding of FTA and ODOT grant programs, policies and procedures, and previous experience on similar projects. This applies to the proposing firm and to any firms participating in the team or subcontractors. Include a table of organization identifying participating personnel. Include your response to this section as the Staff Plan.

IV. Cost Containment/DBE Requirements

Cost containment is an important factor in determining how many tasks can be performed under the contract. Under this section, please identify measures to be taken to contain costs.

Areas to be addressed include direct expenses, overhead expenses, and travel expenses.

In SFY 2020-2021 one contract for SSO technical support was awarded. A single contract for SFYs 2022-2023 will not exceed $1,100,000 for the contract period, which will run from July 1, 2021 through June 30, 2023.

This contract makes up ODOT’s primary Disadvantaged Business Enterprise effort for the Office of Transit each year. DBE contractors/subcontractors must be identified in this section with a description of how DBE involvement in a task will be determined. The DBE contractors/subcontractors must perform work meaningful to the contract so peripheral efforts should not be included. Failure to follow through and use the DBE contractors/subcontractors following a contract award will provide cause to exclude a firm from future considerations for this contract.

The selected consultant shall deliver a monthly invoice to ODOT staff at least fifteen (15) calendar days after the last day in the previous month. For example, work performed in the month of July shall be invoiced to ODOT by August 15th.

Include your responses to this section as the Cost Proposal.

V. Forms, Certifications and Assurances

All proposers must complete, sign and submit the following enclosed exhibits with their proposal:

- Exhibit A - Affirmative Action Affidavit
- Exhibit B - Non-Collusion Affidavit
- Exhibit C - Debarment & Suspension Certification
- Exhibit D – Certification of Restrictions on Lobbying

PROPOSER INSTRUCTIONS

I. Proposal Due Date

One (1) original proposal with all the required elements must be received electronically by ODOT by 1:00 p.m. EDT on Thursday March 18, 2021. The proposal may not exceed a total page length of fifteen (15) pages, excluding resumes and required forms, certifications, and assurances.

Any proposals received after the deadline will not be considered and will be unopened. To facilitate the clarification of requirements, respondents are requested to submit questions by email no later than March 5, 2021, to the contact stated in the beginning of this RFP. Questions and answers received by March 5, 2021, will be posted on ODOT’s Office of Contract website.

II. Commitment to Perform Proposal Services
The proposal must be signed by a duly authorized official of the proposer's firm, or if a joint venture, by an official from each participating firm.

III. Contract Type

ODOT will award a cost reimbursement contract. ODOT and the successful proposer(s) will negotiate the costs for each approved task, separate from. However, under no circumstance will the unit costs for direct labor, the percent of allowances for overhead and general administration, or the profit exceed the amounts or rates agreed upon prior to entering the contract.

IV. Travel

While not requested as a part of the information submitted, all travel costs are limited by the rates allowed under the applicable ODOT travel directives in place at the time travel is undertaken. The Office of Budget and Management (OBM) sets the mileage reimbursement rate for contractors with state agencies to utilize at the following location: https://obm.ohio.gov/wps/portal/gov/obm/areas-of-interest/agency-overview/obm-travel-rule/obm-travel-rule. This contract will utilize the rate set by OBM as amended quarterly throughout the state fiscal year.

V. Contract Award

Any proposed contract negotiated between ODOT and the successful proposer as a result of this RFP is subject to approval of the ODOT Governance Board. Without ODOT Governance Board approval, the contract will be invalid and unenforceable.

RFP INFORMATION

I. Project Completion

The duration of this contract will be two years starting July 1, 2021 and ending June 30, 2023. Individual purchase orders will be issued for each year of the two-year contract period. Respondents should note that each task within the overall contract will have its own completion date.

II. Project Funding

The contract will be funded with federal funds from the FTA. The federal assistance expected to be provided for this contract shall be no more than $1,100,000 from the following FTA program:

- 20.528: State Safety Oversight Formula Grant Program

III. Reserved Rights

During the solicitation process, ODOT reserves the following rights:

- To reject any or all proposals, to postpone contractor selection and to resolicit or cancel this procurement if deemed to be in the best interest of the State of Ohio.
- To request additional information from any and all proposers.
- To subject the execution of any contract or task order to the availability of funds and negotiation of agreeable terms with the successful proposer.
- To enter into a contract with any proposer based upon the proposer’s initial offer.
- To waive liability for reimbursement of any costs incurred by proposers responding to this RFP.

IV. Rejection of Proposals

ODOT will reject any proposal for the following reasons:

- Proposer fails to sign the required forms, certifications and assurances
- Proposer includes exceptions to the services described under Scope of Services.
- Proposal exceeds the fifteen (15) page limit, excluding resumes and required forms and certifications
- Proposal is received after the deadline.
- Proposer provides less than sixty (60) days for acceptance.
REQUIRED CONTRACT CLAUSES

Any contract awarded as a result of this solicitation will incorporate the clauses of the standard ODOT contract as well as specific clauses required by FTA. The required FTA clauses and certifications (Exhibit A through Exhibit E) are included. If selected, the proposer must execute the contract and each of the appropriate exhibits prior to ODOT’s execution.

EVALUATION AND SELECTION PROCESS

I. Criteria for Scoring of Technical Proposal

Qualifying technical proposals will be collectively scored by a Proposal Review Team (PRT) appointed by ODOT. For each of the evaluation criteria given in the following score sheet, reviewers will collectively judge whether the technical proposal exceeds, meets, partially meets or does not meet the requirements expressed in the RFP, and assign the appropriate point value, as follows:

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Does Not Meet</th>
<th>Partially Meets</th>
<th>Meets</th>
<th>Exceeds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requirement</td>
<td>Score: 0</td>
<td>Score: 4</td>
<td>Score: 7</td>
<td>Score: 10</td>
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</tbody>
</table>

Technical Performance Scoring Definitions:

“Does Not Meet Requirement”- A particular RFP requirement was not addressed in the vendor’s proposal, Score: 0

“Partially Meets Requirement”- Vendor proposal demonstrates some attempt at meeting a particular RFP requirement, but that attempt falls below acceptable level, Score: 4

“Meets Requirement”- Vendor proposal fulfills a particular RFP requirement in all material respects, potentially with only minor, non-substantial deviation, Score: 7

“Exceeds Requirement”- Vendor proposal fulfills a particular RFP requirement in all material respects, and offers some additional level of quality in excess of ODOT expectations, Score: 10

Final scoring will be based on a grand total of 850 technical point possible and 150 points for cost.

Scoring Breakdown Table

<table>
<thead>
<tr>
<th>ITEM</th>
<th>EVALUATION CRITERIA</th>
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<tbody>
<tr>
<td></td>
<td>Weighting</td>
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</tbody>
</table>

Proposal Experience

A. Work Plan: Experience and Proposer’s Quality of Response:
   1. Prior experience with safety and security programs, with emphasis on rail fixed guideway public transportation.
   2. Understanding of the work to be completed
   3. Responsiveness to the Scope of Work
   4. Clarity of proposal and work to be performed.
   5. Interviews (if necessary) Score: 45

B. Staff Plan: Structure of Proposer’s Organization
   1. Qualifications of personnel – (education, experience and training)
   2. Resumes (limit ten) including identification of Project Manager
   3. Access of respondent’s resources and personnel to ODOT/local public entities.
   4. Availability and responsiveness of proposer’s resources and personnel. Score: 35
Invitation No. 590-22

DBE Response:
Disadvantaged Business Enterprise (DBE) Participation:
1. Evidence of meaningful DBE participation either from the prime consultant and/or any subcontractors
2. All DBE firms included their appropriate DBE certification from Ohio with the proposal.

| Column Subtotal of "Partially Meets" points | 5 |
| Column Subtotal of "Meets" points |
| Column Subtotal of "Exceeds" points |

**Cost Score (based on 150 total)**

**GRAND TOTAL SCORE:**

II. **Cost Proposal Points**

ODOT will use the information Offeror gives on the Cost Summary Form to calculate Cost Proposal Points. ODOT will calculate the Offeror’s Cost Proposal points after the Offeror’s total technical points are determined, using the following method:

Cost points = (lowest Offeror’s cost/Offeror’s cost) x Maximum Allowable Cost Points as indicated in the “Scoring Breakdown” table. The value is provided in the Scoring Breakdown table. "Cost" = Total identified in the Cost Summary section of Offeror’s Proposal. In this method, the lowest cost proposed will receive the maximum allowable points.

The number of points assigned to the cost evaluation will be prorated, with the lowest accepted Cost Proposal given the maximum number of points possible for this criterion. Other acceptable Cost Proposals will be scored as the ratio of the lowest Cost Proposal to the Proposal being scored, multiplied by the maximum number of points possible for this criterion.

An example for calculating cost points, where Maximum Allowable Cost Points Value = 60 points, is the scenario where Offeror X has proposed a cost of $100.00. Offeror Y has proposed a cost of $110.00 and Offeror Z has proposed a cost of $120.00. Offeror X, having the lowest cost, would get the maximum 60 cost points. Offeror Y’s cost points would be calculated as $100.00 (Offeror X’s cost) divided by $110.00 (Offeror Y’s cost) equals 0.909 times 60 maximum points, or a total of 54.5 points. Offeror Z’s cost points would be calculated as $100.00 (Offeror X’s cost) divided by $120.00 (Offeror Z’s cost) equals 0.833 times 60 maximum points, or a total of 50 points.

Cost Score: __________

**FINAL STAGES OF EVALUATION** The Offeror with the highest point total from all phases of the evaluation (Technical Points + Cost Points) will be recommended for the next phase of the evaluation.

Technical Score: _________ + Cost Score: _________ = Total Score: ______________

If ODOT finds that one or more Proposals should be given further consideration, ODOT may select one or more of the highest-ranking Proposals to move to the next phase. ODOT may alternatively choose to bypass any or all subsequent phases and make an award based solely on the Proposal evaluation phase.

II. **Selection Process**
The successful proposer will be selected by ODOT staff. ODOT staff will review and score all eligible proposals. Proposers may be contacted to conduct an interview. An interview allows ODOT staff to ask questions with regard to the respective proposals and provide an opportunity for proposers to discuss issues relative to their proposals.

Following this selection process, ODOT staff will recommend a proposer for the rail safety contract to the ODOT Governance Board. Upon approval from the Governance Board, ODOT staff will contact the successful proposer to execute the contract.

III. Solicitation Schedule

The schedule below lists target dates for completion of various phases of this solicitation:

<table>
<thead>
<tr>
<th>Date</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>February 16, 2021</td>
<td>RFP advertised</td>
</tr>
<tr>
<td>March 5, 2021</td>
<td>Last day to send solicitation questions to ODOT</td>
</tr>
<tr>
<td>March 18, 2021</td>
<td>Responses due at ODOT by 1:00PM</td>
</tr>
<tr>
<td>March 31, 2021</td>
<td>Proposers’ interview, if necessary</td>
</tr>
<tr>
<td>April 7, 2021</td>
<td>Contractor recommendations submitted to ODOT management and ODOT Governance Board</td>
</tr>
<tr>
<td>April 27, 2021</td>
<td>ODOT Governance Board Meets</td>
</tr>
<tr>
<td>May 28, 2021</td>
<td>Anticipated contract execution with the selected proposer</td>
</tr>
<tr>
<td>July 1, 2021</td>
<td>Contract Effective Date</td>
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</table>

IV. RFP Proposer’s Checklist

The checklist below is provided for proposers to ensure all required elements are included in a proposal. In order to be deemed responsive to the RFP by ODOT, all elements must be met.

|☐| Deadline|Submitted electronic proposal on or before March 18, 2021 by 1:00pm EDT|
|☐| Work Plan|Proposer’s experience, understanding of the work, and quality of response regarding the Scope of Work|
|☐| Staff Plan|Qualifications of Proposer’s firm or team of firms including resumes|
|☐| Cost Proposal|Cost proposal as a separate document from the rest of the proposal titled as SSO_Cost-Proposal_Name of Proposer in the format provided.|
|☐| Required Forms|Completed and signed forms, certifications, and assurances identified in Exhibits A, B, C, and D|
EXHIBIT A

AFFIRMATIVE ACTION AFFIDAVIT
(to be completed by firms with less than 50 employees)

(STATE OF ___________________________
(COUNTY OF ___________________________)

I, ________________________________ of the __________________________ of ____________________________,
in the County of __________________________, State of ____________________________, of full age, being duly
sworn according to law on my oath depose and state that:

1. I am ________________________________ of the firm of ________________________________, a bidder making a proposal inclusive upon the above-named project.

2. ________________________________ does not have 50 employees or more inclusive of all officers and employees of every type.

3. I am familiar with the affirmative action requirements of O.R.C. 125.11.1 and rules and regulations issued by the Ohio Department of Administrative Services pursuant thereto.

4. ________________________________ has complied with all affirmative action requirements of the State of Ohio, including those required by the O.R.C. 125.11.1 and the rules and regulations issued by the Ohio Department of Administrative Services thereto.

5. I am aware that if ________________________________ does not comply with O.R.C. 125.11.1 and rules and regulations issued pursuant thereto, that no monies will be paid by ODOT until an affirmative action plan is approved. I understand that the contract may be terminated and ________________________________ may be debarred from all public contracts for a period up to five (5) years for violation of said provisions.

6. In the event my workforce increases to 50 employees, I must contact the Ohio Affirmative Action office and complete an Employee Information Report.

Signature of Authorized Official __________________________________ Title ____________________________
EXHIBIT B

NON-COLLUSION AFFIDAVIT

(STATE OF )
(COUNTY OF )

I, __________________________ of the __________________ of __________________________

in the County of __________________________, State of __________________________, of full age, being duly
sworn according to law on my oath depose and state that:

I am __________________________ of the firm of __________________________,

______________________________, a bidder making a proposal inclusive upon the above named project, and that I
executed the said proposal with full authority to do so: that said bidder has not, directly or indirectly, entered into
any agreement, participated in any collusion, or otherwise taken any action in restraint of free, competitive bidding
in connection with the above named project; and that all statements contained in said proposal and in this affidavit
are true and correct, and made with full knowledge that ODOT relies upon the truth of the statements contained in
said proposal and in the statements contained in this affidavit in awarding the contract for the said project.

I further warrant that no person or selling agency has been employed or retained to solicit or secure such contract
upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide
employees or bona fide established commercial or selling agencies

maintained by __________________________.

(Name of Contractor)

____________________________________
Signature of Authorized Official

____________________________________
Title
CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS

By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

1. It will comply and facilitate compliance with U.S. DOT regulations, “No procurement Suspension and Debarment,” 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (No procurement),” 2 CFR part 180,

2. To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:
   a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently: debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded, or disqualified
   b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:
      1. 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,
      2. Violation of any Federal or State antitrust statute, or
      3. Proposed for debarment commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property
   c. It is 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 listed in the preceding subsection 2.b of this Certification,
   d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this Certification,
   e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a – 2.d above, it will promptly provide that information to FTA,
   f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:
      1. Equals or exceeds $25,000,
      2. Is for audit services, or
      3. Requires the consent of a Federal official, and
   g. It will require that each covered lower tier contractor and subcontractor:
      1. Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and
      2. Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:
         a. Debarred from participation in its federally funded Project,
         b. Suspended from participation in its federally funded Project,
         c. Proposed for debarment from participation in its federally funded Project,
         d. Declared ineligible to participate in its federally funded Project,
         e. Voluntarily excluded from participation in its federally funded Project, or
         f. Disqualified from participation in its federally funded Project, and
3. It will provide a written explanation as indicated on a page attached in FTA’s TrAMSWeb or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third-Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

__________________________________________ certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801 ET SEQ. are applicable thereto.

__________________________________________
Signature of Authorized Official

__________________________________________
Title

__________________________________________
Date

EXHIBIT D
CERTIFICATION OF RESTRICTIONS ON LOBBYING
I, ____________________________________________, hereby certify

(Name and title of official)
On behalf of ______________________________________________ that:

(Name of Bidder(s)/Company Name)

➢ No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and 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.

➢ If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

➢ The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801, et seq., are applicable thereto.

Executed this ___ day of ________________, 20__.

______________________________
Signature of Authorized Official

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Exhibit E

FTA Clauses

ACCESS TO RECORDS AND REPORTS

a. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-contracts, leases, subcontracts, arrangements, other third party Contracts of any type, and supporting materials related to those records.
b. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.

d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors’ access to the sites of performance under this contract as reasonably may be required.

BYRD ANTI-LOBBYING AMENDMENT

Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Agency.

CIVIL RIGHTS LAWS AND REGULATIONS

The following Federal Civil Rights laws and regulations apply to all contracts.

1. Federal Equal Employment Opportunity (EEO) Requirements. These include, but are not limited to:

   a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.


4. Federal Protections for Individuals with Disabilities. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

Civil Rights and Equal Opportunity
The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. chapter 60, and Executive Order No. 11246, “Equal Employment Opportunity in Federal Employment,” September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.


**CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). Violations must be reported to FTA and the Regional Office of the Environmental Protection Agency. The following applies for contracts of amounts in excess of $150,000:

**Clean Air Act**

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

2. The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

3. The contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FTA.

**Federal Water Pollution Control Act**

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
(2) The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FTA."

CONFORMANCE WITH ITS NATIONAL ARCHITECTURE

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

DEBARMENT AND SUSPENSION

a. Applicability: This requirement applies to all FTA grant and cooperative agreement programs for a contract in the amount of at least $25,000

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) The accompanying certification is a material representation of fact relied upon by the subrecipient. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Agency and subrecipient, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Agency deems appropriate, which may include, but is not limited to:

(1) Withholding monthly progress payments;
(2) Assessing sanctions;
(3) Liquidated damages; and/or
(4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the Agency makes to the prime contractor. 49 C.F.R. § 26.29(a).

Finally, for contracts with defined DBE contract goals, each FTA Recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the Agency’s written consent; and that, unless the Agency’s consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).
It is the policy of the Agency and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE’s"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts.

**DHS SEAL, LOGO, AND FLAGS**

The contractor shall not use the Search Results or Web results of Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FTA pre-approval.

**ENERGY CONSERVATION**

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

**EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

3. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

4. The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

6. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

7. In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
(8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance:

Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

FEDERAL CHANGES

49 CFR Part 18 Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

FLY AMERICA

a) Definitions. As used in this clause—
   1) "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States. 2) “United States” means the 50 States, the District of Columbia, and outlying areas. 3) “U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, Agenycs, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers
International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403.

e) Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

Incorporation of Federal Transit Administration (FTA) Terms - The provisions within include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in the current FTA Circular 4220 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

The Agency and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be
subject to any obligations or liabilities to the Agency, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

PATENT RIGHTS AND RIGHTS IN DATA

Intellectual Property Rights

This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the Agency intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 37 C.F.R. part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum, include the following restrictions:

Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this Contract, the term “subject data” means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of “subject data” include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

1. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for “Federal Government Purposes,” any subject data or copyright described below. For “Federal Government Purposes,” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party.

   a. Any subject data developed under the Contract, whether or not a copyright has been obtained; and
   
   b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.

2. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA’s license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.

3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

4. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from
the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of
the Contract work.

6. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or
research work financed in whole or in part with Federal assistance.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements)
applies to the contractor's actions pertaining to this contract."

PROMPT PAYMENT

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory
performance of that work no later than 30 days after the contractor's receipt of payment for that work. In addition,
the contractor is required to return any retainage payments to those subcontractors within 30 days after the
subcontractor's work related to this contract is satisfactorily completed.

The contractor must promptly notify the Agency, whenever a DBE subcontractor performing work related to this
contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE
subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE
subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of
the Agency.

SAFE OPERATION OF MOTOR VEHICLES

Seat Belt Use
The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its
employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally
operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by
the Contractor or Agency.

Distracted Driving
The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted
drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and
driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle
when on official business in connection with the work performed under this Contract.

SPECIAL NOTIFICATION REQUIREMENTS FOR STATES

Applies to States –

a. To the extent required under federal law, the State, as the Recipient, agrees to provide the following information
about federal assistance awarded for its State Program, Project, or related activities:

(1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
(2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a
State Program or Project is authorized; and
(3) The amount of federal assistance FTA has provided for a State Program or Project.

b. Documents - The State agrees to provide the information required under this provision in the following
documents: (1) applications for federal assistance, (2) requests for proposals or solicitations, (3) forms, (4)
notifications, (5) press releases, and (6) other publications.

TERMINATION

Termination for Convenience (General Provision)
The Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it
is in the Agency’s best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit
on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to
Agency to be paid the Contractor. If the Contractor has any property in its possession belonging to Agency, the
Contractor will account for the same, and dispose of it in the manner Agency directs.
Termination for Default [Breach or Cause] (General Provision)
If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Agency may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the Agency that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

Opportunity to Cure (General Provision)
The Agency, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to Agency's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from Agency setting forth the nature of said breach or default, Agency shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Agency from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach
In the event that Agency elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Agency shall not limit Agency’s remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

Termination for Convenience (Professional or Transit Service Contracts)
The Agency, by written notice, may terminate this contract, in whole or in part, when it is in the Agency’s interest. If this contract is terminated, the Agency shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

Termination for Default (Supplies and Service)
If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

Termination for Default (Transportation Services)
If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract. If this contract is terminated while the Contractor has possession of Agency goods, the Contractor shall, upon direction of the Agency, protect and preserve the goods until surrendered to the Agency or its agent. The Contractor and Agency shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

Termination for Default (Construction)
If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Agency may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Agency resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Agency in completing the work.

The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if: 1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of Agency, acts of another contractor in the performance of a contract with Agency, epidemics, quarantine restrictions, strikes, freight embargoes; and 2. The Contractor, within [10] days from the beginning of any delay, notifies Agency in writing of the causes of delay. If, in the judgment of Agency, the delay is excusable, the time for completing the work shall be extended. The judgment of Agency shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract. 3. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Agency.

Termination for Convenience or Default (Architect and Engineering)
The Agency may terminate this contract in whole or in part, for the Agency's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Agency’s Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. Agency has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of the Agency, the Agency's Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Agency may complete the work by contact or otherwise and the Contractor shall be liable for any additional cost incurred by the Agency.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Agency.

Termination for Convenience or Default (Cost-Type Contracts)
The Agency may terminate this contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of Agency or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the Agency, or property supplied to the Contractor by the Agency. If the termination is for default, the Agency may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Agency and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of Agency, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a Notice of Termination for Default, the Agency determines that the Contractor has an excusable reason for not performing, the Agency, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

VIOLATION AND BREACH OF CONTRACT

Rights and Remedies of the Agency
The Agency shall have the following rights in the event that the Agency deems the Contractor guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors; 2. The right to cancel this Contract as to any or all of the work yet to be performed; 3. The right to specific performance, an injunction or any other appropriate equitable remedy; and 4. The right to money damages.

For purposes of this Contract, breach shall include.

Rights and Remedies of Contractor
Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the Agency, the Contractor expressly agrees that no default, act or omission of the Agency shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the Agency directs Contractor to do so) or to suspend or abandon performance.

Remedies
Substantial failure of the Contractor to complete the Project in accordance with the terms of this Contract will be a default of this Contract. In the event of a default, the Agency will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Contract by the Contractor before the Agency takes action contemplated herein, the Agency will provide the Contractor with sixty (60) days written notice that the Agency considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

Disputes
Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by an authorized representative of Agency. This decision shall be final and conclusive unless within [10] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Agency’s authorized representative. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Agency’s authorized representative shall be binding upon the Contractor and the Contractor shall abide by the decision.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with the Agency’s direction or decisions made thereof.

Performance during Dispute
Unless otherwise directed by Agency, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages
Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies
Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Agency and the Contractor arising out of or relating to this Contract or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Agency is located.

Rights and Remedies
The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Agency or Contractor shall constitute a waiver of any right or duty
afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.
Terms and Conditions for Submitting Excel Pricing File in Bid Package
(Last Revised 07/2020)

1. DOWNLOADING THE EXCEL PRICING FILE: Bidders can access and download the most current Excel Pricing File for this procurement by following the hyperlink provided below:

http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/PurchDocs/314pricing.xls

2. SUBMISSION OF EXCEL PRICING FILE: Bidders should submit the pricing page in the original excel format.

3. UNAPPROVED ALTERATIONS TO EXCEL PRICING FILE: Bidders who materially alter the original content of the Excel pricing file (e.g. specifications, formulas, etc.) issued by the Department may be found non-responsive and ineligible for award of this procurement.

4. CHANGES TO EXCEL PRICING FILE: The Department will only make modifications to the Excel pricing file by written addendum only. Where changes are necessary to the Excel pricing page, the Department will issue a new Excel pricing page indicating the revisions made and a revision date for the changes.

   It is the sole responsibility of the bidder to check for issued addenda prior to submitting a bid package to ensure the most updated Excel pricing file is being utilized.

5. DESCRIPTIVE LITERATURE: Bidders may electronically provide any descriptive literature (e.g. brochures, spec/cut sheets, drawings, MSDS, etc.) regarding the products and/or services offered by the bidder. As this literature may be publicly posted for viewing by purchasers, bidders must not submit any literature electronically in which they consider to be a trade secret, proprietary, or confidential in any way.

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State of Ohio, Department of Transportation (ODOT)
Office of Contract Sales, Purchasing Services

INSTRUCTIONS, TERMS AND CONDITIONS FOR BIDDING
(Last revised 11/30/2020)

1. **BIDDER REGISTRATION:** The Department requires awarded bidder(s) to successfully register as a State of Ohio Supplier with the Department of Ohio Shared Services and successfully obtain an OAKS vendor identification number (OAKS ID) within fourteen (14) calendar days from the date of contract award and execution. The Department cannot utilize awarded Contracts to purchase from a bidder who cannot obtain an OAKS ID from Ohio Shared Services. In the event an awarded bidder is unable to obtain an OAKS ID, the Department shall reserve the right to revoke its award to the bidder and immediately cancel any resulting Contract.

A Supplier Information Form and W-9 must be completed and sent back directly to Ohio Shared Services in order to register and apply for an OAKS ID. The following website can be accessed by bidders to obtain both the forms and specific instructions for obtaining an OAKS ID:

http://ohiosharedservices.ohio.gov/SupplierOperations/Forms.aspx

It is strongly recommended that all interested bidders not already registered with Ohio Shared Services submit the above paperwork prior to the bid submission deadline.

2. **HOW BIDS MUST BE PACKAGED:** All submitted bids in response to this procurement must be emailed to contracts.purchasing@dot.ohio.gov – Paper bids will NOT be accepted.

3. **WHAT NEEDS INCLUDED IN BID PACKAGE:** Submitted bid packages should include, at a minimum, a completed Signature Page, a completed Excel pricing page, and all necessary supportive documentation, forms, and any other information required herein. The Department may deem a bid non-responsive for failure to submit any of the documents requested above.

4. **PREBID QUESTIONS, DISCREPANCIES, AND CLARIFICATIONS:** Any discrepancies, omissions, ambiguities, or conflicts in or among the bidding documents or doubts as to the meaning shall be brought to the Department's attention by the bidder no less than three (3) business days prior to the bid submission deadline. All questions, discrepancies, clarifications, etc. must be submitted electronically (hyperlink below). During the competitive bidding process, bidders (and their agents) are prohibited from contacting any ODOT office, including District offices, other than the Office of Contract Sales, Purchasing Services section to obtain responses to any questions. The Department may find a bidder non-responsive for failing to adhere to any of the above requirements.

Pre-bid questions/inquiries must be submitted electronically through the following website:

http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/Pages/PurchasePBQ.aspx

Answers to Pre-Bid Questions/Inquiries will be posted on the following document available for download at the following website:

http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/Purchase/PBQ-Answers.doc

It is each bidder's sole responsibility to check the website for updates to pre-bid questions and answers before submitting its bid package to the Department.

5. **MODIFICATIONS TO THE BIDDING DOCUMENTS:** When it is deemed necessary to modify these bidding documents, the Department will only do so by written addendum. The issuance of an addendum is dependent upon the information received and the impact on the competitive bid process. All issued addenda will be posted to the Department's Upcoming ITB's website and shall be automatically incorporated into the bidding/contract documents:

http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/Lists/PurchaseUpcomingITBs/UpITBs.aspx
In addition to posting on the above website, the Department also may email addenda information out to all known bidders for convenience purposes only. The Department shall not be held responsible for a bidder’s failure to receive the email with the addenda information. It is the sole responsibility of all interested bidders to diligently visit the above-listed website to see if any addenda have been issued prior to submitting their bid to the Department. Those interested in obtaining addenda information via email for a particular procurement must send the Department its request in writing to the following email address:

Contracts.Purchasing@dot.ohio.gov

6. **PRE-BID CONFERENCES:** The Department reserves the right to hold mandatory or optional pre-bid conferences at its discretion. Conferences may be held either in-person or via webinar/phone conference formats. Bidders will be required to sign-in at all pre-bid conferences. The sign-in sheet for all pre-bid conferences is considered a public record, will be kept in the bid file, and will be shared with any requesting party. Additionally, any business cards collected during any pre-bid conference shall be considered public records and may be distributed out to all conference attendees. Any changes to the requirements or specifications of a procurement, as a result of the pre-bid conference content, will be made by written addendum and publicly posted.

For mandatory pre-bid conferences, the Department requires that those companies intending on submitting a bid be in attendance for the entire duration of the pre-bid conference. Mandatory pre-bid conferences will officially begin five (5) minutes after the scheduled date and start time at the location specified in the Special Terms and Conditions. Those bidders not in attendance at that time will be considered ineligible to submit a bid. The conference will be considered adjourned and complete when a representative of the Office of Contract Sales, Purchasing Services section indicates so. To be considered in attendance and eligible to bid, a bidder must have at least one representative of the company in attendance. A single representative cannot be present on behalf of two or more companies (bidders). Each company (bidder) must send its own representative on behalf of their organization. It is the sole responsibility of the bidder to ensure that the representative follows the sign-in procedures to properly document the bidder’s attendance. The Department shall not be held responsible for a bidder’s failure to arrive at the meeting on time, properly sign-in, or failure to stay for the entire duration of the meeting.

7. **WHERE BIDS MUST BE DELIVERED TO:** contracts.purchasing@dot.ohio.gov - Paper bids will NOT be accepted.

8. **LATE BIDS:** A bid received after 1:00 p.m. eastern time, on the bid submission deadline (bid opening date) established, shall be deemed “Late” and will not be considered for award of this procurement. The late bid package will be marked as late, remain sealed, and will be kept in the Department’s bid file to serve as official record of a late bid having been received.

Note: The Office of Contract Sales, Purchasing Services timeclock takes precedence over any other timekeeping device (e.g. cell phones, other ODOT clocks, wrist watches, etc.) and will be utilized by the Department to determine whether or not a bid was received by the 1:00 p.m. deadline.

9. **PUBLIC BID OPENING PROCEDURE:** Due to the current Covid-19 global pandemic, Public bid openings are suspended.

10. **BIDS FIRM:** Once opened, all bids are firm and cannot be altered by the bidder. Once a Contract is awarded and executed, the Vendor shall deliver all products and/or services at the bid prices and terms contained in the Contract. All submitted bids shall remain valid for a period of sixty (60) calendar days after the date of the public bid opening. Beyond sixty (60) calendar days, bidders will have the option to either honor their submitted bid or make a written request to withdraw their bid from consideration. The Ohio Department of Transportation shall receive the benefit of any decrease in price during the sixty (60) day period.

11. **WITHDRAWAL OF BIDS:** A bidder may, by way of written notice to the Purchasing Services section, request to withdraw their bid response prior to the bid submission deadline. The request must be received by the Purchasing Services Section PRIOR to the start of the public bid opening (beginning at 1:01 p.m.) on the date of the bid submission deadline. Such written notice must set forth the specific reasons for the bid withdrawal.

For requests to withdrawal a bid after the bid opening has begun, the bidder may request to withdraw their bid response from consideration if the unit bid price(s) submitted are unreasonably lower than the other
bids received, provided the bid was submitted in good faith, and the reason for the unit bid price(s) being substantially lower was due to an unintentional and substantial arithmetical error or unintentional omission of a substantial quantity of material or labor in the compilation of the bid. Written notice of any such request to withdraw after the bid opening must be received by the Purchasing Services section within no later than forty-eight (48) hours of the scheduled bid opening.

The decision to allow a bid to be withdrawn is at the sole discretion of the Purchasing Services section. If the bid is to be awarded by category, lot, or group the withdrawal request will apply to all items within the category, lot, or group. All documents and conversations relating to any withdrawal request will become a part of the permanent bid file.

12. MODIFICATION OF SUBMITTED BIDS PRIOR TO BID OPENING: A bidder may request to modify their bid response prior to the scheduled date and time set for the public bid opening (i.e. bid submission deadline). To modify a bid response, the bidder must provide an alternate, complete bid package containing all required forms and necessary documents. The alternate bid package must have in the email subject line “REVISED”.

13. UNIT BID PRICES: The unit bid price(s) submitted shall govern the award of this procurement unless otherwise specified in the bid evaluation criteria. The unit bid price should be entered for each required bid item on the Department’s pricing page. Use of ditto marks, arrows, or other markings in lieu of the actual unit price may result in a non-responsive bid determination. Lot or group prices listed in the unit bid price area shall be considered as the unit price unless clearly identified as the lot price. Unless specifically allowed in the contract’s terms and conditions, requests to change or alter unit bid prices after the public bid opening are prohibited.

The following requirements also apply to unit bid prices:

a. DECIMAL POINT: Bidders should not insert a unit cost of more than two (2) digits to the right of the decimal point. Digit(s) beyond two (2) will be dropped and not recognized by the Department for the purposes of bid evaluation or contract award.

b. CREDIT CARD FEES: Bidders must incorporate into their unit bid price(s) submitted all costs and fees associated with the State’s use of a payment (credit) card.

c. DISCOUNTS: While bidders may offer to the Department discounts for prompt payment and other similar incentives, discounts and incentives these will not be used to alter the submitted unit bid price(s) for purposes of bid evaluation and contract award. This section only applies to bids awarded to the lowest responsive and responsible bidder either by individual bid item or group of bid items and does not include bids which are awarded to all responsive and responsible bidders (i.e. Multiple Award Contracts).

d. MULTIPLE AWARD CONTRACTS: Pursuant to Ohio Revised Code 5513.02, the Department may award Contracts to all responsive and responsible bidders for articles (i.e. bid items) meeting the general specifications provided. These are referenced by the Department as ‘Multiple Award Contracts’. Unit bid prices submitted for Multiple Award Contracts shall be considered by the Department as an amount-not-to-exceed unit bid price for the entire duration of the Contract. These awarded, amount-not-to-exceed bid prices often do not reflect potential quantity discounts, freight discounts, nor other similar discounts/incentives offered periodically by a distributor, manufacturer, or supplier. Where like or similar bid items are being offered by two or more awarded Vendors (bidders) on the awarded Contract, the Department reserves the right to obtain quotes from all awarded bidders on the Contract in order to achieve the best and most up-to-date pricing available to the Department at the time of ordering.

e. UNBALANCED BIDS: The Department will not accept unit bid prices that are deemed to be either materially or mathematically unbalanced. The final determination of an unbalanced unit bid price shall be at the Department’s sole discretion.
f. TIE BID PROCESS: If two or more responsive bids offer the same unit bid price, ODOT may break the tie as follows: during the bid evaluation process, the bidders that submitted tie bids will be contacted and given up to three (3) business days to submit a written revised unit price for the affected item or items. Bidders are not required to submit a revised unit price. In the event a tie still exists after the above-prescribed deadline has passed, ODOT will schedule a coin flip to be conducted in the presence of both bidders. The winner of the coin flip will be deemed awarded the affected bid item(s).

14. PREFERENCE FOR OHIO/BORDER STATE PRODUCTS: The bid award for this procurement may be subject to the domestic preference provisions of the Buy America Act, 41 U.S.C.A., 10a-10d, as amended, and to the preference for Ohio products under O.R.C. Sections 125.09 and 125.11 and Ohio Administrative Code Rule 123:5-1-06. A bidder must complete the enclosed Ohio Bid Preference Certification Statement form to be eligible to receive any applicable bid preferences.

15. RESPONSIVE BIDDER: A bidder is responsive if its bid responds to the bid specifications in all material respects and contains no irregularities or deviations from the specifications that would affect the amount of the bid or otherwise give the bidder an unfair competitive advantage.

16. MINOR INFORMALITIES OR IRREGULARITIES IN BIDS: A minor informality or irregularity is one that is merely a matter of form and not of substance. It also pertains to some immaterial defect in a bid or variation of a bid from the exact requirements of the invitation that can be corrected or waived without being prejudicial to other bidders. The defect or variation is immaterial when the effect on price, quantity, quality, or delivery is negligible when contrasted with the total cost or scope of the supplies or services being acquired. The Department either shall give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive the deficiency, whichever is to the advantage of the Department.

17. BIDDER RESPONSIBILITY: The Department will only award this procurement to what it deems to be a responsible bidder. The Department's determination of a bidder's responsibility includes, but is not limited to, the following factors:

   a) experience of the bidder;
   b) bidder's financial condition;
   c) bidder's conduct and performance on previous contracts;
   d) the bidder's facilities;
   e) the bidder's management skills;
   f) the bidder's employees;
   g) past experience and/or quality of bidder's proposed subcontractors;
   h) the bidder's ability to execute the contract;
   i) review of Federal and Department debarment lists;
   j) bidder has history of successful performance on contracts of similar size and scope; and
   k) current or impending legal actions against a bidder.

18. APPARENT CLERICAL MISTAKES: Clerical mistakes apparent on the face of the bid may be corrected, at the Department's discretion, before contract award. The Department first shall obtain from the bidder a verification of the information intended and will attach written verification of the mistake by the bidder in the contract file and award documents. Example of apparent clerical mistakes are:

   (1) Obvious misplacement of a decimal point or comma;
   (2) Obvious incorrect discount factor; or
   (3) Transcription error in Part Number.

19. ADDITIONAL INFORMATION: The Department reserves the right to request additional information to evaluate a bidder's responsiveness to the procurement's requirements and/or to evaluate a bidder's overall responsibility. These requests may require the bidder's submission of confidential materials (e.g. financial statements). If a bidder does not provide all of the requested information within the prescribed timeframe, the Department may find the bid non-responsive and ineligible for award.

20. PRODUCT SAMPLES: The Department may require bidders, by procurement or by request during bid evaluation, to provide sample supplies or equipment or examples of work, at the Bidder's expense. Samples must clearly identify the Bidder, the bid number, and the item the sample represents in the bid.
The Department will return samples that are not destroyed by testing, at the Bidder’s expense, upon the Bidder’s timely request. The Department may keep the samples of the Bidder awarded the contract until the completion of the contract. Unsolicited samples submitted in response to this procurement will not be evaluated and the Department may dispose of them in any way it chooses.

21. SPECIFICATIONS: The Department is authorized by Sections 5513 and/or 125.02(B) of the Ohio Revised Code to prepare specifications and establish contracts to obtain the supplies, equipment, and/or services referenced within this procurement. The purpose of the provided specifications is to describe the supplies, equipment, and/or services to be purchased and will serve as a fair and equitable basis for comparison of submitted bids. The Department may use any form of specification it determines to be in the best interest of the Department and that best describes the supplies or services to be purchased. Specifications may be in the form of a design specification or a combination thereof. If the department determines that a design, performance or a combination specification is not in the best interest of the Department, it may use brand name or equal specifications.

Unless otherwise specified in this procurement, all products, equipment, supplies, etc. offered by bidders must be in a new condition. A ‘new’ product is one that will be first used by the Department after it has been manufactured or produced. Used, reconditioned, or previously titled products, supplies, or equipment will not be considered for award of this procurement.

The Department uses qualified products list (QPL) and/or approved products lists (APL) developed by either itself or other qualified institutions to specify acceptable products and supplies that have been through proper application and testing procedures to verify conformance with technical and/or performance specifications. Where the Department requires products and supplies to be included on a specific QPL/APL listing, the Department will not accept bids for products/supplies that are not included on a specified QPL/APL at the time of public bid opening.

A bidder may not be compensated for damages arising from inaccurate or incomplete information in the procurement specifications or from inaccurate assumptions based upon the specifications.

22. USE OF BRAND NAMES: Unless otherwise provided in this solicitation, the name of a certain brand, make, or manufacturer does not restrict bidders to the specific brand, make, or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the Department, in its sole discretion, determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, or suitability for the purpose intended, may be accepted. The bidder is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Department to determine if the product offered meets the requirements of the solicitation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the bidder clearly indicates in its bid that the product being offered is an equivalent product, such bid will be considered to offer the exact brand, make, or manufacturer name referenced in the bid solicitation.

23. DEVIATIONS: Statements or modifications made by a bidder in their submitted bid package that deviate from this procurement’s terms, conditions, specifications and requirements may render a bid nonresponsive and ineligible for award.

Acceptance of any deviations or modifications will be confirmed by the Department in writing, if accepted. If the Department does not specifically approve submitted deviations or modifications in writing, an award of this procurement shall not constitute acceptance of the bidder’s submitted modifications.

24. ESTIMATED QUANTITIES: Any purchase estimates indicated for bid item(s) are to be considered as estimates only. The Department makes no representation or guarantee as to the actual amount of item(s) to be purchased by the Department or Political Subdivisions.

25. OVERLAPPING CONTRACT ITEMS: The products and/or services included in this solicitation may be available from other State of Ohio contracts and/or other contracts made available for the Department’s use. The existence of these contracts containing like or similar products and/or services could be either known or unknown to the Department at the time this procurement has been published. Unless otherwise stated in this contract, the Department may acquire these products and/or services from any available source. The Department will make purchases from sources that are deemed to be in the best interest of the Agency.
26. **REJECTION/PARTIAL AWARD OF BIDS**: The Department reserves the right to reject any or all bid responses, award partial contracts, or choose to rebid when:

   (1) Product, supplies and/or services are not in compliance with the requirements, specifications, and terms and conditions set forth in this procurement; or

   (2) Pricing offered is determined to be excessive in comparison with existing market conditions, or exceeds the available funds of the Department; or

   (3) Only one bid is received, and the Department cannot determine the reasonableness of the bid prices submitted; or

   (4) It is determined that the award of any or all items would not be in the best interest of the Department; or

   (5) The Department, in its opinion, did not achieve the desired amount of competition amongst qualified bidders for the products, supplies, and/or services being offered in the bid solicitation; or

   (6) Inadequate or ambiguous specifications were cited in the bidding documents; or

   (7) The Department determines that specifications and/or requirements were missing from the bidding documents; or

   (8) A bidder imposes additional terms and conditions against the Department.

27. **NOTICE TO BIDDERS OF REJECTED BIDS**: When the Department deems it necessary to reject a bid, the Department will notify each affected bidder and the reasons for such actions.

28. **BID PROTESTS**: Any apparent low bidder either deemed not responsible or whose bid has been deemed non-responsive shall be notified by the Department of that determination and the reasons for it. The notification will be provided by the Department in writing and sent by U.S. mail and at the email address provided on the front cover of the bidder's bid. The bidder will have five (5) calendar days after receipt (by mail or email confirmation) of this notification to file a written, valid protest of the Department's determination. A valid written protest must contain substantive information and evidence so as to refute the Department's asserted claims against either the bid’s responsiveness or bidder’s responsibility, whichever apply. The Department will only review and respond to valid written protests containing substantive information and evidence. After review of the valid written protest, the Department will either affirm or reverse its original determination.

   If a valid written protest is not received by the Department within five (5) calendar days of receipt, the Director of ODOT will move forward awarding the Contract and the affected bidder will have effectively waived its right to protest the Department's decision. For the purposes of this paragraph, "receipt" shall be defined as verification (via either certified mail return receipt or electronic read or delivery receipt) that the apparent low bidder has received the Department's written determination against the affected bidder. Upon the bidder's receipt, the five (5) calendar day response deadline shall commence.

29. **DELAYS IN CONTRACT AWARD**: Delays in the award of this procurement beyond the anticipated Contract start date may result in a change in the contract period as indicated in the Special terms and conditions of this bid solicitation. In these instances, ODOT shall reserve the right to award a contract covering a period equal to or less than the initial contract term than originally specified in this bid solicitation.

30. **CONTRACT AWARD AND FORMATION**: Successful bidder(s) will receive via U.S. regular mail and/or email a Notice of Contract Award letter as well as a photocopy version of the Signature Page executed by both Parties. These documents shall serve to form the Contract between the Parties. The Signature Page must be executed by both the bidder and the Director of ODOT for the Contract to be deemed valid and enforceable. The Department will maintain in the Contract file the Signature Page document containing each parties' original signature(s).
Upon award of a procurement, the bid invitation number (e.g. Invitation No. 999-16) will subsequently become the number assigned to the resulting Contract (e.g. ODOT Contract number 999-16) and will be referenced by the Department in all matters and documents related to said Contract.

Upon award of a procurement, successful bidders will thereafter be referenced as “Vendor” or “Contractor” by the Department in all matters and documents related to the resulting Contract.

31. **PUBLIC POSTING OF AWARDED CONTRACTS:** All Contracts awarded by the Office of Contract Sales, Purchasing Services section are posted to the Department’s website and open for public review. Successful bidders and awarded Contract pricing can be found by viewing the Contract’s award tab (Excel file). Award tabs can be accessed via the following website:


32. **PUBLIC RECORD:** All opened bids and their contents are subject to the Public Records Law, Section 149.43 of the Ohio Revised Code. Copies of bid responses must be requested and will be provided within a reasonable period of time and at a fee established by the Director of ODOT. To expedite and properly respond to such public records requests, a written request must be submitted to the Department. To prevent delays in evaluating bids and awarding contracts, such requests for recently opened bids, will be honored after a Contract has been executed.

Bidders may request that specific information, such as trade secrets or proprietary data, be designated as confidential and not considered as public record. Material so designated shall accompany the bid and be in a sealed container duly marked, and shall be readily separable from the bid in order to facilitate public inspection of non-confidential portion. Prices, makes, models, catalog numbers of items offered, deliveries and terms of payment cannot be considered as confidential. The decision as to whether or not such trade secrets or proprietary data shall be disclosed at the bid opening rests solely with the Department.

Requests to view previously submitted bids must be submitted in writing to either of the following addresses:

Contracts.Purchasing@dot.ohio.gov
Ohio Department of Transportation
Office of Contract Sales, Purchasing Services
1980 West Broad St. Mail Stop 4110
Columbus, OH 43223

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GENERAL DEFINITIONS
(Last revised 11/30/2020)

When used in this procurement or any ensuing contract, the following definitions shall apply. If a conflict exists between these definitions and any definition listed in the bid specifications, the bid specifications shall prevail.

1. AGENCY: Ohio Department of Transportation.

2. AUTHORIZED DISTRIBUTOR: The bidder/vendor who maintains written legal agreements with manufacturers/producers to act as their agent and provide supplies, materials, equipment or services listed in the bid/contract. The authorized distributor must maintain active and sufficient facilities necessary to perform the awarded contract, own title to the goods inventoried within these facilities and maintain a true stock of these goods on a continuing basis and in sufficient quantity to provide uninterrupted service to ordering agencies.

3. BIDDER: The company and/or authorized representative of the company who has signed and is submitting a bid response and who will be responsible to ensure proper performance of the contract awarded pursuant to the bid. The term bidder, proposer, contractor, or vendor may be used interchangeably in this document.

4. DEPARTMENT: Ohio Department of Transportation

5. EQUIPMENT: Items, implements and machinery with a predetermined and considerable usage life.

6. F.O.B. PLACE OF DESTINATION: meaning the Vendor pays, and includes the cost of such in their bid, and bears the risk for the transportation/delivery of goods delivered to the specified locations provided by the Purchaser.

7. PROCUREMENT/CONTRACT: All documents, whether attached or incorporated by reference, utilized for soliciting bids. Upon completion of the evaluation and award of the bidder's response, the procurement then becomes the contract between ODOT and the successful bidder, both governed by the laws of the State of Ohio.

8. INVOICE: An itemized listing showing delivery of the commodity or performance of the service described in the order, and the date of the purchase or rendering of the service, or an itemization of the things done, material supplied, or labor furnished, and the sum due pursuant to the contract or obligation.

9. LOWEST RESPONSIVE/RESPONSIBLE BIDDER: A bidder who offers the lowest cost for the goods or services listed in the bid; and whose proposal responds to bid specifications in all material respects and contains no irregularities or deviations from the specifications which would affect the amount of the bid or otherwise give him a competitive advantage; and whose experience, financial condition, conduct and performance on previous contracts, facilities, management skills evidences their ability to execute the contract properly.

10. MINORITY BUSINESS ENTERPRISE (MBE): means an individual, partnership, corporation or joint venture of any kind that is owned and controlled by U. S. Citizens and residents of Ohio, who are and have held themselves out as members of the following socially and economically disadvantaged groups. Only businesses certified by the State of Ohio Equal Opportunity Division in accordance with Section 123.151 of the Ohio Revised Code shall be recognized as being MBE certified within the purpose of this invitation.

11. MATERIALS: Items or substance of an expendable or non-expendable nature from which something can be made, improved or repaired.
13. PURCHASE: To buy, purchase, installment purchase, rent, lease, lease purchase or otherwise acquire equipment, materials, supplies or services. "Purchase" also includes all functions that pertain to obtaining of equipment, materials, supplies or services, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

14. SERVICES: The furnishing of labor, time or effort by a person, not involving the delivery of a specific end product other than a report which, if provided, is merely incidental to the required performance. "Services" does not include services furnished pursuant to employment agreements or collective bargaining agreements.

15. SPECIFICATION: Any description of the physical or functional characteristics or of the nature of supplies, equipment, service, or insurance. It may include a description of any requirements for inspecting, testing, or preparing supplies, equipment, services, or insurance.

16. SUPPLIES: Provisions and items normally considered expendable or consumable.

17. UNBALANCED: Any unit price contained in the bid schedule which is obviously unbalanced either above or below reasonable cost analysis and or unreasonably disproportionate to current market prices as determined by the Director of ODOT, or if such unbalanced prices are contrary to the interest of the department.

18. VENDOR: The bidder who, upon awarding of a contract, then becomes a Vendor who is considered to be a primary source for providing the goods and/or services included in the awarded contract and the party to whom payment will be made upon delivery of the goods and/or completion of the contract.

19. SUBVENDOR/SUBCONTRACTOR: An individual, firm or corporation to whom the Vendor sublets part of the contract to be performed.

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1. **HEADINGS**: The headings used in this Contract are for convenience only and shall not be used to affect the interpretation of any of the Contract terms and conditions.

2. **ENTIRE CONTRACT**: This Contract consists of the complete procurement, including the Instructions, Terms and Conditions for Bidding, these Standard Contract Terms and Conditions, the Special Contract Terms and Conditions, ODOT Cooperative Purchasing Program Requirements, mutually executed Signature Page, Specifications and Requirements, awarded unit bid pricing, and any written addenda to the procurement; the completed competitive sealed bid, including proper modifications, clarifications and samples; and applicable, valid State of Ohio purchase orders or other ordering documents ("Contract").

3. **APPROPRIATION OF FUNDS**: Pursuant to the Constitution of the State of Ohio, Article II Section 22, ODOT’s funds are contingent upon the availability of lawful appropriations by the Ohio General Assembly. If the Ohio General Assembly fails at any time to continue funding for the payments or obligations due hereunder, the Work under this Contract that is affected by the lack of funding will terminate and ODOT will have no further obligation to make any payments and will be released from its obligations on the date funding expires.

The current Ohio General Assembly cannot commit a future Ohio General Assembly to a future expenditure. If the term of this Contract extends beyond a biennium, the Contract will expire at the end of a current biennium and the State may renew this Contract in the next biennium by issuing written notice to the Vendor no later than July 1 of the new biennium. The operating biennium expires June 30th of each odd-numbered calendar year.

4. **OBM CERTIFICATION**: None of the rights, duties, or obligations in this Contract will be binding on the Department, and the Vendor will not begin its performance, until all of the following conditions have been met:

   1. All statutory provisions under the O.R.C., including Section 126.07, have been met; and
   2. All necessary funds are made available by the Ohio Office of Budget and Management; or
   3. If ODOT is relying on Federal or third-party funds for this Contract the ODOT gives the Vendor written notice that such funds have been made available.

5. **CONTRACT MODIFICATIONS**: Amendments or modifications to this Contract must be executed in writing between the parties and signed by the Director of ODOT. Amendments or modifications to this Contract made between the Vendor and other Department personnel shall be void and unenforceable.

6. **CONTRACT CONSTRUCTION**: Any general rule of construction to the contrary notwithstanding this Contract shall be liberally construed in favor of the effect the purpose of this Contract and the policy and purposes of the Department. If any provisions in this Contract are found to be ambiguous, an interpretation consistent with the purpose of this Contract that would render the provision valid shall be favored over any interpretation that would render it invalid.

7. **GOVERNING LAW / SEVERABILITY**: This Contract shall be governed by the laws of the State of Ohio, and the venue for any disputes will be exclusively with the appropriate court in Franklin County, Ohio. If any provision of the Contract or the application of any provision is held by that court to be contrary to law, the remaining provisions of the Contract will remain in full force and effect.

8. **ASSIGNMENT / DELEGATION**: The Vendor will not assign any of its rights nor delegate any of its duties under this Contract without the written consent of the Director of ODOT. Any assignment or delegation not consented to may be deemed void by the Department.

9. **PLACEMENT OF ORDERS/METHODS OF PAYMENT**: The Department shall use either State of Ohio Purchase Order or State of Ohio Payment Card (i.e. credit card) to authorize performance under this Contract and to issue payments for supplies, products, and/or services acquired. Vendors are required to
accept both forms of payment. For Department purchases over $2,500.00, an official State of Ohio purchase order must be generated and obtain approvals from the Office of Budget and Management, the Department of Administrative Services, and the Director of Transportation prior to its effectiveness. An approved State of Ohio purchase order will be sent to the Vendor and the Vendor will provide the goods and/or services listed on the ordering documents and in accordance with the Contract’s terms and conditions. Any order placed not using an approved ODOT purchase order or against a State payment card, shall not be considered a valid order and may result in denial of payment and/or return of goods at the Vendor’s expense.

10. **ACCEPTANCE OF ORDERS:** The Vendor must accept orders placed by the Department pursuant to this Contract up through the last day of the Contract’s effectiveness, inclusive of any contract extensions exercised or agreed-upon between the Parties.

11. **BLANKET PURCHASE ORDERS:** The Department utilizes blanket purchase orders to pre-authorize funding for use on Contracts containing bid items that, due to the urgent nature of maintaining the Department’s highways and facilities, are critical to the Department executing its mission and objectives. The generation of blanket purchase orders are not used by the Department to place a specific order, rather as a means to make funding more readily available for use when Contract items are needed. The Vendor shall keep all blanket purchase orders on file and make them readily available for use by Department personnel to place orders against. When placing orders against a blanket purchase order, the Department will telephone or email orders referencing the blanket purchase order and its associated ODOT purchase order number. All of the Contract’s terms and conditions shall apply to the Department’s orders referencing a blanket purchase order.

For all blanket purchase orders, quantities and amounts to be purchased from these purchase orders is unknown by the Department and Vendors must not construe these purchase orders as a commitment to purchase a specific amount of goods and/or services. Accordingly, the Department reserves the right to increase or decrease the available funding on these blanket purchase orders at its discretion.

12. **DELIVERY INSPECTION AND ACCEPTANCE:** Upon pick-up or delivery of any supplies, products, and/or services, ODOT retains the right to inspect the product/service prior to final acceptance and/or payment for the product/service. ODOT shall have sufficient and reasonable time to fully inspect supplies and/or services for compliance. The purpose of the inspection process is to ensure that the product/service is in compliance with the specifications set forth in the awarded contract. In the event that the product/service does not meet the specifications, ODOT shall notify the Vendor for removal/replacement of the product and/or service at the Vendor’s expense. ODOT shall retain all rights and remedies as described herein. Wherein products ordered by ODOT are delivered to a facility, which is not owned by ODOT and where ODOT has contracted with this facility to take delivery of products ordered by ODOT, acceptance will occur when the products have been inspected and accepted by ODOT within a reasonable amount of time after delivery to the facility. ODOT shall not be responsible for any storage costs incurred prior to the inspection and acceptance.

13. **RETURN GOODS POLICY:** The Department will apply the following Return Goods Policy on all purchases made under the Contract:

(A) Return goods, when due to Vendor debar (i.e. over-shipment, defective merchandise, unapproved substitution, etc.) shall be returned to the Vendor, at the Vendor’s expense. The Vendor shall make arrangements to remove the return goods from the Department’s premises within five (5) calendar days after notification. The Vendor shall not apply any restocking or other charges to the Department. At the option of the Department, replacement items may be accepted and will be shipped within five (5) calendar days of notification. Failure of the Vendor to arrange for return of the items within the specified time will result in the items being deemed as abandoned property and the Department will dispose of accordingly.
(B) For orders of custom manufactured items, the Vendor will provide a production sample of the item to the Department for acceptance. The production sample will be identical to the item to be provided. The Department will provide written acceptance of the item prior to the Vendor continuing with production. Once delivery and acceptance has been completed and the Department determines for any reason that any remaining quantities will not be used, the agency may request the return of the custom manufactured items. Acceptance of the return of custom manufactured items will be at the option of the Vendor. If the Vendor agrees to the return of these items, the Department will be responsible for all costs associated with packaging, shipment and transportation, to include the original shipment to the Department and subsequent return of goods to the location designated by the Vendor. The Vendor may assess restocking fees that are equivalent to restocking fees that are normally assessed to other customers or as published by the Vendor. Failure of the Vendor to provide a production sample and obtain written approval from the Department will result in the Vendor bearing all responsibility and costs associated with the return of these goods.

(C) Return goods of regular catalog stock merchandise, when due to Department error (i.e. over purchase, discontinued use, inventory reduction, etc.) will be accepted by the Vendor if notice is given by the Department within six (6) months of delivery and acceptance. All items to be returned must be unused and in their original containers and in suitable condition for resale. The Department will be responsible for all transportation costs associated with both the original shipment of items to the agency and the subsequent return of the items to the location designated by the Vendor. The Vendor may assess a restocking fee (not to exceed 10%) associated with the return of the items to the location designated by the Vendor. Return of regular stock catalog merchandise, when delivery and acceptance exceed six (6) months will be at the option of the Vendor.

14. **PRODUCT RECALLS**: In the event product delivered has been recalled, seized, or embargoed and/or has been determined to be misbranded, adulterated, or found to be unfit for human consumption by the packer, processor, manufacturer or by any Department or Federal regulatory agency, the Vendor shall be responsible to notify the ODOT Office of Contract Sales, Purchasing Services section and all other ordering agencies/entities within two business days after notice has been given. Vendor shall, at the option of the Department, either reimburse the purchase price or provide an equivalent replacement product at no additional cost. Vendor shall be responsible for removal and/or replacement of the affected product within a reasonable time as determined by the ordering agency. At the option of the ordering agency, Vendor may be required to reimburse storage and/or handling fees to be calculated from time of delivery and acceptance to actual removal. Vendor will bear all costs associated with the removal and proper disposal of the affected product. Failure to reimburse the purchase price or provide equivalent replacement product will be considered a default.

15. **PRODUCT SUBSTITUTION**: In the event a specified product listed in the Contract becomes unavailable or cannot be supplied by the Vendor for any reason (except as provided for in the Force Majeure clause), a product deemed in writing by the Department to be equal to or better than the specified product must be substituted by the Vendor at no additional cost or expense to the Department. Unless otherwise specified, any substitution of product prior to the Department’s written approval may be cause for termination of Contract.

The Department reserves the right to deny any substitution request that it is deemed to not be in the best interest of the Department. In these instances, the Department may seek substitute products from another supplier and assess the difference in cost, if any, as damages against the Vendor for their material breach.

16. **INVOICE REQUIREMENTS**: The Vendor must submit an original, proper invoice to the office designated on the purchase order as the “bill to” address. To be a proper invoice, the invoice must include the following information: 1. The ODOT purchase order number authorizing the delivery of products or services. 2. A description of what the Vendor delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the products and services. 3. The Contract number pursuant to the deliverable.
17. **DEFECTIVE INVOICES**: In the event the Department is in receipt of defective or improper invoices, the Department shall postpone payment pursuant to Section 126.30 of the Ohio Revised Code. Invoices shall be returned to the Vendor noting areas for correction. If such notification of defect is sent, the required payment date shall be thirty (30) calendar days after receipt of the corrected invoice.

18. **PAYMENT DUE DATE**: Payments under this Contract will be due on the 30th calendar day after the date of actual receipt of a proper invoice in the office designated to receive the invoice, or the date the service is delivered and accepted in accordance with the terms of this Contract. The date of the warrant issued in payment will be considered the date payment is made. Interest on late payments will be paid in accordance with O.R.C. Section 126.30.

19. **INSURANCE POLICIES**: By way of provision in this Contract to maintain specific minimum levels of insurance coverage(s) (e.g. Commercial General liability, Auto liability, Public liability, Property Damage, etc.), the Vendor shall provide to Department upon request evidence of such insurance required to be carried by these provisions, including any endorsement affecting the additional insured status, is in full force and effect and that premiums therefore have been paid. Such evidence shall be furnished by the Vendor within two (2) business days and on the insurance industry's standard ACORD Form (Certificate of Insurance) or a certified copy of the original policy. The Certificate of Insurance or certified copy of the policy must contain an endorsement naming the State of Ohio, Department of Transportation, its officers, agents, employees, and servants as additionally insured, but only with respect to Work performed for the Department under this Contract, at no cost to Department. Vendor shall notify the Department within ten (10) calendar days of receipt of a notice of cancellation, expiration, or any reduction in coverage, or if the insurer commences proceedings or has proceedings commenced against it, indicating the insurer is insolvent. Vendor shall provide to the Department evidence of a replacement policy at least five (5) calendar days prior to the effective date of such cancellation, expiration, or reduction in coverage.

All required insurance policies shall be maintained at Vendor’s sole expense and in full force for the complete term of the Contract, including any warranty periods. Reference 107.12 the Construction & Materials Specification handbook.

20. **TAXATION**: ODOT is exempt from federal excise taxes and all Department and local taxes, unless otherwise provided herein. ODOT does not agree to pay any taxes on commodities, goods, or services acquired from any Vendor.

21. **CONTRACT TERMINATION**: If a Vendor fails to perform any one of its obligations under this Contract, it will be in breach of contract and the Department may terminate this Contract in accordance with this section. Notices of contract termination shall be made in writing. The termination will be effective on the date delineated by the Department.

   a. **Termination for Breach**. If Vendor’s breach is unable to be cured in a reasonable time, the Department may terminate the Contract by written notice to the Vendor.

   b. **Termination for Un-remedied Breach**. If Vendor’s breach may be cured within a reasonable time, the Department will provide written notice to Vendor specifying the breach and the time within which Vendor must correct the breach. If Vendor fails to cure the specified breach within the time required, the Department may terminate the Contract. If the Department does not give timely notice of breach to Vendor, the Department has not waived any of the Department’s rights or remedies concerning the breach.

   c. **Termination for Persistent Breach**. The Department may terminate this Contract by written notice to Vendor for defaults that are cured, but persistent. “Persistent” means three or more breaches. After the Department has notified Vendor of its third breach, the Department may terminate this Contract without providing Vendor with an opportunity to cure. The three or more breaches are not required to be related to each other in any way.

   d. **Termination for Endangered Performance**. The Department may terminate this Contract by written notice to the Vendor if the Department determines that the performance of the Contract is endangered through no fault of the Department.
e. **Termination for Financial Instability.** The Department may terminate this Contract by written notice to the Vendor if a petition in bankruptcy or a Federal or State tax lien has been filed by or against the Vendor.

f. **Termination for Delinquency, Violation of Law.** The Department may terminate this Contract by written notice, if it determines that Vendor is delinquent in its payment of federal, Department or local taxes, workers’ compensation, insurance premiums, unemployment compensation contributions, child support, court costs or any other obligation owed to a Department agency or political subdivision. The Department also may cancel this Contract, if it determines that Vendor has violated any law during the performance of this Contract. However, the Department may not terminate this Contract if the Vendor has entered into a repayment agreement with which the Vendor is current.

g. **Termination for Subcontractor Breach.** The Department may terminate this Contract for the breach of the Vendor or any of its subcontractors. The Vendor will be solely responsible for satisfying any claims of its subcontractors for any suspension or termination and will indemnify the Department for any liability to them. Subcontractors will hold the Department harmless for any damage caused to them from a suspension or termination. The subcontractors will look solely to the Vendor for any compensation to which they may be entitled.

h. **Termination for Vendor’s Failure to Pay Material Suppliers.** Pursuant to Section 4113.61 of the Ohio Revised Code, Vendors shall promptly pay material suppliers, within ten (10) calendar days of receipt of payment from the State of Ohio, for materials ordered and delivered as a result of this contract. A Vendor unable to furnish bid items because of non-payment issues related to a material supplier shall constitute grounds for the Director of ODOT to terminate this contract immediately. A Vendor may, at the discretion of the Department, be given an amount of time, amount shall be specified by the Department in writing, to furnish past due payment to the material supplier before termination shall occur.

j. **Failure to Maintain MBE Certification.** Pursuant to O.R.C. Section 125.081, the State may set aside a bid for supplies or services for participation only by minority business enterprises (MBE’s) certified by the State of Ohio, Equal Opportunity Coordinator. After award of the Contract, it is the responsibility of the MBE Vendor to maintain certification as a MBE. If the Vendor fails to renew its certification and/or is decertified by the State of Ohio, Equal Opportunity Coordinator, the State may immediately cancel the Contract.

k. **Failure to Maintain Licensure.** The Vendor’s failure to maintain the proper license(s) to perform the services or provide the goods prescribed by this Contract shall be grounds to terminate this Contract without prior notice.

l. **Qualified Products Listing and Approved Products Listing.** Any products or supplies removed from a specific qualified products listing/approved product listing, by either the Department, government, or governing body throughout the duration of the Contract shall be removed from the Contract effective on the date of removal from the respective listing.

22. **NOTICE OF BREACH:** Each party of this Contract has an obligation to provide written notice when it is determined by one party that the other party is in default of this Contract. A notice of ODOT’s default of this Contract must be sent to the Procurement Manager of the ODOT Office of Contract Sales.

23. **CONTRACT SUSPENSION:** A Vendor who fails to perform any one of its obligations under this Contract will be in breach. In these instances, ODOT may choose to suspend the Vendor from the contract rather than terminate the Contract.

In the case of a suspension for ODOT’s convenience, the amount of compensation due the Vendor for work performed before the suspension will be determined in the same manner as provided in this section for termination for ODOT’s convenience or the Vendor may be entitled to compensation for work performed before the suspension, less any damage to ODOT resulting from the Vendor’s breach of this Contract or other fault.

The notice of suspension, whether with or without cause, will be effective immediately on the Vendor’s receipt of the notice. The Vendor will immediately prepare a report and deliver it to ODOT which will
include a detailed description of work completed, percentage of project completion, estimated time for delivery of all orders received to date, and costs incurred by the Vendor.

24. **CANCELLATION FOR CONVENIENCE**: The Department reserves the right to cancel and terminate this Contract, in whole or in part, without penalty, upon thirty (30) days written notice to an awarded vendor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period and upon a minimum of sixty (60) days written notice to the other party. Cancellations exercised in accordance with this section shall not relieve the Vendor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

25. **CONTRACT DAMAGES**: The Department may assess, at a minimum but not limited to, the following damages against a Vendor:

   A. **ACTUAL DAMAGES**: Vendor is liable to the State of Ohio for all actual and direct damages caused by Vendor's breach. The Department may substitute supplies or services, from a third party, for those that were to be provided by Vendor. In accordance with Ohio Revised Code §5513.05(c), the Department may recover the costs associated with acquiring substitute supplies or services, less any expenses or costs saved by Vendor’s breach, from Vendor.

   B. **LIQUIDATED DAMAGES**: If actual and direct damages are uncertain or difficult to determine, the Department may recover liquidated damages in the amount of 1% of the value of the order, deliverable or milestone that is the subject of the breach for every day that the breach is not cured by the Vendor. If Delay of the cure is caused by ODOT, the delivery date shall be extended accordingly to offset such delays. Approval to extend any scheduled delivery date(s) shall be at the sole discretion of ODOT.

   C. **DEDUCTION OF DAMAGES FROM CONTRACT PRICE**: The Department may deduct all or any part of the damages resulting from Vendor's breach from any part of the price still due on the contact, upon prior written notice issued to the Vendor by the Department.

   D. **INCIDENTAL/CONSEQUENTIAL DAMAGES**: Pursuant to Section 5513.05 of the Ohio Revised Code, the Department may recover from a Vendor who fails to promptly provide conforming articles, any incidental or consequential damages as defined in Section 1302.89 of the Ohio Revised Code, incurred by the Department in promptly obtaining the conforming articles.

26. **CONTRACT TERM EXTENSIONS**: ODOT reserves the right to unilaterally extend this Contract up to one (1) calendar month beyond the original contract expiration date at the original unit bid prices awarded. Contract extensions beyond one (1) calendar month shall be executed by means of written, mutual agreement with the Contract Vendor, but in no instance with the Contract be extended beyond the biennium unless it is procured as a multi-year contract stating an option for biennial extension.

27. **FIRM, FIXED PRICE CONTRACT**: Unless otherwise specified in the bidding documents, this Contract is a Firm, Fixed-Price Contract. The Vendor will be required to provide to the Department with the materials, supplies, equipment and/or services at the awarded bid price(s) for the entire duration of the contract, and any extensions thereto.

28. **FORCE MAJEURE**: If the Department or Vendor is unable to perform any part of its obligations under this Contract by reason of force majeure, the party will be excused from its obligations, to the extent that its performance is prevented by force majeure, for the duration of the event. The party must remedy with all reasonable dispatch the cause preventing it from carrying out its obligations under this Contract. The term “force majeure” means without limitation: acts of God; such as epidemics; lightning; earthquakes; fires; storms; hurricanes; tornadoes; floods; washouts; droughts; any other severe weather; explosions; restraint of government and people; war; labor strikes; and other like events.

29. **EQUAL EMPLOYMENT OPPORTUNITY**: The Vendor will comply with all state and federal laws regarding equal employment opportunity, including O.R.C. Section 125.111 and all related Executive Orders.
30. **ANTITRUST ASSIGNMENT TO THE DEPARTMENT:** Vendor assigns to the State of Ohio, through the Department of Transportation, all of its rights to any claims and causes of action the Vendor now has or may acquire under Department or federal antitrust laws if the claims or causes of action relate to the supplies or services provided under this Contract. Additionally, the State of Ohio will not pay excess charges resulting from antitrust violations by Vendor’s suppliers and subcontractors.

31. **CONFIDENTIALITY:** The Vendor may learn of information, documents, data, records, or other material that is confidential in the performance of this Contract. The Vendor may not disclose any information obtained by it as a result of this Contract, without the written permission of the Department. The Vendor must assume that all Department information, documents, data, records or other material is confidential.

   The Vendor’s obligation to maintain the confidentiality of the information will not apply where it: (1) was already in the Vendor’s possession before disclosure by the Department, and it was received by the Vendor without the obligation of confidence; (2) is independently developed by the Vendor; (3) is or becomes publicly available without breach of this Contract; (4) is rightfully received by the Vendor from a third party without an obligation of confidence; (5) is disclosed by the Vendor with the written consent of the Department; or (6) is released in accordance with a valid order of a court or governmental agency, provided that the Vendor (a) notifies the Department of such order immediately upon receipt of the order and (b) makes a reasonable effort to obtain a protective order from the issuing court or agency limiting disclosure and use of the confidential information solely for the purposes intended to be serviced by the original order of production. The Vendor will return all originals of any information and destroy any copies it has made on termination or expiration of this Contract.

   The Vendor will be liable for the disclosure of any confidential information. The parties agree that the disclosure of confidential information of the Department’s may cause the Department irreparable damage for which remedies other than injunctive relief may be inadequate, and the Vendor agrees that in the event of a breach of the obligations hereunder, the Department shall be entitled to temporary and permanent injunctive relief to enforce this provision without the necessity of providing actual damages. This provision shall not, however, diminish or alter any right to claim and recover.

32. **DRUG-FREE WORKPLACE:** The Vendor agrees to comply with all applicable Department and federal laws regarding drug-free workplace and shall make a good faith effort to ensure that all its employees, while working on Department property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

33. **WORKERS’ COMPENSATION:** Workers’ compensation insurance, as required by Ohio law or the laws of any other Department where work under this Contract will be done. The Vendor will also maintain employer’s liability insurance with at least a $1,000,000.00 limit.

34. **OHIO ETHICS LAW:** Vendor agrees that it is currently in compliance and will continue to adhere to the requirements of Ohio Ethics law as provided by Section 102.03 and 102.04 of the Ohio Revised Code.

35. **PUBLICITY:** The Vendor will not advertise that it is doing business with the Department or use this Contract as a marketing or sales tool without prior, written consent of the Department. This provision includes marketing or sales tools related to the ODOT Cooperative Purchasing Program.

36. **STRict PERFORMANCE:** The failure of either party, at any time to demand strict performance by the other party of any of the terms of this Contract, will not be construed as a waiver of any such term and either party may at any time demand strict and complete performance by the other party.

37. **SUBCONTRACTING.** The Department recognizes that it may be necessary for the Vendor to use subcontractors to perform portions of the work under the Contract. In those circumstances, the Vendor shall submit a list identifying its subcontractors or joint venture partners performing portions of the work under the Contract. If any changes occur during the term of the Contract, the Vendor shall supplement its list of subcontractors or joint venture business partners. In addition, all subcontractors or joint venture business partners agree to be bound by all of the Terms and Conditions and specifications of the Contract. The Department reserves the right to reject any subcontractor submitted by the Vendor. All subcontracts will be at the sole expense of the Vendor and the Vendor will be solely responsible for payment of its subcontractors. The Vendor assumes responsibility for all sub-contracting and third party manufacturer work performed under the Contract. In addition, Vendor will cause all subcontractors to be bound by all of
the Terms and Conditions and specifications of the Contract. The Vendor will be the sole point of contact with regard to all contractual matters.

38. **SURVIVORSHIP**: All sections herein relating to payment, confidentiality, license and ownership, indemnification, publicity, construction warranties, limitations of warranties and limitations on damages shall survive the termination of this Contract.

39. **GENERAL REPRESENTATIONS AND WARRANTIES**: The Vendor warrants that the recommendations, guidance, and performance of the Vendor under this Contract will:

   1. Be in accordance with the sound professional standards and the requirements of this Contract and without any material defect.
   2. No services, products or supplies will infringe on the intellectual property rights of any third party.
   3. All warranties are in accordance with Vendor’s standard business practices attached.
   4. That the products or supplies hereunder are merchantable and fit for the particular purpose described in this contract. Additionally, with respect to the Vendor’s activities under this Contract, the Vendor warrants that:
   5. The Vendor has the right to enter into this Contract.
   6. The Vendor has not entered into any other contracts or employment relationships that restrict the Vendor’s ability to perform under this Contract.
   7. The Vendor will observe and abide by all applicable laws and regulations, including those of the Department regarding conduct on any premises under the Department’s control.
   8. The Vendor has good and marketable title to any products or supplies delivered under this Contract and which title passes to the Department.
   9. The Vendor has the right and ability to grant the license granted in products or supplies in which title does not pass to the Department. If any services of the Vendor or any products or supplies fails to comply with these warranties, and the Vendor is so notified in writing, the Vendor will correct such failure with all due speed or will refund the amount of the compensation paid for the services, products or supplies. The Vendor will also indemnify the Department for any direct damages and claims by third parties based on breach of these warranties.

40. **VENDOR’S WARRANTY AGAINST AN UNRESOLVED FINDING FOR RECOVERY**: Vendor warrants that it is not subject to an unresolved finding for recovery under O.R.C. Section 9.24. If the warranty was false on the date the parties signed this Contract, the Contract is void ab initio.

41. **LIMITATION OF LIABILITY**: Notwithstanding any limitation provisions contained in the documents and materials incorporated by reference into this contract, the Vendor agrees that the Vendor shall be liable for all direct damages due to the fault or negligence of the Vendor.

42. **INDEMNITY**: The Vendor will indemnify the Department for any and all claims, damages, lawsuits, costs, judgments, expenses, and any other liabilities resulting from bodily injury to any person (including injury resulting in death) or damage to property that may arise out of or are related to Vendor’s performance under this Contract, providing such bodily injury or property damage is due to the negligence of the Vendor, its employees, agents, or subcontractors. Reference 107.12 the Construction & Materials Specification handbook, if applicable for this product or service.

The Vendor will also indemnify the Department against any claim of infringement of a copyright, patent, trade secret, or similar intellectual property rights based on the Department’s proper use of any products or supplies under this Contract. This obligation of indemnification will not apply where the Department has modified or misused the products or supplies and the claim of infringement, is based on the modification or misuse. The Department agrees to give the Vendor notice of any such claim as soon as reasonably practicable and to give the Vendor the authority to settle or otherwise defend any such claim upon consultation with and approval by the Office of the Department Attorney General. If a successful claim of
infringement is made, or if the Vendor reasonably believes that an infringement claim that is pending may actually succeed, the Vendor will take one (1) of the following four (4) actions:

1. Modify the products or supplies so that it is no longer infringing;
2. Replace products or supplies with an equivalent or better item;
3. Acquire the right for the Department to use the infringing products or supplies as it was intended for the Department to use under this Contract; or
4. Remove the products or supplies and refund the fee the Department paid for the products or supplies and the fee for any other products or supplies that required the availability of the infringing products or supplies for it to be useful to the Department.

43. **AUDITS**: The Vendor must keep all financial records in a manner consistent with generally accepted accounting principles. Additionally, the Vendor must keep separate business records for this Contract, including records of disbursements and obligations incurred that must be supported by contracts, invoices, vouchers and other data as appropriate. During the period covered by this Contract and until the expiration of three (3) years after final payment under this Contract, the Vendor agrees to provide the Department, its duly authorized representatives or any person, agency or instrumentality providing financial support to the work undertaken hereunder, with access to and the right to examine any books, documents, papers and records of the Vendor involving transactions related to this Contract. The Vendor shall, for each subcontract in excess of two thousand five hundred ($2,500), require its subcontractor to agree to the same provisions of this Article. The Vendor may not artificially divide contracts with its subcontractors to avoid requiring subcontractors to agree to this provision. The Vendor must provide access to the requested records no later than (5) five business days after the request by the Department or any party with audit rights. If an audit reveals any material deviation from the Contract requirements, and misrepresentations or any overcharge to the Department or any other provider of funds for the Contract, the Department or other party will be entitled to recover damages, as well as the cost of the audit.

44. **INDEPENDENT CONTRACTOR ACKNOWLEDGEMENT**: It is fully understood and agreed that Vendor is an independent contractor and is not an agent, servant, or employee of the State of Ohio or the Ohio Department of Transportation. Vendor declares that it is engaged as an independent business and has complied with all applicable federal, state, and local laws regarding business permits and licenses of any kind, including but not limited to any insurance coverage, workers’ compensation, or unemployment compensation that is required in the normal course of business and will assume all responsibility for any federal, state, municipal or other tax liabilities. Additionally, Vendor understands that as an independent contractor, it is not a public employee and is not entitled to contributions from the State to any public employee retirement system.

**TRADE**: Pursuant to R.C. 9.76(B), Vendor warrants that Vendor is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade, including Israel, and will not do so during the term of this Contract.

45. **EXECUTIVE ORDER 2019-12D**: The Vendor affirms to have read and understands Executive Order 2019-12D issued by Ohio Governor Mike DeWine and shall abide by those requirements in the performance of this Contract, shall sign and require its subcontractors (if any) to sign the attached “Standard Affirmation and Disclosure Form,” and shall perform no services required under this Contract outside of the United Departments. The Executive Order is incorporated by reference and also is available at the following website: [https://procure.ohio.gov/pdf/EO2019-12D/Executive_Order_2019_12WEB.pdf](https://procure.ohio.gov/pdf/EO2019-12D/Executive_Order_2019_12WEB.pdf)

The Vendor also affirms, understands, and agrees to immediately notify the Department of any change or shift in the location(s) of services performed by the Vendor or its subcontractors under this Contract, and no services shall be changed or shifted to a location(s) that are outside of the United Departments.

46. **NON-DISCRIMINATION/COMPLIANCE WITH APPLICABLE LAWS**: Vendor agrees that Vendor, any subcontractor, and any person acting on behalf of Vendor or a subcontractor, shall not discriminate, by reason of race, color, religion, sex (including pregnancy, gender identification and sexual orientation), age (40 years or older), disability, military status, national origin, or ancestry against any citizen of this state in the employment of any person qualified and available to perform the Work. Vendor further agrees that Vendor, any subcontractor, and any person acting on behalf of Vendor or a subcontractor shall not, in any manner, discriminate against, intimidate, or retaliate against any
employee hired for the performance of the Work on account of race, color, religion, sex (including
pregnancy, gender identification and sexual orientation), age, disability, military status, national origin, or
ancestry.

During the performance of this Contract, the Vendor, for itself, its assignees, and successors in interest
agrees to comply with the Federal Requirements as follows:

1. Vendor will ensure that applicants are hired and that employees are treated during
employment without regard to their race, religion, color, sex (including pregnancy, gender
identification and sexual orientation), national origin (ancestry), disability, genetic
information, age (40 years or older), or military status (past, present, or future). Such
action shall include, but not be limited to, the following: Employment, Upgrading,
Demotion, or Transfer; Recruitment or Recruitment Advertising; Layoff or Termination;
Rates of Pay or other forms of Compensation; and Selection for Training including
Apprenticeship.

2. Vendor agrees to post in conspicuous places, available to employees and applicants for
employment, notices setting forth the provisions of this nondiscrimination clause. Vendor
will, in all solicitations or advertisements for employees placed by or on behalf of Vendor,
state that all qualified applicants will receive consideration for employment without regard
to race, religion, color, sex (including pregnancy, gender identification and sexual
orientation), national origin (ancestry), disability, genetic information, age (40 years or
older), or military status (past, present, or future).

3. Vendor agrees to fully comply with Title VI of the Civil Rights Act of 1964, 42 USC Sec.
2000. Vendor shall not discriminate on the basis of race, color, national or
origin, sex (including pregnancy, gender identification and sexual orientation), age, disability, low-
income status, or limited English proficiency in its programs or activities. The Director of
Transportation may monitor the Vendor’s compliance with Title VI.

4. Compliance with Regulations: The Vendor (hereinafter includes consultants) will comply
with the Acts and Regulations relative to Non-discrimination in Federally-assisted programs
of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as
they may be amended from time to time, which are herein incorporated by reference and
made a part of this contract.

5. Nondiscrimination: The Vendor, with regard to the work performed by it during the contract,
will not discriminate on the grounds of race, color, national origin (ancestry), sex (including
pregnancy, gender identification and sexual orientation), age (40 years or older), disability,
low-income status, or limited English proficiency in the selection and retention of
subcontractors, including procurements of materials and leases of equipment. The Vendor
will not participate directly or indirectly in the discrimination prohibited by the Acts and the
Regulations as set forth in section 10. below, including employment practices when the
contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

6. Solicitations for Subcontractors, including procurements of Materials and Equipment: In all
solicitations, either by competitive bidding, or negotiation made by the Vendor for work to
be performed under a subcontract, including procurements of materials, or leases of
equipment, each potential subcontractor or supplier will be notified by the Vendor of the
Vendor’s obligations under this contract and the Acts and the Regulations relative to
nondiscrimination on the grounds of race, color, national origin (ancestry), sex (including
pregnancy, gender identification and sexual orientation), age (40 years or older), disability,
low-income status, or limited English proficiency.

7. Information and Reports: The Vendor will provide all information and reports required by
the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to
its books, records, accounts, other sources of information, and its facilities as may be
determined by the Ohio Department of Transportation (hereinafter “ODOT”) or FHWA to be
pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where
any information required of a Vendor is in the exclusive possession of another who fails or
refuses to furnish this information, the Vendor will so certify to ODOT or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

8. Sanctions for Noncompliance: In the event of the Vendor’s noncompliance with the nondiscrimination provisions of this contract, ODOT will impose such contract sanctions as it or FHWA may determine to be appropriate, including, but not limited to:

   a. Withholding of payments to the Vendor under the contract until the Vendor complies, and/or
   b. Cancellation, termination or suspension of the contract, in whole or in part.

9. Incorporation of Provisions: The Vendor will include the provisions of sections 1. through 9. in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Vendor will take action with respect to any subcontract or procurement as ODOT or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Vendor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Vendor may request ODOT to enter into any litigation to protect the interests of ODOT. In addition, the Vendor may request the United States to enter into the litigation to protect the interests of the United States.

10. During the performance of this contact, the Vendor, for itself, its assignees, and successors in interest, consultants and sub-contractors, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

• Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21
• The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-Aid programs and projects)
• Federal-Aid Highway Act of 1973 (23 U.S.C. § 324 et seq.) (prohibits discrimination on the basis of sex)
• Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), as amended (prohibits discrimination on the basis of disability) and 49 CFR Part 27
• The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.) (prohibits discrimination on the basis of age)
• Airport and Airway Improvement Act of 1982 (49 U.S.C. § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex)
• The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of Federal-Aid recipients, sub-recipients, and contractors, whether such programs or activities are Federally funded or not)
• Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§ 12131-12189), as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38 (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities)
• The Federal Aviation Administration’s Non-Discrimination Statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex)
• Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations)
• Executive Order 13166, Improving Access to Services for People with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100)
• Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended (prohibits discrimination in the sale, rental, and financing of dwellings on the basis of race, color, religion, sex, national origin, disability, or familial status (presence of child under the age of 18 and pregnant women)
• Title IX of the Education Amendments Act of 1972, as amended (20 U.S.C. 1681 et seq.) (prohibits discrimination on the basis of sex in education programs or activities)
• Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA 38 U.S.C. 4301-4335) (prohibits discrimination on the basis of present, past or future military service)

(the remainder of this page has been left intentionally blank)
This Signature Page must be completed and submitted with a Bidder’s sealed bid package to serve as acknowledgment to the Department that the Bidder understands and will comply with all terms, conditions, and requirements in submitting a response for the above-referenced procurement.

Furthermore, the execution and submission of this Signature Page shall serve as acknowledgment that the Bidder will enter into a Contract with the State of Ohio, Department of Transportation if selected for award of the above-referenced procurement, and understands, upon Contract award, it shall be bound by all terms and conditions included in this procurement.

The person signing and executing this Signature Page below acknowledges that he/she is signing on behalf of their Company in a representative capacity and hereby warrants that he/she has been duly authorized by his/her Company to submit this formal response and is authorized to execute Contracts on such Company’s behalf.

(Please execute below using blue ink)

Company (Bidder) Name: ________________________________________________

Original Signature: _______________________________________________________

Print Name of Officer: ____________________________________________________

Title of Signing Officer: __________________________________________________

Date: _________________________________________

FOR USE BY THE OHIO DEPARTMENT OF TRANSPORTATION ONLY:

Pursuant to Section 30 of the Instructions, Terms and Conditions for Bidding, a signature below by the Director of ODOT shall serve as the Department’s formal acceptance of the bidder’s offer and will effectively form ODOT Contract 590-22 between the State of Ohio, Department of Transportation and the above successful bidder (company):

Jack Marchbanks, Ph. D.
Director
State of Ohio, Department of Transportation