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**NEW NOTE – REQUEST FOR PROPOSAL – 9/22/2010**

A complete Request for Proposal (RFP) package will be released through the Department's addenda process. This RFP consists of new, revised and re-released documents as listed in Appendix DI-01.

For purposes of coordinating contract documents, the RFP supersedes the Request for Qualifications (RFQ) and any addenda issued prior to release of the RFP.

Within the RFP, the order of precedence outlined in C&MS 105.04, as modified by the Proposal's, "New Note – Revisions to the 2010 C&MS for Value Based Design Build Projects", applies."

**NEW NOTE - PAYMENT FOR PREPARATION OF RESPONSIVE PRELIMINARY DESIGN CONCEPT**

Subject to the conditions listed in this note, the Department will provide a payment of \$500,000 or the DBT's actual costs of preparing the responsive preliminary design concept, whichever is less, to each non-winning short-listed DBT. The successful bidder will not receive a separate payment. The term "payment" as used in this section shall mean \$500,000 or the DBT's actual costs of preparing the preliminary design concept, whichever is less.

After award, each non-winning short-listed DBT shall submit complete documentation of all actual costs of preparing the preliminary design concept. The Department will initiate payment after validation of the actual costs submitted and approval of the Controlling Board.

By submitting its Technical Proposal for this Project, the DBT forms a contract and agreement for its technical proposal and conceptual design with the Department, the terms and conditions of which are outlined in the documents referenced in Revised Specification 105.04. Furthermore, by submitting its Technical Proposal for this Project, the DBT acknowledges that it is eligible for payment if the DBT's proposal is not selected. The payment will be payable by the Department to the DBT within 90 days of award of the Design-Build Contract, unless payment is waived by the unsuccessful DBT.

The payment shall be due only if the DBT submits a Technical Proposal that is responsive to the RFP as defined in Section 3 of the Selection Criteria. However, upon award, all information provided to the Department that was used in the evaluation of the bids will be considered a public record.

The payment shall be full and final consideration for all documents submitted in the Technical Proposal. Except for that intellectual property developed apart from or prior to DBT commencing work on the Technical Proposal for this project, the Department shall retain an undivided joint interest in all rights and intellectual property submitted with the Technical Proposal including any intellectual property derived in the ATC(s) submitted to the Department as part of the Technical Proposal.

If Technical Proposals have been submitted, but the Department does not award the Design-Build Contract, all responsive short-listed DBTs shall receive a payment, unless payment is waived by the DBT. If the Department withdraws the RFP prior to Technical Proposal submission, no fee will be paid.

In order to receive a payment, the DBT will be required to have a State of Ohio Vendor's Code number. Information on Vendor Codes may be obtained from the Ohio Department of Transportation's Office of Accounting. The unsuccessful DBTs must submit an invoice and all supporting documentation within 30 days of contract award.

Unsuccessful DBTs who otherwise qualify for the payment may elect to waive the fee and refuse payment within 10 days of the Design-Build Contract award and retain any available rights to its Technical Proposal and ATCs contained therein.

The DBT's actual costs of preparing the preliminary design concept shall be calculated as described below. Eligible costs must have been incurred between the advertised Request for Qualifications and the date the Technical and Price Proposal is submitted to ODOT. The DBT bears the burden to document and support claimed costs.

Consultants

Actual costs shall be determined in conformance with applicable provisions of the Department's policies and directives, the FHWA's Federal-Aid Policy Guide, and the principles and procedures set forth in FAR Part 31. When specific Department and FHWA policies differ from FAR Part 31, the Department and FHWA policy shall prevail. Direct costs must be properly supported by time records and/or copies of receipts or other acceptable evidence of expenditures.

No mark-up of actual costs is permitted to compensate the consultant for profit.

Contractors

Actual costs shall be determined in accordance with sections 109.05.C.1, 109.05.C.2 and 109.05.C.3 of ODOT's *Construction and Materials Specification (CMS)* manual (Dated 1/1/2010), with the following modifications –

109.05.C.1:

1. Completion of a Daily Force Account Record is not required. However, labor documentation requirements set forth in section 109.05.C.2 apply.
2. Equipment costs are not allowable or reimbursable.
3. Actual subcontractor and consultant costs are reimbursable, without mark-up, if required for this project, The Contractor must provide copies of paid invoices from the subcontractors and consultants demonstrating the actual costs incurred and paid by the Contractor for this project.

109.05.C.2:

4. Costs associated with profit sharing, bonuses (in any form), and incentives are not reimbursable.
5. Workers' Compensation Premiums for other states, if incurred for this project, are reimbursable.
6. Restriction on personnel categories shall not apply.
7. Travel costs shall be calculated in accordance with the State of Ohio's most current travel reimbursement policy in effect at the time travel was incurred.

109.05.C.3:

8. Actual material costs are allowable, with no additional mark-up. The Contractor must provide paid invoices from the vendor demonstrating the actual material costs incurred and paid by the Contractor for this project.

All payments are subject to approval of the Controlling Board under Section 127.16 of the Ohio Revised Code.

#### **NEW NOTE – DESIGN, INCIDENTAL AND INDEPENDENT QUALITY FIRM COSTS**

Design costs, Incidental costs and Independent Quality Firm costs are to be included into all appropriate bid items.

#### **NEW NOTE - BID PACKAGE ORGANIZATION**

Selection of a Design Build Team (DBT) for this project will follow a value based process that includes short-listing based on a Statement of Qualifications as well as an evaluation of Technical and Price Proposals as outlined in the Selection Criteria document.

Initial advertisement of this project (Request for Qualifications) will include a draft version of the Document Inventory. The draft Document Inventory lists all contract and reference documents that are being developed for the Request for Proposal (RFP). A finalized Document Inventory will be distributed to all short-listed DBTs when the final RFP requirements are released.

#### **NEW NOTE – GOVERNING REGULATIONS**

Bidders are directed toward ORC Chapters 5525.01 et seq. including but not limited to 5525.13 regarding surety limits and 5525.05 regarding bidder prequalifications. Bidders are further directed to review FHWA guidance documents including but not limited to 23 CFR 636 et seq.

#### **NEW NOTE – SELECTION PROCESS CALENDAR**

Prospective DBTs will adhere to the following selection process schedule:

<b>Activity</b>	<b>Date</b>
Department advertises Request for Qualifications (RFQs)	10/01/10
First day for Design Build Teams (DBTs) to submit pre-bid questions.	10/04/10
Department conducts pre-Statement of Qualifications (SOQ) meeting.	10/14/10
DBTs submit SOQs.	11/01/10
Department holds SOQ Oral Interviews	11/15/10
Department announces Short-Listed DBTs.	12/1/10
Department confirms Request for Proposal (RFP) requirements for the Short-Listed DBTs.	12/1/10
First day for DBTs to submit Alternative Technical Concept (ATC) proposals.	12/2/10
Department holds pre-Technical Proposal Conference.	1/20/11
Last day for DBTs to submit ATC proposals.	1/24/11
Department conducts meeting with involved utilities and Short-Listed DBTs.	2/3/11
Last day for DBTs to submit ATC proposal reconsideration requests.	2/8/11
Last day for DBTs to apply for appropriate prequalifications from the Office of Contracts and Consultant Services.	2/9/11

Last day for DBTs to submit pre-bid questions.	2/9/11
Last day for Department to inform DBTs of ATC and ATC reconsideration approval status.	2/24/11
Last day for Department to issue addenda.	03/02/11
<b>DBTs submit Technical and Price Proposals (including bid bond).</b>	3/11/11
Department conducts oral interviews with DBTs	4/11/11
Department announces Technical Scores and opens Price Proposals.	4/26/11
FHWA Concurrence	4/29/11
Department awards contract. (Must be awarded within 10 days following bid opening.)	5/4/11

All submissions to and requests of the Department must be received by 11:00 a.m. on the date indicated.

The Department may issue addenda at any time during the selection process.

**NEW NOTE - PRE-BID QUESTIONS, PROJECT COMMUNICATIONS, & PROJECT SUBMISSIONS**

All questions prior to submission of the Statement of Qualifications, Bridge Renderings, Price Proposals or Technical Proposals shall be directed to:

Name: FRA670/71-PrebidQs

Web submittal form:

<http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/Pages/Fra71-PrebidQs.aspx>

***In addition to pre-bid questions, the DBT may submit optional Alternative Technical Concepts as described in the Selection Criteria.***

Statements of Qualifications, Technical Proposals and Alternative Technical Concepts (if desired) shall be submitted to:

Ohio Department of Transportation  
 Office of Contracts, First Floor  
 1980 W. Broad St.  
 Columbus, OH 43223  
 Attention: Letting Manager

The outer wrapping of each submission shall clearly indicate the following information:

Project 3000 (11)  
*Design Build Team Name*  
 FRA-71-17.76  
 PID 77369  
 ??????

Where ?????? is one of the following:

- Statement of Qualifications
- Alternative Technical Concept # \_\_\_\_\_
- Alternative Technical Concept # \_\_\_\_\_ Resubmission # \_\_\_\_\_

- Technical Proposal.
- Bridge Renderings
- Price Proposal – Bid
- Price Proposal – Acknowledgements/Miscellaneous

Complete submission requirements, including details regarding the format of these documents will be as described in the Selection Criteria.

A cover sheet shall be provided with each copy of submissions and shall clearly indicate the same information printed on the outer wrapping of each submission.

Submissions shall include page numbers in the bottom-center footer location of each page (not counting the cover sheet).

To facilitate ODOT accountability of the printed versions of the submissions during the procurement process, paper copies of submissions shall be sequentially numbered 1 through YY, where YY equals the total number of paper copies required. The designation “Copy #”, where # is the unique designation of the paper copy 1 through YY, shall be printed in the bottom-right footer location of each page (including the cover sheet) of the submission.

Where electronic file copies (PDF or TIF) are requested, the designation “E Copy #” shall be inserted into the bottom-right footer location of each page, including the cover sheet. All submissions will be received in sealed packages. Submissions will NOT be accepted after the time specified.

#### **NEW NOTE - EX PARTE COMMUNICATIONS**

DBTs are expected to conduct themselves with professional integrity and to refrain from lobbying activities. Commencing with the issuance of the RFQ and continuing until the award of the contract for the Project (or cancellation of the procurement), no employee, member, agent, or advisor of any potential or submitting DBT shall have any direct or indirect ex parte communications regarding this Project with any representative of the Department, the Federal Highway Administration, including staff or advisors or representatives of the City of Columbus or its departments or agencies, DBTs or consultants involved with the procurement, except for communications expressly permitted by the bid documents.

Any verified allegation that a DBT, DBT member, an employee, agent, advisor or consultant of the DBT has engaged in such prohibited communications or attempted to unduly influence the selection process may be cause for the Department to disqualify the DBT or to disqualify the DBT member from participating with the DBT; all at the sole discretion of the Department.

#### **NEW NOTE – REQUIRED MEETINGS**

Short-listed DBTs will be required to attend the pre-Technical Proposal Conference. The timing of this meeting is listed in the Selection Process Calendar. Persons with a disability may request a reasonable accommodation such as a sign language interpreter. Request for accommodations must be made one week in advance of the meeting, to allow time to arrange the accommodation.

If it is believed that circumstances warrant, the Department will schedule other technical meetings during the timeframe allotted for the DBT’s development of technical proposals. Notice of such meetings will be given to all short-listed DBTs.

ODOT will schedule a meeting with all known utilities within the project area during the development of Technical and Price Proposals. Attendance at this meeting by at least one representative from each short-listed DBT is mandatory. Additional issues concerning utilities shall be addressed via pre-bid questions.



**PN 002 - MODIFIED - REVIEW OF DBT BIDDING DOCUMENTS**

The Department reserves the right to review any and all bids and the documents which, in the opinion of the Department, are relevant to that review. The Department shall review the bids and relevant documents for evidence of unbalancing, bidding inconsistencies, deviations from the Engineer's Estimate, bid items and quantities, and other concerns that the Department may have.

The Department reserves the right, after review of the DBT's bid and Technical Proposal submission, to request additional information or data other than that submitted, and to inquire further with respect to a DBT's responses; and the DBT consents to such further inquiry and agrees to furnish all relevant documents and information as requested. The Department further reserves the right to contact a DBT after their bid and Technical Proposal for the purpose of clarifying the submissions to ensure mutual understanding. This contact may include but may not be limited to written questions, interviews, and site visits.

**PN 003 - 10/15/2004 - TITLE VI RELATED STATUTES NON-DISCRIMINATION STATEMENT**

The Ohio Department of Transportation, under Title VI of the Civil Rights Act and related statutes, ensures that no person in the Department of Transportation, shall on the grounds of race, color, national origin, sex, disability or age be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity it administers.

**PN 006 - MODIFIED - NOTICE TO BIDDERS**

**Prequalification**

The Design Build Team must apply for prequalification with the Department's Office of Contracts, Contractor Qualifications Section (DB Contractor) and Consultant Services (DB Designer), at least 30 days before submission of the Technical and Price Proposals.

If the Design Build Team is a joint venture, all members shall be pre-qualified with the Department, as either a contractor or a designer. A member's share of a joint venture should not exceed its pre-qualification limit.

**Certificate of Compliance with Affirmative Action Programs**

No contract shall be entered into unless the bidder possesses a valid Certificate of Compliance with Affirmative Action Programs, issued by the State EEO Coordinator, Certification Section, 77 South High Street, 24th Floor, Columbus, Ohio 43215, dated no earlier than 180 days prior to the date fixed for the opening of bids.

**PN 019 – MODIFIED - PREPARATION OF PRICE PROPOSAL**

**PRICE PROPOPSAL REQUIREMENTS**

**Bidders must prepare their “Price Proposal – Bid” and their “Price proposal – Acknowledgements/Miscellaneous” on hard copy forms supplied by the Department.**

The Department will not be using Bid Express for this project. A disk or printout of any electronic file of the “Price Proposal-Bid” **is not required**.

The bid will be received through both a “Technical Proposal” and “Price Proposal.” The “Price Proposal” will be submitted in two parts:

“Price Proposal – Bid”, and  
“Price proposal – Acknowledgements/Miscellaneous”.

ODOT will not be opening the “Price Proposal – Bid” until the completion of the evaluation of the “Technical Proposals” and the “Price Proposals - Acknowledgements/Miscellaneous” information.

NOTICE:

Bidders are to submit their bids in to include the following information:

- 1) Cover Letter signed by an officer of the DBT or joint venture.
- 2) “Technical Proposal”: Contents as defined in the Selection Criteria. Acknowledge of receipt of all project addenda by including a copy of the cover sheet of each addenda in an Appendix to the “Technical Proposal.”
- 3) “Price Proposal – Bid”: hand written on a form supplied by the Department
- 4) “Price Proposal – Miscellaneous/Acknowledgements”: All other documents listed in this proposal note; except the Bid Guarantee.
- 5) Bid Guarantee, unless previously submitted.

Item #'s 2 through 5 shall be submitted in separate sealed packages. If necessary, the “Technical Proposal” may be submitted in more than one separate sealed package; provided the outer wrapping clearly provides a sequential numbering of the packages (e.g., “Technical Proposal, Box #1 of 3, etc.).

The Department will only accept a handwritten “Price Proposal – Bid” on a hard copy form supplied by the Department. All other methods of submitting the “Price Proposal – Bid” shall be considered non-responsive and ineligible for award.

If there is a discrepancy between the total bid price and the summation of individual bid item unit prices, unit prices will control.

The Department’s Office of Contracts will provide DBTs with relevant documents. Most addenda will not be provided by hard copy, but will be available on the Office of Contracts website at: <http://contracts.dot.state.oh.us>. All proposals, plans, and addenda are also available on the Office of Contracts web site.

Bids must comply with all special provisions, the Construction and Material Specifications, Supplemental Specifications and the rules and regulations of the Ohio Department of Transportation regarding bid preparation and bid submittal.

Addenda and/or amendments must be acknowledged in the “Technical Proposal” in order for your bid to be considered for award of this project.

The “Price Proposal - Acknowledgements/Miscellaneous” submission contains the Supplemental Questionnaire information regarding the bidder’s outstanding ODOT and non-ODOT work, EEO certification (on Federally-funded projects only), and certification against debarment and suspension have also been included in this section. These forms will be furnished by the Department. Also include the PN013 DBE Affidavit.

Each bidder is required to file with the bidder’s bid a bid guaranty in the form of a certified check or cashier’s check for an amount equal to five percent (5%) of its bid, but in no event more than fifty

thousand dollars, or a bid bond for ten percent (10%) of its bid payable to the "Director of Transportation."

If the DBT chooses to submit a certified check to guaranty its bid, the Department's Office of Contracts will accept a check up to 72 hours in advance of the letting. The Office of Contracts must receive the certified check by 11:00 a.m. on the day the project sells. All checks must be sent to ODOT, Office of Contracts, Attention: Letting Manager, First Floor, 1980 W. Broad St., Columbus, Ohio 43223.

The successful bidder must furnish a performance bond and a payment bond in an amount equal to one hundred percent (100%) of the Department's estimate. (Ohio Revised Code Section 5525.16)

Any bid ("Technical Proposal" and "Price Proposal") received after 11:00 a.m. on the scheduled date will receive no further consideration for award. The Department will not be responsible for a late bid due to failure of the bidder to allow sufficient time for delivery of the bid.

**SUPPLEMENTAL QUESTIONNAIRE:**

Enter the TOTAL for each of the following incomplete construction contracts. This includes both prime contracts and sub-contracts:

ODOT Contracts: \$ \_\_\_\_\_

Non-ODOT Contracts: \$ \_\_\_\_\_

ODOT reserves the right to request detailed information to support above totals.

**FEDERALLY REQUIRED EEO CERTIFICATION**

The bidder hereby certifies that it  has  has not participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114 or 11246, and that it  has  has not filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Opportunity, all reports due under the applicable filing requirements.

**CERTIFICATION AGAINST DEBARMENT AND SUSPENSION**

By my submission of this proposal I certify, under penalty of perjury and under other such penalties as the laws of the State of Ohio and the United States of America provide, that neither I nor anyone in my company or agent thereof has violated Title 23 United States Code, Section 112 Non-Collusion Affidavit, and further I certify, except as previously noted under penalty of perjury and under other such penalties as the laws of the State of Ohio and the United States of America provide, that I, the company or any person associated therewith in the capacity of owner, partner, director, officer, principal investigator, project director, manager, auditor, or any position involving the administration of federal funds are in compliance with the Certification Against Debarment and Suspension Clause.

\_\_\_\_\_ Signature

\_\_\_\_\_ Printed Name

The person or persons signing this proposal do hereby certify, under penalty of perjury that this CERTIFICATION OR DEBARMENT is a true and accurate statement.

If there are exceptions to any of the above clauses please set out the exceptions on the lines below. Exceptions will not necessarily result in denial of award, but will be considered in determining bidder

responsibility. For any exception noted, indicate below to who it applies, initiating agency and dates of action. Providing false information may result in criminal prosecution of administrative sanctions.

**SUSPENSION OR DEBARMENT LISTING:**

Applies to Whom	Initiating Agency	Dates of Action

**NEW NOTE - ORGANIZATIONAL CONFLICTS OF INTEREST**

The bidder’s attention is directed to 23 CFR Part 636 Subpart A and in particular Section 636.116 regarding organizational conflicts of interest. Section 636.103 defines “organizational conflict of interest” as follows:

*“Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person’s objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.”*

Bidders are prohibited from receiving any advice or discussing any aspect relating to the Project or procurement of the Project with any person or entity with an organizational conflict of interest. The Department may disqualify a bidder if an organizational conflict of interest exists.

The bidder agrees that, if after award, an organizational conflict of interest is discovered, the DBT must make an immediate and full written disclosure to the Department that includes a description of the action that the DBT has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the Department may, at its discretion, cancel the contract for this project.

The bidder’s attention is further directed to Ohio Administrative Code Section 4733-35-05 (C) and the requirements regarding organizational conflicts of interest.

**PN 007 - 10/15/2004 - TRUCK LEASING & MATERIAL SUPPLIES**

The Code of Federal Regulations Title 49, Section 26.55(d)(4)(5)(6) governs trucking operations. This section states that the Disadvantaged Business Enterprise (DBE) may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE will receive credit for only the fee or commission it receives as a result of the lease agreement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE. The law requires that a lease must indicate that the DBE has exclusive use of and control over the truck for credit to be accorded to the DBE. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

In lieu of a truck owner displaying the name and identification number of the DBE, the truck owner shall be required to furnish a photocopy of the lease agreement. Thereby, fulfilling the rule without causing undue hardship on any entity.

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

1. When the materials or supplies are obtained from a DBE manufacturer the prime DBT may receive credit for 100 percent of the cost of the materials or supplies toward the DBE goal. For purposes of this section, a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
2. When the materials or supplies are purchased from a DBE regular dealer or supplier the prime DBT may receive credit for 60 percent of the cost of the materials or supplies toward the DBE goal. For purposes of this section, a regular dealer or supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

For subcontract agreement (C-92) purposes the following definitions will be used:

Install - DBE DBT who obtains goods, materials and supplies and fixes in place, for use, the same goods, materials and supplies. (e.g., DBE DBT obtains and fixes in place re-bar on project site). Must spend 20% or more time on project per day. 100% credit toward prime's DBE goal.

Stockpiling - DBE DBT/Trucker who delivers materials, goods, or supplies to project site. 60% credit toward prime's DBE goal.

Tailgating - DBE DBT/Trucker who delivers and installs materials, goods, or supplies to project site. Must spend 20% or more time on project per day. 100% credit toward prime's DBE goal.

#### **PN 014 - MODIFIED - DRUG-FREE WORKPLACE**

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

The DBT shall also require that this contractual obligation be placed in all subcontractor and material man contracts that it enters into and further requires that all subcontractors and material men place the same contractual obligations in each of their lower tier contracts.

#### **PN 038 - MODIFIED - UNRESOLVED FINDING FOR RECOVERY**

The DBT affirmatively represents to the Department that it is not subject to a finding for recovery under Ohio Revised Code §9.24, or that it has taken the appropriate remedial steps required under §9.24 or otherwise qualifies under that section. The DBT agrees that if this representation is deemed to be false, the contract shall be void *ab initio* as between the parties to this contract, and any funds paid by the state hereunder shall be immediately repaid to the Department, or an action for recovery may be immediately commenced by the Department for recovery of said funds.

**PN 039 – MODIFIED - ASSIGNMENT OF ANTITRUST CLAIMS IN STATE CONTRACT LANGUAGE**

It is the policy of the Ohio Department of Transportation that ODOT and the DBT recognize that in actual economic practice, overcharges resulting from antitrust violations are usually borne by ODOT. As consideration for the Award of the Contract and intent to be legally bound, the DBT acting herein by and through the person signing this contract on behalf of the DBT as a duly authorized agent, hereby assigns, sells, conveys, and transfers to ODOT any and all right, title and interest to any and all claims and causes of action the DBT now has or hereafter requires under state or federal antitrust laws provided that the claims or causes of action related to the goods or services that are the subject to the contract. In addition, the DBT warrants and represents that it will require any and all of its subcontractors and first tier suppliers to assign any and all federal and state antitrust claims and causes of action to ODOT. The provisions of this article shall become effective at the time ODOT executes this contract without further acknowledgment by any of the parties.

All contracting entities shall assign their rights and responsibilities to ODOT for all antitrust claims and causes of action regarding subcontractors.

**PN 008 – MODIFIED - SPECIFICATION AND SUPPLEMENTAL SPECIFICATIONS, POLICIES AND SPECIAL PROVISIONS INCORPORATED BY REFERENCE AS IF REWRITTEN HEREIN**

The version of the following in effect at the time of bid will govern this improvement:

Policies:

- Policy 27-003 (P) Partnering On Construction Projects
- Policy 27-009 (P) Acceptance of Nonspecification Material on Construction Projects

Standard Procedures:

- 510-003 (SP) Standard Procedure for Formal Partnering of Construction Projects
- 510-004 (SP) Standard Procedure for Preconstruction Conferences & Informal Partnering
- 510-009 (SP) Acceptance of Nonspecification Material on Construction Projects

Copies of the above-referenced Policies, Standard Procedures and Special Provisions policies can be found on our website at:

<http://www.dot.state.oh.us/divisions/constructionmgt/onlinedocs/pages/constructionpolicies.aspx>

**PN 027 - 10/15/2004 - IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction DBT, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.
3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

**PN 037 – MODIFIED - UTILITY NOTE**

The DBT must exercise caution when working in proximity to the existing and /or relocated utility facilities.

Sections 105.07 and 107.16 of the Department of Transportation Construction and Material Specifications require that the DBT cooperate with all utilities located within the limits of this construction project and take responsibility for the protection of the utility property and services.

If the DBT is directed by a utility company to perform any work not specifically contained in the project scope, the Department will not compensate the DBT for this work unless the Department approves the request in writing before the work begins. If the work is not preapproved by the Department, the DBT will be responsible for obtaining reimbursement for its work from the utility company which directed the DBT to perform the work.

In the event that the DBT requests that additional work, not specifically contained in this project scope, be performed by a utility company, the DBT will be responsible for reimbursing the utility company for the additional work unless the Department has agreed in writing to pay for the additional work before the work begins.

**PN 015 - 10/15/2004 - CONTRACT PROVISIONS FOR FEDERAL-AID CONSTRUCTION CONTRACTS**

The required contract provisions for federal-aid construction contracts (contained in Form FHWA 1273 revised April 1993) are hereby incorporated reference as if rewritten herein.

**PN 017 - 10/15/2004 - FEDERALLY REQUIRED EEO CERTIFICATION CLAUSE**

The Federally Required EEO Certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7 (b) (1)), and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontractors which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed DBTs and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7 (b) (1) prevents the award of contracts and subcontracts unless such DBT submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

**PN 020 – MODIFIED - NOTICE OF REQUIREMENT OF AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY**

The Bidder's attention is called to the affirmative action obligations required by the specifications set forth in 23 CFR Part 230, 41 CFR Part 60, Executive Order 11246, Section 503, and the affirmative action provisions of Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) of 1974.

Utilization goals applicable to the project, expressed in percentages, for minority and female participation for each construction craft can be found on ODOT's website at <http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/Pages/default.aspx>. These goals are based on 2000 census data and represent the area, per craft, minority and female availability pool.

Minority and female utilization obligations by craft per county (applicable to project):  
<http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/Construction/CountyAvailability-ByTrade.pdf>

Statewide utilization obligations by craft (applicable to the DBT's statewide workforce):  
<http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/Construction/StatewideAverages-ByTrade.pdf>

**Effective 1/1/08 the New Hire Definition will be as follows:**

Individual who has a break in service (not on an employer's payroll) for a period of 60 days or longer and the person affected is not a salaried employee, but belongs to a union craft. If this person is rehired the following Spring (construction industry), that person is to be considered a new hire even though the individual may have worked for the DBT the previous construction season or prior years. Individuals compensated for training or incidental work which does **not cause a break in unemployment compensation**, i.e., paid by voucher check or petty cash, are considered new hires if the individual's break in service is 60 days or longer.

**Effective 4/1/09:**

A new hire shall be associated with the first project worked for that DBT regardless of whether it is public or private. When reporting new hires the DBT shall identify that employee as a new hire on that specific project only. Subsequent work, barring a break in service of 60 days or more, would **not** qualify the employee as a new hire for that DBT.

The DBT's compliance shall be based on the implementation of affirmative action obligations required by the specifications set forth in 23 CFR Part 230, and its good faith efforts to meet these obligations. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the DBT shall make a good faith effort to employ minorities and females on each of its projects. The transfer of minority or female employees or trainees from DBT to DBT, Designer to Designer or from project to project for the sole purpose of meeting the affirmative action obligations shall be a violation of the contract and regulations in 23 CFR Part 230. The good faith efforts put forth by the DBT will be measured against the total work hours performed. Under FHWA, ODOT is the authority tasked with ensuring that the DBT adheres to the aforementioned regulations. In addition to complying with the Required Contract Provisions as outlined in the attached subcontract agreement the DBT shall provide immediate written notification to the ODOT and the Prime DBT when referral practices of the union or unions with which the DBT has a collective bargaining agreement impede the company's efforts to meet its equal opportunity obligations.

The Office of Federal Contract Compliance Programs (OFCCP) administers and enforces equal employment opportunity laws that apply to Federal government DBTs and subcontractors supplying goods and services, including construction, to the Federal Government under 41 CFR Part 60,



Executive Order 11246, Section 503, and the affirmative action provisions of VEVRAA. The OFCCP monitors compliance with these laws primarily through compliance evaluations, during which a compliance officer examines the DBT's affirmative action efforts and employment practices. Under Executive Order 11246, the OFCCP may perform contract compliance reviews on DBTs involved with federally funded ODOT projects.

Requirements for affirmative action obligations governing OFCCP contract compliance reviews are those listed in the Federal Register for the Economic Area. <http://www.dol.gov/esa/ofccp/TAguides/consttag.pdf> page E-32

The Department of Administrative Services (DAS), Equal Opportunity Division, is responsible for ensuring state DBTs implement and adhere to the State of Ohio's affirmative action program pursuant to [Ohio Administrative Code \(OAC\) 123:2-3-02](#). Specifically, this unit's responsibilities include the issuance of certificates of compliance under [ORC 9.47](#) and [153.08](#), conducting project site visits and compliance reviews (desk audits) to ensure DBTs utilize minorities and women in the construction trades, as well as maintaining a working environment free of discrimination, harassment and intimidation. The DAS may perform contract compliance reviews on DBTs involved with state funded ODOT projects. Requirements for affirmative action obligations governing DAS contract compliance reviews are those listed in the O.A.C. for the Metropolitan Statistical Area in which a project is located. [http://www.das.ohio.gov/Eod/123\\_2\\_3\\_02.htm](http://www.das.ohio.gov/Eod/123_2_3_02.htm)

All prime and subcontractors regardless of the number of employees or the state contract amount are required to submit monthly utilization reports (Input Form 29) to Ohio Department of Administrative Services covering the DBT's total workforce within the State of Ohio. The reports must be filed electronically by the 10th of each month, beginning with the contract award and continuing until the DBT or subcontractor completes performance of the state contract. <http://www.das.ohio.gov/Eod/ccinputform29.htm>

The DBT shall provide written notification to the Director of the Office of Federal Contract Compliance Programs, 200 N. High Street, Room 409, Columbus, Ohio 43215, within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor, employer identification number of the subcontractor, estimated dollar amount of the subcontract, estimated starting and completion dates of the subcontract and the geographical area in which the subcontract is to be performed.

**PN 029 – MODIFIED - ON THE JOB TRAINING PROVISIONS**

The requirements of this Training Special Provision supersede subparagraph 7b of the Special Provision entitled Special Employment Opportunity Responsibilities, and implements 23 U.S.C. 140(a).

The following must be included as part of the DBT's equal employment opportunity affirmative action training program:

The DBT must provide on-the-job training aimed at developing full journey persons in the type or job classification in which they work.

The DBT is required to have a minimum of 30 trainees assigned to this project. Each trainee shall have a minimum of 1000 hours of on-the-job training over the duration of the project. The number of trainees will be distributed among the work classifications on the basis of the DBT's needs. The DBT will be credited for each trainee employed by them who is currently enrolled or becomes enrolled in an approved program.

Training and upgrading of minorities and women toward journey person or professional employment status is a primary objective of this Training Special Provision. Accordingly, the DBT must make

every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. This training commitment is not intended, and will not be used, to discriminate against any applicant for training, regardless of whether the applicant is a member of a minority group or not.

No employee will be employed as a trainee in any classification in which he or she has successfully completed a training course leading to journey person status or in which he or she has been employed as a journey person. The DBT must satisfy this requirement by including appropriate questions in the employee's application or by other suitable means. Regardless of the method used, the DBT's records must document the findings in each case.

The minimum length and type of training for each classification will be established in the training program selected by the DBT.

No payment by ODOT will be made to the DBT for providing this training. However, if the DBT fails to provide adequate training and cannot show good faith efforts on its part to provide adequate training, it will be subject to a formal compliance review to determine the DBT's efforts in meeting the EEO laws and regulations.

The DBT must provide the following reports:

1. CR1 Report:

- a. To be completed on each trainee;
- b. To be filled out at the start of training and finish of training or at the end of the year, whichever comes first; and
- c. To be submitted to the District in which the DBT's home office is located.

2. Tracking will be on an annual basis. The DBT must submit the subsequent CR1 to the District in which the DBT's home office is located.

The prime or subcontractor conducting the training must be involved in at least one Federal project per calendar year in order to get FHWA training credit. Participation in the OJT Program is not project or contract specific.

All DBTs are encouraged to participate in the OJT program. Such a program will be considered when examining the DBT's Good Faith Efforts toward meeting its contractual affirmative action obligations.

All DBTs shall submit their own Training Program or Apprenticeship Certificate, for approval, to the District in which the company's home office is located.

All OJT Trainees must have the appropriate certification. Apprenticeship Certificates can be obtained from the State of Ohio, Bureau of Apprenticeship and Training. The union apprenticeship agreement is not acceptable verification of an apprentice's enrollment in a union sponsored training program. A copy of the Apprenticeship Certificate along with a statement indicating the number of months/years the employee has been in the apprenticeship program must be submitted to the EEO Coordinator in the company's home district and to the prevailing wage coordinator in the district responsible for the project within 90 days of the apprentice beginning work on the project.

Due to the nature and duration of this design build project, the DBT is encouraged but not required to consider "white collar" workers in its OJT program. To the extent applicable, the aforementioned training and tracking requirements would apply to a "white collar" or professional OJT Trainee.

**PN 035 - MODIFIED - SPECIAL PROVISIONS OF FEDERAL-AID HIGHWAY PROGRAM OF MANUAL 6-4-1-2 SPECIFIC EQUAL EMPLOYMENT OPPORTUNITY RESPONSIBILITIES**

**1. GENERAL**

- a. Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity as required by Executive Order 11246 and Executive Order 11375 are set forth in Required Contract Provisions (Form PR- 1273 or 1316, as appropriate) and these Special Provisions which are imposed pursuant to Section 140 of Title 23, U.S.C., as established by Section 22 of the Federal-Aid Highway Act of 1968. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the Required Contract Provisions.
- b. The DBT will work with the State Highway Agencies and the Federal Government in carrying out equal employment opportunity obligations and in their review of his/her activities under the contract.
- c. The DBT and all his/her subcontractors holding subcontracts not including material suppliers, of \$10,000 or more, will comply with the following minimum specific requirement activities of equal employment opportunity: (The equal Employment Opportunity requirements of Executive Order 11246, as set forth in Volume 6, Chapter 4, Section 1, Subsection I of the Federal-Aid Highway Program Manual, are applicable to material suppliers as well as DBTs and subcontractors.) The DBT will include these requirements in every subcontract of \$10,000 or more with such modification of language as is necessary to make them binding on the subcontractor.

**2. EQUAL EMPLOYMENT OPPORTUNITY POLICY**

The DBT will accept as his/her operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a positive continuing program:

It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, or national origin. Such action shall include: employment, upgrading, demotion, or transfer recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship, pre-apprenticeship, and/or on-the-job training.

**3. EQUAL EMPLOYMENT OPPORTUNITY OFFICE**

The DBT will designate and make known to the State Highway Agency contracting officers an equal employment opportunity officer (hereinafter referred to as the EEO Officer) who will have the responsibility for and must be capable to effectively administering and promoting an active DBT program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

**4. DISSEMINATION OF POLICY**

- a. All members of the DBT's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action or who are substantially involved in such action, will be made fully cognizant of, and will implement, the DBT's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

- (1) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the DBT's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.
  - (2) All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the DBT's equal employment opportunity obligations within thirty days following their reporting for duty with the DBT.
  - (3) All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer or appropriate company official in the DBT's procedures for locating and hiring minority group employees.
- b. In order to make the DBT's equal employment opportunity policy known to all employees, prospective employees and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the DBT will the following actions:
- (1) Notices and posters setting forth the DBT's equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
  - (2) The DBT's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

## **5. RECRUITMENT**

- a. When advertising for employees, the DBT will include in all advertisements for employees the notation: "An Equal Employment Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived.
- b. The DBT will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the DBT will, through his EEO Officer, identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the DBT for employment consideration.

In the event the DBT has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to extent that the systems permits the DBT's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women or obligates the DBT to do the same, such implementation violates Executive Order 1 1246, as amended.)

- c. The DBT will encourage his present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

**6. PERSONNEL ACTIONS**

Wages, working conditions and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, or national origin. The following procedures shall be followed:

- a. The DBT will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
- b. The DBT will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
- c. The DBT will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the DBT will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
- d. The DBT will promptly investigate all complaints of alleged discrimination made to the DBT in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the DBT will inform every complainant of all of his avenues of appeal.

**7. TRAINING AND PROMOTION**

- a. The DBT will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
- b. Consistent with the DBT's work force requirements and as permissible under Federal and State regulations, the DBT shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event the "Training Special Provisions" are included in this bid proposal, this subparagraph will be superseded as indicated in said provisions.
- c. The DBT will advise employees and applicants for employment of available training programs and entrance requirements for each.
- d. The DBT will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

**8. UNIONS**

If the DBT relies in whole or in part upon unions as a source of employees, the DBT will use their best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the DBT either directly or through a DBT's association acting as agent will include the procedures set forth below:

- a. The DBT will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

- b. The DBT will use best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, or national origin.
- c. The DBT is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the DBT, the DBT shall so certify to the State Highway Department and shall set forth what efforts have been made to obtain such information.
- d. In the event the union is unable to provide the DBT with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the DBT will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex or national origin, making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the DBT has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the DBT from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such DBT shall immediately notify the State Highway Agency.

**9. SUBCONTRACTING**

- a. The DBT will use their best efforts to solicit bids from and to utilize minority group subcontractors or subcontractors with meaningful minority group and female representation among their employees. DBTs shall obtain lists of minority-owned construction firms from State Highway Agency personnel.
- b. The DBT will use their best efforts to ensure subcontractor compliance with their equal employment opportunity obligations.

**10. RECORDS AND REPORTS**

- a. The DBT will-keep such records as are necessary to determine compliance with the DBT's equal employment opportunity obligations. The records kept by the DBT will be designed to indicate:
  - (1) the number of minority and non-minority group members and women employed in each work classification on the project;
  - (2) the progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to DBTs who rely in whole or in part on unions as a source of their work force);
  - (3) the progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and
  - (4) the progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.
- b. All such records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the State Highway Agency and the Federal Highway Administration.

- c. The DBT will submit to the State Highway Agency a monthly report for the first three months after construction begins and every month of July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form PR 139 1. If on-the-job training is being required by "Training Special Provisions," the DBT will be required to furnish Form FHWA 1409.

**PN 026 - 10/15/2004 - CERTIFICATION OF NONSEGREGATED FACILITIES**

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

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

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

**PN 031 – MODIFIED - AFFIDAVIT OF SUBCONTRACTOR PAYMENT**

The Code of Federal Regulations 49, 26.37(b), requires the Ohio Department of Transportation (ODOT) to monitor and verify that work committed to Disadvantaged Business Enterprise (DBE) firms at contract award is actually performed by the DBE's. Additionally, ODOT is required to report the DBE participation on each project, including all work, materials or service sublets. Therefore, it is ODOT's responsibility to discern whether payments are made to DBE firms. An affidavit is to be completed and signed by the DBT within 15 days of the completion of the project or within 15 days of when work is completed by a DBE, whichever is sooner. The affidavit seeks to verify actual payments made to DBE firms on the project. Each DBE firm must verify the actual payment amount.

The blank spaces in the affidavit must be filled in correctly, where indicated. The affidavit must be signed by the DBT and DBE sub-contractors. By signing the affidavit, the noted firm agrees that the payment amount recorded is true and accurate as of the payment time period.

Completed and signed affidavit shall be mailed to the Ohio Department of Transportation, **Division of Equal Opportunity**, DBE Services Section, 1980 West Broad Street, Columbus, Ohio 43223.

**PN 046 – MODIFIED - SUBCONTRACT AGREEMENTS**

The DBT must furnish to the Department subcontract agreements and C-92's from DBE subcontractors (includes, but not limited to subcontractors, consultants and suppliers) with whom they propose to utilize to fulfill the project goal or for which they desire to obtain DBE participation credit. At the time of submission of the C-92 the DBE subcontractor must have sufficient dollar and work type qualifications to perform the work.

Under no circumstances shall a DBE perform services or supply goods, regardless of their lower tier status, without a C-92 and an executed subcontract agreement or purchase order that has been submitted to the Department. The DBT and lower tier non-DBE subcontractors with DBE participation responsibilities must also submit copies of all change orders and contract modifications for DBEs to the Department. Each subcontract agreement shall at a minimum include all required federal provisions and the requirement that all lower tier subcontractors must cooperate with all compliance reviews (DBE or EEO) and investigations to validate DBE Program compliance.

If the DBT or its lower tier subcontractors identify DBEs that they believe may be eligible for capacity expansion; i.e. increasing their prequalification dollar value and/or work type qualifications to perform additional type(s) of work, they shall notify the Department in their monthly report of project activities. The Department or its designee will investigate the options and provide technical assistance/facilitate the process of expanding the capacity of prequalified DBEs. The DBT will be held accountable to meet the project DBE goal, or satisfactorily document good faith efforts.

**PN 013 - MODIFIED - DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS**

It is the policy of the Ohio Department of Transportation that Disadvantaged Business Enterprises (DBEs) shall have equal opportunity to compete for and perform subcontracts on this contract. The DBT must use its best efforts to solicit bids from and to utilize DBE subcontractors with meaningful minority groups and female representation among their employees. Consequently, the requirements of Title 49 CFR Part 26 and Ohio Revised Code §5525.011 apply to this contract. Consistent with 49 CFR Part 26.53 (e) the DBT shall submit an initial DBE Subcontracting Plan covering the anticipated procurements or expenditures for the value of the services, equipment, materials and supplies projected for the first two years of this Design Build project. The DBT shall thereafter institute an open procurement process whereby they select specific contracting and procurement opportunities, sufficient to meet or exceed its DBE commitments. These procurements shall be advertised and DBE participation shall be solicited by placing DBE participation goals on the selected procurements. The



DBT may determine the solicitation process and same shall be defined in its DBE Subcontracting Plan. The DBT shall maintain full documentation of all procurements with DBE participation goals. No later than twelve (12) months after the award of this contract and annually thereafter, the DBT shall submit for review and approval a revised Subcontracting Plan and affidavit covering the next twelve (12) months period of the project until the project is complete.

The DBT shall submit an affidavit of its commitment to comply with the DBE participation goals for this project with its proposal. The affidavit may identify the firms to be utilized, the scope of work, services or supplies to be provided, the percentage value of work, the estimated start and completion dates. The DBT must ensure that the DBE subcontractor(s) is performing a "commercially useful function" as defined in 49 CFR 26.55 over the life of the project.

The percentage indicated on the front cover of this bid is the percent of the awarded DBT'S bid which must be subcontract to certified ODOT DBE firms.

In order to be assured that the DBT complies with this contract requirement the DBT shall provide certified payrolls from its DBE subcontractors where appropriate. Also, the DBT shall submit by the 10th of each month for the duration of the project, a report detailing DBE payments to date and payments anticipated for the remainder of the project. The report shall also state, for the applicable reporting period, whether the DBT or any of its non-DBE consultants, subcontractors and/or suppliers have received payments (regardless of the form or manner) from any DBEs for shared equipment, shared personnel or facilities. When the DBT utilizes a service, for example trucking, to satisfy a part or its entire contractual goal, the DBT, when requested, must provide a copy of each canceled check issued to the DBE service provider until the goal amount is reached or for which the DBT expects to receive DBE participation credit. The Department shall total the amounts of the canceled checks and compare that total to the subcontract agreement by the parties and the C-92 issued to the DBT for the work to be performed by the DBE subcontractor.

#### **MODIFIED WAIVER PROCESS FOR DBE GOAL**

As a part of this RFP, the DBT represented that it would, at a minimum, achieve the goal of securing the services of DBE consultants, subcontractors and suppliers for the percentage indicated on the front cover of this bid. The Department recognizes, however, that circumstances could arise where the proposed DBE consultant, subcontractor or supplier is unable to perform the agreed-upon work. Therefore, the Department will permit a waiver to be submitted throughout the term of the contract and will follow the below process in reviewing and evaluating waivers.

The DBT shall attempt to replace a non-performing DBE with another certified DBE for the same/remaining work to be performed by the non-performing DBE or an equivalent scope of work. The DBT must document the process, progress and efforts being made in securing the services of DBE subcontractors. In the event the DBT is unable to meet the DBE Goal placed on this project, a request for a waiver of all or part of the goal may be made to the Office of Contracts. The written request must indicate and satisfactorily request that good faith efforts were made to meet the goal and be sent to the Administrator, Office of Contracts, 1980 West Broad Street, Columbus, Ohio, 43223. There will be no extension of time for the project granted if the DBT wishes to avail himself of this process. If an item of work subcontracted to a DBE firm is non-performed by the Department, the DBT may request a waiver for the portion of work excluded. If the DBT or Department proposes an alternate scope of work in place of the work not being performed, then the DBT must submit for review and approval documentation of the good faith efforts utilized to replace the participation for which the waiver was being requested with the participation of the same and/or alternate DBEs. The efforts made by the DBT are reviewable by the Department.

If requesting a partial waiver, the DBT must provide the following for Departmental review and approval:

1. The dollar value and percentage of the applicable DBE participation goal.
2. The dollar value and percentage of the partial waiver request.

3. Executed copy of the subcontract or purchase order between the DBT/lower tier subcontractor and the DBE initially projected to meet the contract specific goal, if any,
4. Copies of all dated communications/solicitations, fax confirmations, personal contact sheets or meeting notes, negotiation summaries and applicable follow-up,
5. Copies of all written communications and/or fax/e-mail confirmations that the DBT or lower tier bidders solicited and provided DBEs with adequate information about the plans, specifications and requirements of the contract or subcontract opportunities in a timely manner to assist them in responding to the DBT or their lower tier subcontractors solicitation efforts.
6. Copy of dated written communication, fax or electronic e-mail communication for each non-competitive DBE quote that includes the dollar value of each item of work for which the DBE provided a quote. Copy of any written communications evidencing the unavailability of DBEs or their general unwillingness to provide a quote for the project/subcontract opportunity.
7. Documentation of all negotiations with DBEs and reasons for rejecting their bids.
8. Documentation of good faith efforts to meet the DBE goal by looking beyond the specialty items typically subcontracted or even items of work typically performed by the prime, as a way of meeting the DBE goal for the project or applicable subcontract goal, regardless of the tier.
9. Documentation of efforts to utilize ODOT's Outreach Consultant or any minority or female business organizations or associations in an effort to meet the DBE participation goals.
10. Such other factors the DBT or its lower tier bidder/subcontractor contends warrants consideration in the waiver determination process based on the unique facts and circumstances.

The Administrator will review the submitted documentation and issue a written determination within ten (10) business days. The DBT may request administrative reconsideration within fourteen (14) days of being notified that the request for a waiver or that documentation of good faith efforts was unsatisfactory.

## **SANCTIONS**

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

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

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

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

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

**PN 034 - MODIFIED - DRUG FREE WORKPLACE PROGRAM PARTICIPATION**

During the life of this project, the DBT and all its subcontractors, that provide labor on the Project site, must be enrolled in and remain in good standing in the Ohio Bureau of Worker’s Compensation (“OBWC”) Drug-Free Workplace Program (“DFWP”) or a comparable program approved by the OBWC.

In addition to being enrolled in and in good standing in an OBWC-approved DFWP or a comparable program approved by the OBWC, the Department requires each DBT and subcontractor that provides labor, to subject its employees who perform labor on the project site to random drug testing of 5 (five) percent of its employees. The random drug testing percentage must also include the on-site supervisors of the DBTs and subcontractors. Upon request, the DBT and subcontractor shall provide evidence of required testing to the Department.

Each subcontractor shall require all lower-tier Subcontractors that provides labor on the project site with whom the subcontractor is in contract for the Work to be enrolled in and be in good standing in the OBWC DFWP or an OBWC-approved DFWP prior to a lower-tier Subcontractor providing labor at the Site.

The Department will declare a bid non-responsive and ineligible for award if the DBT is not enrolled and in good standing in the Ohio Bureau of Workers’ Compensation’s Drug-Free Workplace (DFWP) Discount Program or a similar program approved by the Bureau of Workers’ Compensation within 8 (eight) days of the bid opening. Furthermore, the Department will deny all requests to sublet when the subcontractor does not comply with the provisions of this proposal note.

Failure of the DBT to require a subcontractor to be enrolled in and be in good standing in the OBWC DFWP or an OBWC-approved DFWP prior to the time that the Subcontractor provides labor at the Site, shall result in the DBT being found in breach of the Contract and that breach shall be used in the responsibility analysis of that DBT or the subcontractor who was not enrolled in a program for future contracts with the State for 5 (five) years after the date of the breach.

**PN 090 – MODIFIED - WORK TYPE CODES AND DESCRIPTIONS**

The DBTs CPM schedule will indicate the work type required for each pay item. If a CPM task does not have a corresponding work type, NR will be shown in the work type column. This proposal note will govern the assignment of work types to pay items. NR will also be shown for design work.

Prequalification of the DBT and subcontractors is required pursuant to Ohio Revised Code Chapter 5525. However, the DBT may perform incidental work items for which it does not hold the required work type provided the cost of the work does not exceed 5% of the total bid.

Listed below are the work types for this proposal. In accordance with Ohio law, a bidder must possess work types, and perform work equal to 50%. This is a percentage of the total amount of the submitted bid price.

<b>Work Type Code</b>	<b>Work Type Description</b>	<b>Work Type Code</b>	<b>Work Type Description</b>
1	Clearing & Grubbing	29	Structure Repairs
2	Building Removal	30	Hydrodemolition
3	Gas, Oil, Water Well Abandonments	31	Structural Steel Repairs
4	Roadway Excavation &	32	Heat Straightening

Work Type Code	Work Type Description	Work Type Code	Work Type Description
	Embankment Construction		
5	Major Roadway Excavations	33	Tieback Installation
6	Incidental Grading	34	Earth Retaining Structures
7	Soil Stabilization	35	Drainage (Culverts, Misc.)
8	Temporary Soil Erosion & Sediment Control	36	Guardrail / Attenuators
9	Aggregate Bases	37	Fence
10	Flexible Paving	38	Misc. Concrete
11	Apply Bituminous Treatments	39	Maintenance of Traffic
12	Rigid Paving	40	Waterproofing
13	Pavement Planning, Milling, Scarification	41	Raised Pavement Markers
14	Concrete Texturing	42	Signing
15	Sawing	43	Highway Lighting
16	Flexible Replacement	44	Traffic Signals - Standard
17	Rigid Pavement Replacement	45	Pavement Markings
18	Pavement Rubblizing, Breaking, Pulverizing	46	Landscaping
19	Structure Removal	47	Mowing
20	Level 1 Bridge	48	Trucking
21	Level 2 Bridge	49	Herbicidal Spraying
22	Level 3 Bridge	50	Railroad Track Construction
23	Reinforcing Steel	51	Micro Tunneling
24	Structural Steel Erection	52	Tunneling
25	Stud Welding	53	Piling
26	Structural Steel Painting	54	Post-Tensioning Bridge Members
27	Expansion & Contraction Joints, Joint sealers, Bearing Devices	55	Fiber Optic Cable Installation, Splicing, Termination and Testing – Traffic Signal System
28	Caissons / Drilled Shafts	56	Fiber Optic Cable Installation, Splicing, Termination and Testing – Intelligent Transportation System
		57	Sealing of Concrete Surfaces with Epoxy or Non-Epoxy Sealers

#### NEW NOTE - DB DESIGNER PREQUALIFICATION

In order to qualify for selection, interested Design Build Teams shall be pre-qualified with the Department for the performance of the work. Prequalification requirements pertaining to licensure in the State of Ohio will not be required until just prior to award. All other prequalification requirements will apply throughout the bidding process.

The DBT must include at least one design consultant firm that meets each required Ohio Department of Transportation consultant prequalification category as follows:

Roadway:

- Non-Complex Roadway Design

- Complex Roadway Design

Subsurface Utility Engineering

Bridge Design:

- Level 1
- Level 2

Soils/Geotechnical Services:

- Geotechnical Engineering Services
- Geotechnical Testing Laboratory

Traffic Signal Design:

- Basic Traffic Signal Design
- Traffic Signal System Design

Highway Lighting Design:

- Limited Lighting Design
- Complex Lighting Design

Services that require prequalification may only be performed by firms that are prequalified for those services at the time of performance of the services, All engineering services must comply with Section 4733.16 of the Ohio Revised Code.

The DBT must also certify that there are no conflicts of interest between its members and subcontractors and the Department. These certification statements shall be supplied with the SOQ and Technical Proposals verifying, to the satisfaction of the Department, that the DBT and its proposed subcontractors are in compliance with the respective state and federal rules and regulations.

**PN 059 - 10/15/2004 - WAGE DETERMINATION APPEALS PROCESS**

1. Has there been an initial decision in the matter? This can be:
  - an existing published wage determination
  - a survey underlying a wage determination
  - a Wage and Hour Division letter setting forth a position on a wage determination matter
  - a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response for this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determination  
Wage and Hour Division  
U. S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D. C. 20210

2. If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (see 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U. S Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D. C. 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requester considers relevant to the issue.

3. If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U. S. Department of Labor  
200 Constitution Avenue, N. W.  
Washington, D. C. 20210

4. All decisions by the Administrative Review Board are final.

#### **PN 061 - MODIFIED -WAGE SCALE ON ALL FEDERAL-AID PROJECTS**

The wage rates for this project were determined by the Secretary of Labor in accordance with Federal-Aid requirements.

***DBTs shall use only the classifications and wage rates set forth in the United States Department of Labor (USDOL) wage decision found at the website noted below on payrolls submitted to the District Office. Additionally, please note that the wage modification in effect at the time of the project sale date, shall be used by all DBTs.***

This USDOL wage decision may be viewed, by accessing the United States Department of Labor (USDOL) website at: <http://www.wdol.gov/dba.aspx#3>

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

1. The U.S. Department of Labor Regulations, Title 29, Subtitle A, Part 5, Sections 5.5, 5.31, and 5.32, most recent revision at contract execution.

Form FHWA-1273 (most recent revision at contract execution) Part IV. Payment of Predetermined Minimum Wage and Part V. Statements and Payrolls.

The failure to pay prevailing wages to all laborers and mechanics employed on this project, shall be considered a breach of contract. Such a failure may result in the termination of the contract and debarment.

The DBT and all subcontractors shall pay all wages and fringe benefits by company check. All payroll records and canceled pay checks shall be maintained for at least three years after final acceptance as defined in section 109.12 of the Ohio Department of Transportation Construction and Materials Specifications. The DBT's and all subcontractor's payroll records and canceled pay checks shall be made available for inspection by the Department and the U.S. Department of Labor, upon request,

anytime during the life of the contract, and for three years thereafter by the U.S. Department of Labor. Additionally, the DBT and all subcontractors shall permit such representatives to interview any employees during working hours while the employee is on the job.

The wage and fringe rates determined for this project shall be posted by the DBT in a prominent and accessible place on the project, field office, or equipment yard where they can be easily read by the workers.

The DBT and all subcontractors shall submit to the District Construction Office, certified payrolls each week beginning three weeks after the start of work. These payrolls shall be on a Form WH-347 or equivalent and shall show the following:

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

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

Please be aware that it is ultimately the responsibility of the DBT to ensure that all laws relating to prevailing wages in the USDOL Regulations, Title 29, parts 1 and 5, are strictly adhered to by all subcontractors on the project.

If the DBT or any subcontractor fails to comply with any of the provisions contained in this proposal note, the Department may terminate the contract, debar the DBT or subcontractor and/or withhold or suspend pay estimates after written notice and a reasonable opportunity to comply has been provided.

#### **PN 050 - 10/15/2004 - LIMITATION ON USE OF CONTRACT FUNDS FOR LOBBYING**

1. The prospective bidder certifies, by signing and submitting this bid proposal, to the best of his or her knowledge and belief, that:
  - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. This certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective bidder also agrees by submitting his or her bid proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

### **PN 045 - 10/15/2004 - NON - COLLUSION AFFIDAVIT**

In accordance with Title 23 United States Code, Section 112 and Ohio Revised Code, Chapter 1331 et. seq; and Sections 2921.11 and 2921.13, the bidder hereby states, under penalty of perjury and under other such penalties as the law provides, that he or his agents or employees have not entered either directly or indirectly into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this proposal. Execution of this proposal on the signature portion thereof shall constitute also signature of this Non-Collusion Affidavit as permitted by title 28 United States Code, Section 1746.

### **REPORTING BID RIGGING**

To report bid rigging activities call: 1-800-424-9071

The U.S. Department of Transportation (DOT) operates the above toll-free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m. eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of the DOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

### **PN 107 MODIFIED -01/18/2011- CRITICAL PATH METHOD PROGRESS SCHEDULE WITH COST LOADING**

**A. General.** The progress schedule required for this project is the critical path method schedule (CPM schedule). The DBT shall designate a Schedule Representative who shall be responsible for coordinating with the Engineer during the preparation and maintenance of the schedule. The requirements of this note replace the progress schedule requirements in 108.02.B of the Construction & Material Specifications. The DBT shall submit an interim design schedule followed by a baseline schedule, or only a baseline schedule, depending on when the **DBT** starts work as described below.

#### **B. Interim Design Schedule.**

The DBT shall submit an Interim Design Schedule defining the planned operations during the design phase(s) of the contract. The Interim Design Schedule will be in CPM schedule format. The general (summarized) approach for the construction phase(s) of the project shall be indicated. The Engineer will review the Interim Design Schedule and will either "approve", "approve as noted" or "reject" the Interim Design Schedule within 14 days of receipt. The requirements of Section C.1. shall apply to the Interim Design Schedule.

Include any administrative submittals and review periods that will be required prior to start of construction. Cost of activities expected to be completed or partially completed before submission of the Baseline Schedule shall be included. In accordance with Section E, the Interim Design Schedule may be used for requesting progress payments for a period not to exceed the design phase(s) of the contract.



Submittal and acceptance of the Interim Design Schedule will be a condition precedent to processing any pay requests submitted by the DBT.

The Interim Design Schedule shall be updated at least monthly or updates may be submitted as part of the design submittals, whichever occurs first. Updates to the Interim Design Schedule shall cease after acceptance to the Baseline Schedule. The activities and relationships of the Interim Design schedule shall coincide and mesh with the activities of the Baseline Schedule

Bonds may be paid prior to acceptance of the Baseline Schedule, but not before acceptance of the Interim Design Schedule.

### **C. Baseline Schedule.**

The DBT shall submit a baseline schedule within 120 days of the execution of the Contract. The baseline schedule will be in CPM schedule format and as described below. The Engineer will review the baseline schedule and will either “approve”, “approve as noted” or “reject” the schedule within 30 days of receipt. If the Engineer does not provide written notification regarding the disposition of the baseline schedule within 30 days, the submission will be considered approved.

For baseline schedules that are “approved as noted”, the DBT shall make the necessary revisions and resubmit the revised schedule within 14 days. The Engineer will only reject baseline schedules that are not in compliance with contract requirements.

For baseline schedules that are “rejected”, the Engineer shall indicate in writing all portions of the schedule that are not in compliance with the contract requirements. The Project Engineer shall conduct a mandatory meeting with the DBT and the DBT’s Schedule Representative within 14 days of the Engineer’s written notice. The purpose of this meeting is to resolve all issues with the baseline schedule. At this meeting the DBT shall provide clarification and all additional information necessary for the Engineer to “approve” the baseline schedule.

In the event the baseline schedule is not “approved” within 180 days of execution of the contract, all work shall cease on the project and no progress payments will be made until the baseline schedule is “approved”. Approval of the baseline schedule does not revise the Contract Documents. The baseline schedule must be “approved” or “approved as noted” by the Engineer prior to the Engineer evaluating any DBT claims associated with time impacts.

When the Baseline Schedule is submitted and accepted by the Department, it will then be used by the DBT for planning, organizing, and directing the work; reporting progress; and requesting payment for work accomplished. The schedule will be updated monthly by the DBT and submitted monthly with the progress pay request to reflect the current status of the work. Submittal and acceptance of the Baseline Schedule and accurate updated schedules accompanying the pay requests are both conditions precedent to processing pay requests.

The Baseline Schedule must be submitted and accepted by the Department before the DBT will be allowed to start work on the construction stage(s) of the contract. Examples of construction stages are, but not limited to; demolition, site work, temporary work for construction, etc.

1. Schedule Requirements. Generate the baseline schedule using P6 Project Planner by Primavera Systems Inc., Bala Cynwyd, PA.

Provide a working day schedule that shows the various activities of work in sufficient detail to demonstrate a reasonable and workable plan to complete the Project by the Original Contract Completion Date. Show the order and interdependence of activities and the sequence for accomplishing the work. Describe all activities in sufficient detail so that the Engineer can

readily identify the work and measure the progress of each activity. The baseline schedule must reflect the scope of work, required phasing, maintenance of traffic requirements, interim completion dates, the Completion Date, and other project milestones established in the Contract Documents. Include activities for design processes, inspection, testing, submittals, working drawings, shop drawing preparation, submittal review time for the Department shop drawings, material procurement and fabrication, and the delivery of materials, plant, and equipment, and other similar activities. Design reviews will be numbered and include ODOT, Independent Quality Firm and other agency review times.

The DBT shall be responsible for assuring all work, including all subcontractor/subconsultant work, is included in the schedule. The DBT shall be responsible for assuring that all work sequences are logical and that the schedule indicates a coordinated plan.

Failure by the DBT to include any element of work required for performance of the Contract shall not excuse the DBT from completing all work within the required time. The Engineer's review of the baseline schedule will be for compliance with the specifications and contract requirements. Approval by the Engineer will not relieve the DBT of any of their responsibilities for the accuracy or feasibility of the schedule. Omissions (work or logic) and errors will be corrected as described in Section F or I in this note and will not affect contract time.

a. Administrative Identifier Information:

- a. Project Number
- b. County
- c. Route Number
- d. FHWA Number
- e. PID Number
- f. Contract Signed Date
- g. Completion Date
- h. DB Designer and DBT Name
- i. DB Designer and DBT Dated Signature
- j. ODOT's Dated Approval Signature

b. Project Activities:

- i. Activity Identification (ID). Assign each activity a unique identification number. Activity ID length shall not exceed 10 characters. Once accepted, the Activity ID shall be used for the duration of the project.
- ii. Activity Description. Each activity shall have a narrative description consisting of a verb or work function (e.g.; form, pour, excavate) and an object (e.g.; slab, footing, underdrain).
- iii. Activity Original Duration. Assign a planned duration in working days for each activity. Do not exceed a duration of 20 working days for any construction activity unless approved by the Engineer. Do not represent the maintenance of traffic, erosion control, and other similar items as single activities extending to the Completion Date. Break these Contract Items into component activities in order to meet the duration requirements of this paragraph.
- iv. Activity Relationships:
  1. All activities, except the first activity, shall have a predecessor(s). All activities, except the final activity, shall have a successor(s).
  2. Use only finish-to-start relationships with no leads or lags to link activities, or use start-to-start relationships with lags no greater than the predecessor duration to link activities.

3. Use of finish-to-finish relationship is permitted when both activities are already linked with a start-to-start relationship.

c. Project Milestones:

i. Start Project:

The DBT shall include as the first milestone in the schedule, a milestone named "Start Project". The date used for this milestone is the date the contract is executed and signed by the Department.

ii. End Project Milestone:

The DBT shall include as the last activity in the project schedule, a milestone named "End Project". The date used for this milestone is considered the project completion date.

iii. Start Phase Milestone:

The DBT shall include as the first activity for a project phase, an activity named "Start Phase X", where "X" identifies the phase of work. The DBT may include additional milestones but, as a minimum, must include all contractual milestones.

iv. End Phase Milestone:

The DBT shall include as the last activity in a project phase, an activity named "End Phase X" where "X" identifies the phase of work. The **DBT** may include additional milestones, but at a minimum contractual milestones.

d. Hammock:

Hammock activities are summary activities used for graphical display only. Use hammocks to show the duration of specified contract work periods, phases and road closures. The hammock activity type is allowed to have a start-to-start relationship with the first activity in a series of activities and a finish-to-finish relationship with the last activity in a series of activities.

e. Constraints:

Constraints in the schedule must be approved by the Engineer. If constraints are permitted, use only Early Constraints or Late Constraints.

f. Weather and Seasonal Weather Conditions:

The winter shutdown periods shall be shown using non-work calendars. The activity can be assigned to a calendar indicating time periods of non-work. These custom calendars can be created to show days, weeks, or months of non-work. Anticipated weather and seasonal weather conditions shall be inserted into the calendars in the scheduling of all work.

g. Linking Projects:

Independent projects shall not be linked using Primavera's Interproject Relationship Manager Application.

h. Activity Codes:

The DBT shall include the following codes for each activity:

i. Area

ii. Phase

iii. Responsibility for each task, DBT (Prime DBT) and subcontractors

- iv. Worktypes for each task, as identified by the Department
  - v. DBE and non-DBE DBT activities
- i. Schedule Options  
The schedule may only be calculated using retained logic. Show open ends as non-critical. Schedule durations are to be contiguous. Total float shall be calculated as finish float.
- j. Cost Loading:
- a) Cost Loading Activities: Costs for incremental design preparation will be assigned to the respective design phase submittal milestone(s). Delivered Material/ costs will be assigned to their respective Procurement Activities (i.e., the delivery milestone activity). Equipment mobilization costs will be assigned to their respective Mobilization Activities. Costs for installation of the material/equipment (labor, construction equipment, and temporary materials) will be assigned to their respective Construction Activities. Evenly disperse overhead and profit to each activity over the duration of the project. The total of all cost loaded activities; including costs for material and equipment delivered for installation on the project, and labor and construction equipment loaded construction activities, shall total to 100 percent of the value of the contract.
  - b) Quantities and Units of Measure: Each cost loaded activity will have a detailed breakdown of the quantities for each of the various kinds of work and the unit of measure. These entries are informational only and are non-calculating. Quantities shall be entered as Log 1 for each activity, column heading will be "Quantities". Units of Measure shall be entered as Log 2 for each activity, column heading will be "Units of Measure".
2. Submission Requirements. Submit all schedules within the time frames specified. Submit the schedule and information in electronic file format. Submit the following information along with the electronic baseline schedule:
- a) A baseline schedule in a bar chart format including the Administrative Identifier Information discussed in Section C.1.a on the first page of the schedule. For each activity on the chart, indicate the Activity ID, Activity Description, Original Duration, Remaining Duration, Total Float, Early Start Date, Early Finish Date, and Calendar ID. Use arrows to show the relationships among activities.
  - b) A baseline schedule in a bar chart format, on paper. Identify the critical path of the project on the bar chart in red. The critical path is defined as; the longest path of activities in the project that determines the project completion date. The activities that make-up the critical path of activities are the "Critical Activities."
  - c) A Three Week Look Ahead and a Six Week Look Ahead Schedule in bar chart format. This schedule will have all the requirements of the baseline schedule in bar chart format except that it shall be limited to those activities that have an early start or early finish within a three week and a six week period of the data date.
  - d) A Scheduling Statistics Report. Submit a report of baseline schedule statistics, including number of activities, number of activities on the longest path, number of started activities,

number of completed activities, number of relationships, percent complete, and number and type of constraints.

- e) A Logic Diagram (If requested by the Engineer). Submit a diagram in PERT chart format showing the logic of the baseline schedule.
- f) An Activity ID Sort. Submit a listing of all activities included in the baseline schedule sorted by ascending Activity Identification Number.
- g) A Total Float Sort. Submit a listing of all activities included in the baseline schedule sorted by increasing total float and by early start date.
- h) A Detailed Predecessor/Successor Sort. Submit a listing of all activities included in the baseline schedule indicating the activities that immediately precede and immediately succeed that activity in the schedule logic.
- i) Earned Value Report. Listing all activities having a budget amount and cost. A compilation of total earnings on the project from the notice to proceed to the most recent monthly progress payment request and the difference between the previous request amount and the current payment request amount. Sort report first by resource and then by activity.

A graphical representation (cost curve) of planned work

**D. Float.** Use of float suppression techniques, such as; preferential sequencing (arranging critical path through activities more susceptible to Department caused delay), lag logic restraints, zero total or free float constraints, extending activity times, excessively constrictive calendars or imposing constraint dates other than as required by the contract, shall be cause for rejection of the project schedule or its updates.

1. Definitions of Float: Total Float is the length of time along a given network path that the actual start and finish of activity(s) can be delayed without delaying the project completion date. Project Float is the length of time between the End Project Milestone and the Contract Completion Date.
2. Ownership of Float: Float available in the schedule, at any time shall not be considered for the exclusive use of either the Department or the DBT. During the course of contract execution, any float generated due to the efficiencies of either party is not for the sole use of the party generating the float; rather it is a shared commodity to be reasonably used by either party. Efficiencies gained as a result of favorable weather within a calendar month, where the number of days of normally anticipated weather is less than expected, will also contribute to the Project Float. A schedule showing work completing in less time than the contract time, and accepted by the Department, will be considered to have Project Float. Project Float will be a resource available to both the Department and the DBT. No time extensions will be granted nor delay damages paid unless a delay occurs which impacts the project's critical path, consumes all available float and extends the work beyond the Contract Completion Date.
3. Negative Float: Negative float will not be a basis for requesting time extensions. Any extension of time will be addressed in accordance with the Section F. Scheduled completion date(s) that extend beyond the contract (or phase) completion date(s) may be used in computations for assessment of liquidated damages. The use of this computation is not to be construed as an order by the Department to accelerate the project.

**E. Monthly Update Schedule.** A monthly update schedule is a schedule in which only progress is updated from the prior data date to the current data date. Work added and/or excusable delays encountered since the prior data date must be represented as a schedule revision as described in Section F.

1. Update Requirements. On the seventh day of the current month, during the life of the Project, submit an updated schedule and all required information with a data date of the last day of the preceding month. The date for submission and data date may be adjusted to accommodate regularly scheduled progress meetings. Submit the monthly updated bar chart on paper and a copy of the updated schedule in electronic format in Section C.2. The Engineer shall “approve” or “reject” the schedule update within 10 (ten) days of receipt of the updated CPM schedule. The Engineer may withhold estimates if the updated schedule is not submitted as required by this section. For each updated schedule, identify the actual start and finish dates for all completed activities and the actual start date and remaining duration for all activities in progress. Remaining duration and percent complete shall be linked in the schedule options. Provide a written narrative that identifies any changes or shifts in the critical path and submit reasons for the changes or shifts in the critical path. Correct out-of-sequence progress listings generated by the Scheduling Statistics Report on the critical path. Minor logic revisions to correct out-of-sequence progress to non-critical path activities may be made as part of the monthly schedule update. Submit proposed significant changes and/or changes to the critical path in accordance with Section F. The project schedule shall be reviewed at each monthly progress meeting. Any corrections shall be made prior to the next monthly progress meeting.

Submit the following with each updated schedule:

- i. CPM Schedule in Bar Chart Format
- ii. Six Week Look Ahead CPM Schedule in Bar Chart Format
- iii. Logic Diagram (If requested by the Engineer)
- iv. Activity ID Sort (If requested by the Engineer)
- v. Total Float Sort (If requested by the Engineer)
- vi. Detailed Predecessor/Successor Sort (If requested by the Engineer)
- vii. Schedule Statistics Report
- viii. Electronic files (formatted as described above)
- ix. Earned Value Report
- x. A graphical representation (cost curve) of actual work completed vs. planned work

The DBT may submit a statement that there were no changes in the schedule logic, activity durations, or calendars since the previous update in lieu of submission of items iii, iv, v and vi.

2. Early Completion Monthly Update Schedule. An Early Completion Monthly Update Schedule is defined as a monthly update schedule submitted by the DBT in which the Finish Date precedes the Contract Completion Date. If after incorporating necessary revisions in accordance with Section F, the Finish Date precedes the Contract Completion Date by at least the number of days shown Table A the Engineer will initiate a change order amending the Contract Completion Date to the Early Completion Date shown on the accepted Early

Completion Monthly Update. The amended Completion Date will be effective upon execution of that change order and all contract provisions concerning the Completion Date such as incentives, disincentives, excusable delays, compensable delays, and liquidated damages will be measured against the amended Completion Date. The DBT may elect not to execute the change order amending the Completion Date; however, in so doing, the DBT waives its rights to delay damages in meeting the projected early Completion Date and the time between the Early Completion Date and the Contract Completion Date is used as Project Float.

Table A

<u>Original Project Duration</u>	<u># days prior to Contract Completion Date</u>
one year or less	30
one year to two years	60
two years or more	90

3. Late Completion Monthly Update Schedule. A Late Completion Monthly Update Schedule is defined as a monthly update schedule submitted by the DBT in which the Finish Date exceeds the Contract Completion Date. In the event the Finish Date is more than 14 days beyond the current contract completion date and a schedule revision is not warranted, the DBT must proceed in accordance with Section I.

**F. Revisions.** The Work may require and/or the DBT may make revisions to the CPM schedule. Addition of new activities or new calendars or changes to existing activities, calendars or logic constitute a revision. All revisions must be reported in narrative form on a cover sheet accompanying the monthly update schedule. Any revision which modifies the critical path or impacts an interim date or project completion date must be represented on a companion schedule submitted with the monthly update schedule or as a fragmentary network (fragnet) within the monthly update schedule. A fragnet is defined as the sequence of new activities that are proposed to be added to the existing schedule. The fragnet shall identify the predecessors to the new activities and demonstrate the impacts to successor activities. If submitted as a fragnet, the DBT shall compute two Finish Dates. The first Finish Date shall be computed without consideration of any impact by the fragnet. The second Finish Date shall be computed with consideration of any impact by the fragnet. The DBT shall also submit a written narrative stating the reason for the proposed revisions. The Engineer shall “approve” or “reject” proposed revisions within ten days of receipt of appropriate schedules and narrative.

Any revision which modifies activity’s costs shall be submitted with a written narrative stating the reason for the proposed revision. The Engineer shall review and “approve” or “reject” proposed cost revisions.

All approved revisions will be incorporated into the Monthly Update Schedule.

**G. Time Extensions for Delays in Accordance with C&MS 108.06.B and 108.06.D.** The Work may require and/or the DBT may request an extension of the Completion Date. Perform the following analysis to compute the duration of the time extension. Submit two paper copies and two electronic copies of each analysis performed.

1. Determine project progress prior to circumstance(s) necessitating the time extension. The previous accepted monthly update, updated to the date of the circumstance alleging to have caused delay, shall be used to display the prior progress of the project. This schedule is referred to as the Un-impacted Schedule

2. Prepare a fragmentary network (fragnet) depicting the circumstance that is believed to have delayed the project.
3. Insert the fragnet into the Un-impacted Schedule, run the schedule calculations and determine the finish date. This schedule is referred to as the Impacted Schedule.
4. Compare the Impacted Schedule finish date with the Un-impacted Schedule finish date in order to determine the duration of any warranted time extension.

Submit the impacted schedule with the request for time extension to the Engineer for approval. Include a narrative report describing the effects of new activities and relationships to interim and contract completion dates. All approved time extensions will be incorporated into the monthly update with the fragnet used to determine impacts incorporated into the schedule.

**H. Weather Days in Accordance with C&MS 108.06.C.** The DBT may request and/or the Engineer will determine an extension of the completion date due to weather days. Perform the following analysis to compute the duration of the time extension. Submit two paper copies and two electronic copies of each analysis performed.

1. The previously accepted monthly update shall be used to display progress of the project and planned activities for the next 30 day period that incurred weather days. Make a copy of the schedule file to use for the analysis. This schedule is referred to as the Non-weather Schedule.
2. Prepare a list of weather days believed to have delayed the project.
3. Insert the actual weather day(s) into the calendar(s) for the planned work as a non-work day. Remove previously anticipated weather days for the month being evaluated. Run the schedule calculations and determine the finish date. This schedule is referred to as the Weather Schedule.
4. Compare the Weather Schedule finish date with the Non-weather Schedule finish date in order to determine the duration of any warranted time extension.

Submit the weather schedule with the request for time extension to the Engineer for approval on a monthly basis. Include a narrative report describing the effects of weather days to interim and contract completion dates.

**I. Recovery Schedule.** If the Monthly Update Schedule or Revised Monthly Update Schedule projects a finish date for the Project more than 14 calendar days later than the current Completion Date, submit a recovery schedule showing a plan to finish by the current Completion Date if requested by the Engineer. The Department will withhold Estimates until the Engineer approves the recovery schedule. The Engineer will use the schedule to evaluate time extensions and associated costs requested by the DBT. In the event the current Completion Date is in dispute, the recovery schedule will need to be submitted once the dispute has been resolved.



## **PN 108 – MODIFIED - DISPUTE REVIEW BOARD PROCESS**

The Department's Dispute Review Board Process is based upon the partnering approach to construction administration and must be followed by the DBT in order to resolve disputes on the project and seek additional compensation or contract time from the Department.

### **Purpose**

The purpose of the Dispute Review Board (DRB) is to provide special expertise to assist in and facilitate the timely and equitable resolution of disputes and claims. The goal is to avoid delays to the contract work, minimize the expense of settlement, avoid litigation, and promote project partnering. The DRB will render non-binding recommendations on issues brought before them.

### **DRB Membership**

The DRB will consist of three members. One member is selected by the Department and approved by the DBT and one member is selected by the DBT and approved by the Department. These first two members will mutually select and agree on the third member who will complement the design, construction and contract administration experience of the first two members and act as the Chair for all DRB activities. All three members must meet the "Requirements of DRB Members" set forth below.

### **Requirements of DRB Members**

Members of the DRB shall have at least ten years of experience with the type of design and/or construction involved on this project, construction contract administration principles, and dispute resolution training.

Members of the DRB must not show or be perceived as showing partiality to either the DBT or the Department. A DRB member shall not have any conflict of interest which could affect their ability to act in a disinterested and unbiased manner.

A person proposed as a member of the DRB shall submit to the party appointing him/her a resume covering his/her applicable education and experience. The resume shall include a list of all DRBs on which he/she currently serves along with meeting frequencies and his/her hourly rate for professional service as a DRB member. A disclosure statement shall be submitted and include, but not limited by, any of the following categories of relationships or prior involvement in this project:

- A. Any direct or indirect ownership or financial interest in the DBT, any consultant or consulting firm on the project, any subcontractor or supplier on the project or any business of another DRB member.
- B. Current employment by the Department, the DBT, or any consultants or consulting firms on the project.
- C. Current employment by any subcontractor or supplier on the project.
- D. Within the one year period immediately prior to award of the contract, employment by the Department, DBT or the any consultant or consulting firm on the project, any subcontractor or supplier on the project or any business of another DRB member.
- E. A close personal relationship with any key individual in any firm involved in the contract.
- F. A prior involvement in the project of a nature, which might be construed as compromising his/her ability to act impartially in carrying out the duties of the DRB.
- G. A contract as a consultant to the Department or DBT.
- H. A contract as a consultant with any subcontractor or supplier on the project.

Category "A" and "B" relationships listed above shall disqualify a person from serving on the DRB for this project. The other categories listed above will be considered by the Department and the DBT in arriving at their decision as to whether or not to accept a person as a member of the DRB. If a prospective DRB member who discloses a relationship or prior involvement in this project listed in other than category "A" and "B" is considered to be highly qualified and desirable as a DRB member, the Department and the DBT may, by mutual agreement, approve that person to serve as a member on the DRB.

The Department may disqualify a person from serving on future DRBs for Department projects who submits a disclosure statement which fails to provide accurate and complete disclosure of a relationship that prohibits him/her from serving as a member on the DRB for this project or one of the possible conflicts of interest listed above.

Service as a member of other DRBs or as an arbitrator or mediator shall not be construed as employment and therefore will not preclude a person from membership on the DRB for this project.

### **DRB Establishment**

Every attempt shall be made by the Department and the DBT to complete the selection of DRB members and execute the "Dispute Review Board Three-Party Agreement" prior to the date of the preconstruction conference. At a minimum, the following timeframes for establishment of the DRB must be followed.

Within twenty-one (21) calendar days of the signing of the contract, both the Department and DBT shall each obtain a written commitment from their respective members to serve as a DRB member along with the resume, disclosure statement, and hourly rate for professional service as a DRB member. These commitments shall include a clause that requires the first two members to immediately pursue selection of the Chair. Within this same timeframe, the Department and DBT must also give the other party notice of the person they have selected to serve as a DRB member. This notice shall be accompanied by the resume, disclosure statement, and hourly rate for professional service as a DRB member submitted by that person.

Within fourteen (14) calendar days of receiving the notice of selection of a DRB member, the Department and the DBT shall notify the other party in writing as to whether or not the person selected is acceptable. Failure to give this notice within the required timeframe shall be construed to be acceptance of that member.

If a person selected is not acceptable to the other party, the party who selected that person shall within seven (7) calendar days select another person and provide to the other party a notification accompanied by the resume and disclosure statement submitted by that person. Within seven (7) calendar days written notification shall be given as to whether or not the person selected is acceptable. Failure to give this notice within the required timeframe shall be construed to be acceptance of that member.

Once the Department and the DBT have agreed upon the first two members of the DRB they shall immediately notify those members of their approval. Within seven (7) calendar days of this notification, the Department and DBT will each provide the first two members with a list of not less than two (2) potential members from which the Chair will be selected. Within seven (7) calendar days of receipt of the list of potential members, the first two members shall select the Chair ensuring that the Chair meets all the "Requirements of DRB Members" set forth above and give written notice to both the Department and DBT accompanied by that person's resume, disclosure statement, and hourly rate for professional service as a DRB member. In the event of an impasse in selection of the Chair, that member shall be selected by mutual agreement of the Department and DBT.

Immediately after agreement is reached on all members of the DRB, the Department, DBT, and the members of the DRB shall execute the "Dispute Review Board Three Party Agreement" as provided

at the end of this proposal note. The execution of this agreement will not modify the requirements, terms, or conditions of the contract.

### **DRB Member Termination**

If during the life of the contract, a DRB member's status changes in regards to category "A" or "B" categories set forth in the "Requirements for DRB Members" above he/she shall immediately disclose this in writing to both the Department and the DBT. Upon receiving such notification, the Department or the DBT may, within seven (7) calendar days, give notice that this DRB member is no longer acceptable. In no event, shall a DRB member participate in a hearing by the DRB of a dispute or claim involving a firm by which he/she is employed.

Service of a member of the DRB may be terminated at any time with not less than thirty (30) calendar days notice as follows:

- A. The Department may terminate the service of the Department appointed member.
- B. The DBT may terminate the service of the DBT appointed member.
- C. The Chair's service may be terminated only by agreement of the other two members.
- D. Resignation of the member.

### **DRB Member Replacement**

In the event that a vacancy on the DRB occurs, replacement members will be appointed in the same manner as the replaced member was appointed. The selection of a replacement DRB member shall be completed within thirty (30) days of the creation of the vacancy. The "Dispute Review Board Three Party Agreement" shall be amended to reflect the change of a DRB member.

### **DRB Operation and Duties**

The DRB will establish its Operating Procedures for Dispute Resolution. The DRB may elect to adopt the "Dispute Review Board (DRB) Operating Procedures for Dispute Resolution" which can be found on ODOT's website at [http://www.dot.state.oh.us/CONTRACT/construction\\_policy.htm](http://www.dot.state.oh.us/CONTRACT/construction_policy.htm) in its entirety or a modified version thereof.

The members of the DRB will keep current on the progress of this project by: 1) quarterly visits to the project; 2) keeping current files; 3) meetings with other DRB members; and 4) meetings with Department and DBT personnel. The frequency of project visits and meetings and content of members' files shall be as agreed upon among the Department, the DBT, and members of the DRB.

The Chair shall be responsible for arranging and conducting meetings, hearings, mediation sessions, project visits, and drafting DRB recommendations on claims presented to the DRB.

The DRB will not maintain an official transcript of its hearings or deliberations. The DRB members shall discharge their responsibilities impartially and independently considering the facts and conditions related to the matters under consideration and the provisions of the contract.

Should the Department and the DBT mutually agree to terminate a "Dispute Review Board Three Party Agreement," the existing "Dispute Review Board Three Party Agreement" will remain in force until replaced by another fully executed "Dispute Review Board Three Party Agreement."

The DRB will exist for the life of this project only and will not review disputes or claims on any other project unless as otherwise agreed upon by the Department and the DBT. If, after the Department has made final acceptance of the project, there are unresolved disputes and claims remaining, the "Dispute Review Board Three Party Agreement" shall remain active and in full force and effect until the project is otherwise administratively closed by the Department following final payment so that the DRB may continue in operation until all unresolved disputes and claims are resolved.

### **Disputes and Claims**

Disputes include disagreements, matters in question, and differences of opinion between the Department's personnel and the DBT that may include a request for additional money and/or time. Claims are disputes that are not settled through Steps 1 and 2 of the Dispute Review Board Process and for which the DBT has documented costs or time incurred as a result of such disputes.

Disputes and claims by subconsultants, subcontractors and suppliers may be pursued by the DBT on behalf of subconsultants, subcontractors or suppliers. Disputes and claims of subcontractors and suppliers against the DBT will not be reviewed by the Department or DRB. Disputes and claims by subconsultants, subcontractors and suppliers against the Department but not supported by the DBT will not be reviewed by the Department or DRB.

### **Process**

All parties to the dispute must adhere to the Dispute Review Board Process by completing each step before proceeding to the next step.

The DBT must exhaust the Department's Dispute Review Board Process prior to seeking additional compensation or contract time by filing an action in the Ohio Court of Claims. The following procedures do not compromise the DBT's right to seek relief in the Ohio Court of Claims.

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

### **Continuation of Work.**

The DBT shall continue with all Work, including that which is in dispute. The Department will continue to pay for Work.

### **Step 1 (On-Site Determination).**

The Engineer and Area Engineer shall meet with the Project Manager within two (2) working days of receipt of the DBT Written Early Notice set forth in 104.05. They shall review all pertinent information and contract provisions and negotiate in an effort to reach a resolution according to the Contract Documents. The Engineer or Area Engineer will issue a written decision of Step 1 within fourteen (14) calendar days of the meeting. If the dispute is not resolved, the DBT must either abandon or escalate the dispute to Step 2.

### **Step 2 (District Dispute Resolution Committee).**

Within seven (7) calendar days of receipt of the Step 1 decision, the DBT must submit a written request for a Step 2 meeting to the District Construction Engineer (DCE). The DCE will assign the dispute a dispute number. The dispute number will consist of the District number, followed by a hyphen, the project number, followed by a hyphen and then the number of disputes on this project that this dispute represents. Within fourteen (14) calendar days of receipt of the request for a Step 2 meeting, the DBT shall submit the Dispute Documentation as follows:

1. The DBT shall submit three (3) complete copies of the documentation of the dispute to the DCE.
2. The Dispute Documentation shall be identified on a cover page by county, project number, DBT name, subconsultant, subcontractor or supplier if involved in the dispute, and dispute number.
3. The Dispute Documentation shall be an original document that clearly and in detail gives the required information for each item of additional compensation and time extension requested.
4. A narrative of the disputed work or project circumstance at issue. This section must include the dates of the disputed work and the date of early notice.
5. References to the applicable provisions of the plans, specifications, proposal, or other contract documents. Copies of the cited provisions shall be included in the Dispute Documentation.
6. The dollar amount of additional compensation and length of contract time extension being requested.

7. The cost and supporting documents that served as the basis for the requested compensation stated in number six (6) above.
8. A detailed schedule analysis must be included in the Dispute Documentation for any dispute concerning additional contract time, actual or constructive acceleration, or delay damages. At a minimum, the schedule analysis must include the Schedule Update immediately preceding the occurrence of the circumstance alleged to have caused delay and must comport with accepted industry practices. Failure to submit the required schedule analysis will result in the denial of that portion of the DBT's request.
9. Copies of relevant correspondence and other pertinent documents.

Each District shall establish a District Dispute Resolution Committee (DDRC) which shall be responsible for hearing and deciding disputes at the Step 2 level. The DDRC shall consist of the District Deputy Director, District Production Administrator and District Construction Engineer or designees (other than the project personnel involved).

To prepare for the DDRC meeting, the DCE will create a file on the dispute and assign a person to review and manage the dispute. This manager will advise the Division of Construction Management on the status of the dispute.

The DDRC shall meet with personnel from the DBT's headquarters and consider the dispute within fourteen (14) calendar days of receipt of the DBT's Dispute Documentation. The DDRC will issue a written decision of Step 2 within fourteen (14) calendar days of the meeting. If the dispute is not resolved, the DBT must either abandon or appeal to the DRB as outlined below.

The Department's and DBT's personnel shall not contact the DRB until a decision has been issued by the DDRC.

**Step 3 (Appeal to DRB).**

Within fourteen (14) calendar days of receipt of the Step 2 decision, the DBT must submit a written *Notice of Intent to Appeal to the DRB* to the Chair of the DRB. This notice shall state the DBT's request for a DRB hearing. The DBT must also submit copies of this notice to the DCE and Deputy Director of the Division of Construction Management.

The dispute becomes a claim when the Chair of the DRB receives the *Notice of Intent to Appeal to the DRB*.

The DRB will not consider a claim until the DDRC has properly reviewed the dispute and issued a decision.

The Operating Procedures for Dispute Resolution established by the DRB will set forth the Step 3 (Appeal to DRB) process in detail. At a minimum, these procedures will establish both the requirements and timeframes for documentation submissions by both the DBT and Department, documentation exchange between the DBT and Department, and the hearing procedures.

The DBT shall submit its Claim Documentation in accordance with the DRB's Operating Procedures for Dispute Resolution. In addition to the documentation submitted at Step 2, the narrative shall be enhanced to include sufficient description and information to enable understanding by a third party who has no knowledge of the dispute or familiarity with the project. This documentation must also include a discussion of the efforts taken to partner the dispute. The DRB may also require additional information be included in the DBT's Claim Documentation.

When submitting the Claim Documentation, the DBT must certify the claim in writing and under oath. Such certification shall attest to the following:

1. The claim is made in good faith.

2. To the best of the DBT's knowledge, all data offered to support the claim is accurate and complete.
3. The claim amount accurately reflects the DBT's actual incurred costs and additional time impacts.

This claim certification shall also be notarized pursuant to the laws of the State of Ohio.

The following is an example of the correct form for a claim certification:

(The DBT) certifies that this claim is made in good faith, that all supporting data is accurate and complete to the best of (the DBT's) knowledge and belief, and that the claim amount accurately reflects the contract amendment for which (the DBT) believes the Department is liable.

(The DBT)  
By: \_\_\_\_\_  
(Name and Title)

Date of Execution: \_\_\_\_\_

In accordance with the DRB's Operating Procedures for Dispute Resolution, the District will be instructed to submit its Claim Documentation in response to the DBT's Claim Documentation. At a minimum, the District's Claim Documentation must include:

1. A narrative of the disputed work or project circumstance at issue with sufficient description and information to enable understanding by a third party who has no knowledge of the dispute or familiarity with the project. This section must include the dates of the disputed work and the date of early notice. The narrative must also discuss the efforts taken to partner the dispute.
2. References to the applicable provisions of the plans, specifications, proposal, or other contract documents. Copies of the cited provisions shall be included in the claim document.
3. Response to each argument set forth by the DBT.
4. Any counterclaims, accompanied by supporting documentation, the District wishes to assert.
5. Copies of relevant correspondence and other pertinent documents.

The DRB may also require additional information be included in the District's Claim Documentation.

In the event of multiple claims, the DRB may order that they be considered in a single hearing. The DRB may hold this hearing after the completion of the project or until such time that it is assured that all disputes on the project have been processed through Steps 1 and 2 of the Dispute Review Board Process and these issues are before the DRB.

The DRB will hear the entire claim. The DRB will hear oral presentations from both sides. The DRB may, on its own initiative, request information of the DBT or the Department in addition to that submitted for the hearing. If either party fails to reasonably comply with such request, the DRB may render its recommendation without such information.

Upon completion of the hearing and consideration of any additional information submitted upon request, the DRB will render its written recommendation within fourteen (14) calendar days of the hearing. The recommendation of the DRB shall be by majority vote. The recommendation shall be a well-reasoned decision which, at a minimum, shall include findings of fact and a conclusion that

provides clear direction to the parties. The Chair must submit copies of the recommendation to the DBT, DCE and Deputy Director of the Division of Construction Management

Within three (3) days of receipt of the recommendation, either party may request a meeting of the DRB the express purpose of which will be to hear the DRB's explanation of the recommendation. Within seven (7) days of this request, the Chair shall conduct this meeting with both the Department and the DBT.

Within twenty-one (21) calendar days of receipt of the recommendation, the DBT must indicate its intentions in writing to the Department and the Chair in regards to the recommendation. Simultaneously, the Director or designee will determine the Department's intentions in regards to the recommendation. This determination will be issued in writing to the DBT and the Chair within twenty-one (21) calendar days of receipt of the recommendation.

Either the Department or the DBT may appeal a recommendation to the DRB for reconsideration. However, reconsideration will only be allowed when there is new evidence to present.

The recommendation of the DRB is the final step of the Department's Dispute Review Board Process and may not be appealed within the Department. The DRB is not bound by any offers of settlement or findings of entitlement made during Steps 1 and 2 of the Dispute Review Board Process.

**Interest on Claims.**

The Department shall pay interest on any amount found due on a claim, which is not paid within 30 days of the Department's receipt of the certified claim and in accordance with ORC 5703.47.

**Binding Arbitration (Optional).**

In lieu of the DRB hearing the DBT may request that the claim proceed through binding arbitration. The Department may agree to binding arbitration as defined by ORC 5525.23 in the manner in which this method is practiced by the Department and allowed by law. At its discretion, the Department may decline the DBT's request.

ODOT's Claims Coordinator will coordinate the agreement of the parties to the binding arbitration method and the selection of a neutral third party or technical expert. The fees of the neutral third party or technical expert will be shared equally. The Claims Coordinator will obtain a written agreement, signed by both parties, that establishes the binding arbitration process. Subject to the requirements of ORC 5525.23, the neutral third party or technical expert will assume complete control of the claim upon execution of the binding arbitration agreement.

**Advisory Recommendation Process (Optional)**

1. Objective

To more fully allow the DRB to act in an advisory capacity to assist the Department and the DBT in resolving selected disputes, the Advisory Recommendation Process may be used to provide the parties with a preliminary assessment of the merits of each party's position in the dispute based upon the information presented pursuant to this process. The process is meant to be expedient, shall be primarily oral, and will not prejudice a future formal DRB hearing of the dispute.

The Advisory Recommendation Process is not to be substituted for the good faith negotiation efforts. Rather, the Advisory Recommendation Process should be utilized when negotiations have reached a temporary impasse.

2. Identification of Disputes

A dispute may be identified as a candidate for an Advisory Recommendation by the Department, the DBT, the DRB, or any combination of the above.

3. Concurrence of Both Department and DBT

Both the Department and the DBT must concur that the dispute is appropriate for the Advisory Recommendation Process; else, the dispute must proceed through the Dispute Review Board process as set forth in Proposal Note 108.

4. Pre-meeting Submittals to the DRB

The DRB will decide the nature of the submissions that it wishes the parties to make, on a case-by-case basis. At a minimum, the DRB will require submission to all parties of brief position papers (1 to 2 pages) plus copies of relevant specification sections, plans, notes, drawings, and other pertinent Contract and /or Project related documentation. The submission will be made at least fifteen (15) days prior to the next quarterly meeting unless the parties agree to alter the time frames.

5. Scheduling of Advisory Recommendation Meetings

In most cases, the dispute will be scheduled for presentation to the DRB at the DRB's next regularly scheduled meeting. If the parties agree and the schedules permit, a dispute may be heard during the period between the regularly scheduled meetings, in which case, a meeting will be scheduled at a time and location convenient to the parties and the DRB.

6. Conduct of Meetings

The DBT will make its presentation first, followed by the Department. Each party will be allowed sufficient time to make a thorough oral presentation, make rebuttals, provide the DRB with relevant documentation and respond to the DRB's queries and requests.

After receiving all relevant information, the DRB members will, at their discretion, privately caucus to discuss their assessment of the dispute. Either that same day or the next, the DRB will orally share and discuss with the parties its assessment and recommendations with respect to the dispute. The Advisory Recommendation shall not be binding on either party or on the DRB and does not require either party to accept or reject it. The recommendation does not prejudice the opportunity for a Step 3 hearing if the dispute is not resolved. If the dispute is presented to the DRB formally at a later date, pursuant to the Proposal Note 108 process, the DRB will focus anew upon the facts of the dispute as presented at that time, without reference to the Advisory Recommendation meeting.

7. Resolution

The Advisory Recommendation of the DRB will be used by the parties at any time after Step 1 of the Dispute Review Board Process. If the parties remain unable to resolve the dispute following the Advisory Recommendation Process, the dispute may proceed in accordance with the next level of Proposal Note 108 process and the requirements of the DRB approved Operating Procedures.

**Basis of Payment**

The Department will furnish the following item with an amount in the Proposal:

<b>Item</b>	<b>Unit</b>	<b>Description</b>
-------------	-------------	--------------------





The Scope of Work of the **DRB** includes, but is not limited to, the following items of work:

A. Operating Procedures for Dispute Resolution

Upon execution of the **AGREEMENT**, the **DRB** shall establish Operating Procedures that will govern the conduct of its business based on the Dispute Review Board (DRB) Guidelines which can be found on ODOT's website at <http://www.dot.state.oh.us/Divisions/ConstructionMgt/Pages/DisputesandClaims.aspx>. The **DRB** may elect to adopt the "Dispute Review Board Operating Procedures for Dispute Resolution" which can be found on the same website in its entirety or a modified version thereof. At a minimum, these procedures will establish both the requirements and timeframes for documentation submissions by both the **DBT** and **DEPARTMENT**, documentation exchange between the **DBT** and **DEPARTMENT**, and the hearing procedures. The members of the **DRB** will keep current on the progress of this project by: 1) quarterly visits to the project; 2) keeping current files; 3) meetings with other **DRB** member; and 4) meetings with **DEPARTMENT** and **DBT** personnel. The frequency of project visits and meetings and content of members' files shall be as agreed upon among the **DEPARTMENT**, **DBT**, and members of the **DRB**.

Upon receipt by the **DRB** of a written *Notice of Intent to Appeal to the DRB* of a dispute, from either the **DBT** or the **DEPARTMENT**, the **DRB** shall convene to review and consider the appeal. The time and location of **DRB** meetings shall be determined by the **DRB** with reasonable notice to the **DEPARTMENT** and **DBT**. Both the **DEPARTMENT** and **DBT** shall be given the opportunity to present their evidence at these meetings. It is expressly understood that the **DRB** members are to act impartially and independently in the consideration of the contract provisions, and the facts and conditions surrounding any written appeal presented by the **DEPARTMENT** or the **DBT**, and that the recommendations concerning any such appeal are advisory. The **DRB** recommendations, resulting from their consideration of a dispute or claim, shall be furnished to the **DEPARTMENT** and to the **DBT** in accordance with the process set forth in the Dispute Review Board Process Proposal Note. The recommendations shall be based on the pertinent contract provisions and the facts and circumstances involved in the dispute.

Either the **DEPARTMENT** or the **DBT** may appeal a recommendation to the **DRB** for reconsideration. However, reconsideration will only be allowed when there is new factual evidence to present.

B. **DRB** Member Replacement

Should the need arise to appoint a replacement **DRB** member, the replacement **DRB** member shall be appointed in the same manner as the original **DRB** members were appointed. The selection of a replacement **DRB** member shall begin promptly upon notification of the necessity for a replacement and shall be completed within 30 calendar days. The **AGREEMENT** shall be amended to indicate a change in **DRB** membership.

III. **DEPARTMENT RESPONSIBILITIES**

The **DEPARTMENT** shall furnish the following services and items:

A. Contract Related Documents:

The **DEPARTMENT** shall furnish the **DRB** three copies of the contract for project (3000-11), change orders, written instructions issued by the **DEPARTMENT** to the **DBT**, or other documents pertinent to the performance and therefore, necessary for the **DRB** to perform their function.

B. Coordination and Services:

The **DEPARTMENT's** Engineer for the (3000-11) project will, in cooperation with the **DBT**, coordinate the operations of the **DRB**. The **DEPARTMENT**, through the Engineer, will arrange or provide conference facilities at or near the contract site and provide secretarial and copying services.

C. Dispute Resolution Documents:

1. The **DEPARTMENT** shall cooperate with the **DBT** to jointly create a Common Support Document Appendix for each claim that is to be heard by the **DRB**. This Appendix shall include all reference documents (applicable plans sheets, specification references, sketches or drawings, etc.) common to both the **DEPARTMENT'S** and the **DBT'S** dispute resolution submittal. The **DEPARTMENT** will be responsible for producing 5 copies of this document for the first claim (one copy for each **DRB** member, the **DEPARTMENT** and the **DBT**). The **DBT** will be responsible for producing 5 copies of this document for the second claim. The responsibility will continue to alternate with subsequent claims, if necessary.
2. The **DEPARTMENT** shall furnish to each **DRB** member, one copy of all pertinent documents not included in the Common Support Document Appendix, which are or may become necessary for the **DRB** to perform their function. Pertinent documents are any documents substantiating or justifying the **DEPARTMENT'S** position. A copy of such pertinent documents must also be furnished to the **DBT**.

Except for its participation in the **DRB's** activities as provided in the contract and in this **AGREEMENT**, the **DEPARTMENT** will not solicit advice or consultation from the **DRB** or any of its members on matters dealing in any way with the project, the conduct of the work, or resolution of problems.

**IV. DBT RESPONSIBILITY**

The **DBT** shall furnish the following items:

A. Contract Related Documents:

The **DBT** shall furnish each member of the **DRB** a copy of the progress schedule and updates and any other **DBT** -generated documents pertinent to the performance and therefore, necessary for the **DRB** to perform their function.

B. Dispute Resolution Documents:

1. The **DBT** shall cooperate with the **DEPARTMENT** to jointly create a Common Support Document Appendix for each claim that is heard by the **DRB**. This Appendix shall include all reference documents (applicable plans sheets, specifications, sketches or drawings, etc.) common to both the **DBT'S** and the **DEPARTMENT'S** dispute resolution submittal. The **DEPARTMENT** will be responsible for producing 5 copies of this document for the first claim (one copy for each **DRB** member, the **DEPARTMENT** and the **DBT**). The **DBT** will be responsible for producing 5 copies of this document for the second claim. The responsibility will continue to alternate with subsequent claims, if necessary.
2. The **DBT** shall furnish to each **DRB** member, one copy of all pertinent documents not included in the Common Support Document Appendix, which are or may become necessary for the **DRB** to perform their function. Pertinent documents are any documents which are used in the performance of the work or in justifying or substantiating the **DBT'S** position. A copy of such pertinent documents must also be furnished to the **DEPARTMENT**.

Except for its participation in the **DRB's** activities as provided in the contract and in this **AGREEMENT**, the **DBT** will not solicit advice or consultation from the **DRB** or any of its members on matters dealing in any way with the project, the conduct of the work, or resolution of problems.

**V. DURATION OF DRB**

The **DRB** will exist for the life of the (3000-11) project only and will not review disputes or claims on any other project unless as otherwise agreed upon by the **DEPARTMENT** and the **DBT**. If, after the **DEPARTMENT** has made final acceptance of the project, there are unresolved disputes and claims remaining, the **AGREEMENT** shall remain active and in full force and effect until the project is otherwise administratively closed by the **DEPARTMENT** following final payment so that the **DRB** may continue in operation until all unresolved disputes and claims are resolved.

## VI. COMPENSATION

### A. Compensation Allowed

#### 1. **DEPARTMENT** and **DBT** Members' Fees

**DEPARTMENT** and **DBT** Members shall be paid at the hourly rates of \$\_\_\_\_\_ and \$\_\_\_\_\_ respectively for professional services and also shall be paid for travel expenses incurred in accordance with the Ohio Office of Budget and Management Travel Policy as published on the State of Ohio website (<http://obm.ohio.gov/MiscPages/TravelRule/>).

#### 2. **CHAIR's** Fee

The Chair shall be paid at the hourly rate of \$\_\_\_\_\_ for professional services and also shall be paid for travel expenses incurred in accordance with the Ohio Office of Budget and Management Travel Policy as published on the State of Ohio website (<http://obm.ohio.gov/MiscPages/TravelRule/>).

### B. Payment

#### 1. Submission for Compensation

The **CHAIR** shall submit to the **DBT**, monthly, each member's billable time and travel expenses, and required supporting documentation.

#### 2. Member Compensation

After review and verification by the **DBT** and **DEPARTMENT** of the members' submission for compensation, the **DBT** shall pay each member their earned fees.

#### 3. **DBT** Reimbursement

The **DEPARTMENT** will reimburse the **DBT** for the **DEPARTMENT'S** share of actual invoice costs of the members under the Lump Sum Item Special - Dispute Review Board. The Department will not pay a percent mark up on these costs. The Department will make partial payments according to C&MS 109.09.

## VII. ASSIGNMENT OF TASKS OF WORK

The **DRB** members shall not assign any of the work of this **AGREEMENT**.

## VIII. CONFLICT

The members of the **DRB** agree individually that they do not have any direct or indirect ownership or financial interest in the **DBT**, any consultant or consulting firm on the project, any subcontractor or supplier on the project or any business of another **DRB** member. The members of the **DRB** agree individually that they are not currently employed by the **DEPARTMENT**, the **DBT**, or any consultants or consulting firms on the project. Service as a member of other **DRB's** or as an arbitrator or mediator shall not be construed to be employment. The members of the **DRB**, the **DEPARTMENT**, and the **DBT** agree that during the life of the contract, no unilateral discussion will be had or agreement will be made between any **DRB** member and any party to this **AGREEMENT** for employment after the contract is completed.

In the event that a **DRB** member's status changes in regards to the aforementioned areas of conflict, the members of the **DRB** agree individually to immediately disclose this in writing to both the **DEPARTMENT** and the **DBT**. Upon receiving such notification, the **DEPARTMENT** or the **DBT** may, within seven (7) calendar days, give notice that this **DRB** member is no longer acceptable. In no event, shall a **DRB** member participate in a hearing by the **DRB** of a dispute or claim involving a firm by which he/she is employed.

**IX. TERMINATION OF AGREEMENT**

The parties to this **AGREEMENT** mutually agree that this **AGREEMENT** may be terminated at any time by either party upon not less than a thirty (30) calendar day written notice to the other parties. In the event the **AGREEMENT** is terminated the Proposal Note 109, Dispute Resolution and Administrative Claims Process that was in affect at the time of the bidding of this project will immediately become effective. All disputes in Step 1 or Step 2 of this PN108 Note will continue as in Step 1 or Step 2 as described by the PN 109 Note. Any claims in Step 3, to be heard by the **DRB**, will instead be heard by the Director's Claims Board.

**DRB** members may withdraw from the **DRB** by providing 30 day notice. **DRB** members may be terminated for cause only by their original appointing authority, therefore, the **DEPARTMENT** may only terminate the **DEPARTMENT** appointed member, the **DBT** may only terminate the **DBT** appointed member, and the first two members must agree to terminate the **CHAIR**.

**X. LEGAL RELATIONS**

The parties hereto mutually understand and agree that the **DRB** member in the performance of duties on the **DRB**, is acting in the capacity of an independent agent and not as an employee of either the **DEPARTMENT** or the **DBT** and accordingly, no party to this **AGREEMENT** shall bear a greater responsibility for damages or personal injury than is normally provided by Federal and Ohio Law.

The parties expressly agree that each DRB member is acting in a capacity intended to facilitate resolution of disputes. The DEPARTMENT and the **DBT** further agree that neither of them will seek nor require the testimony or production of documents and/or records from the DRB members in any administrative, judicial or other proceeding.

**XI. FEDERAL REVIEW**

The Federal Highway Administration shall be informed of the work of the **DRB** and shall have the right to attend any meeting or hearing of the **DRB**.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the day and year first above written.

**DRB MEMBER**

**DRB MEMBER**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**CHAIR**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**DBT**

**OHIO DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to Form Only this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Assistant Attorney General

## PN 110 - MODIFIED - ESCROW BID DOCUMENTS

1. **Scope and Purpose.** The purpose of this note is to preserve the DBT's, including DB Designers and subdesigners, DB DBTs and subcontractors, Bid Documents for use by the parties in the settlement of disputes and claims.

The Department will not use Escrow Documents to assess the DBT's qualifications for performing the Work. Unless otherwise indicated in the bidding documents, the Escrow Documents are, and will always remain, the property of the DBT, subject to joint review by the Department and DBT, as provided below.

Escrow Documents consist of one copy of all documents generated in preparation of the Technical and Price Proposals. This includes handwritten notes, records of phone conversations and phone quotes, letters, faxes, emails both printed and electronically archived, formal quotations, calculations (including design and quantity calculations), work sheets, design details, conceptual progress schedules, marked up plan sheets, and any other paper or electronic record of how the Work was originally bid by the DBT. These documents will be held in escrow for the duration of the Contract. These documents can be scanned in an electronic (TIF or PDF) format acceptable to the Department.

2. **Submittal.** All bidders shall submit their Bid Documents for purposes of escrow by 4:00 p.m. in the Office of Contracts at 1980 West Broad Street, Columbus, Ohio within seven (7) business days after the Technical and Price Proposal submission. The Escrow Documents shall be submitted in a sealed container containing only the Escrow Documents. Clearly mark the container with the DBT's name, date of submittal, project name and number, and the words "Escrow Documents."

Submittal shall be in accordance with this note. Failure of a bidder to submit their Bid Documents for purposes of escrow in a timely manner as defined above will result in a determination by the Department that the bid submitted by that particular bidder is non-responsive and ineligible for award.

3. **Stipulations and Acknowledgements.** Unless otherwise indicated in the bidding documents, the Department stipulates and expressly acknowledges that the Escrow Documents constitute proprietary information. This acknowledgement is based on the Department's expressed understanding that the information contained in the Escrow Documents is not known outside the DBT's business, is known only to a limited extent and by a limited number of the DBT's employees, and is safeguarded while in the DBT's possession. The Department further acknowledges that the Escrow Documents and the information they contain are provided for the joint use of the DBT and the Department.

The DBT agrees, as a requirement of the Contract, that the Escrow Documents constitute all the information used in the preparation of the Bid, and that no other Bid preparation information will be considered in the resolution of disputes and claims. The DBT also agrees that nothing in the Escrow Documentation shall change or modify the terms or conditions of the Contract Documents.

The Department further agrees to safeguard the Escrow Documents, and all information they contain, against disclosure to the fullest extent permitted by law.

4. **Format and Contents.** The DBT may submit Escrow Documents in their usual cost estimating format. It is not the intention of this subsection to cause the DBT to expend additional effort during Technical and Price Proposal preparation, but to ensure that the Escrow Documents are adequate to enable complete understanding and proper interpretation for their intended use.

Ensure that the Escrow Documents clearly itemize the estimated costs of performing the Work. Separate contract items into such items necessary to present a complete and detailed estimate of all costs; which include costs of design work. Detail the plant, equipment, material, and indirect costs in the DBT's usual format. Ensure that the allocation of contingencies, mark ups, and other items are identified for each contract item.

Identify all elements of pricing developed solely based on experience or market factors, and for which a detailed cost estimate does not exist.

Identify all costs. For contract items amounting to less than \$10,000, the DBT may provide estimated costs without a detailed cost estimate.

Ensure that the Escrow Documents include all quantity take-offs, calculations of rates of production and progress, copies of quotes from subcontractors and suppliers, memoranda, narratives, add/deduct sheets, and all other information used by the DBT to arrive at the prices contained in the Price Proposal.

5. **Late Revisions.** If the itemized cost breakdowns and allocations described elsewhere are not revised to reflect the final Bid prices, then submit information reconciling the Bid preparation documents and the Bid unit prices. Consider this reconciliation as a part of the Escrow Documents and include in the submittal.
6. **Storage.** The Department will acknowledge receipt of the Escrow Documents and place the Escrow Documents in an institution in Columbus, Ohio that is mutually agreed upon by both the DBT and the Department for the life of the Contract. The Department will pay the cost of storage.
7. **Examination.** The Department, the DBT, and when necessary, the applicable subcontractors/subconsultants will examine the Escrow Documents, at any time deemed necessary by either the Department or the DBT, to assist in the negotiation of the settlement of disputes and claims; ensure that subcontractors/subconsultants are present if and when they are presenting a claim through the DBT or when information is needed. The DBT, applicable subcontractors/subconsultants, and the Department will be present to review the Escrowed Documents.

Examination of the Escrow Documents is subject to the following conditions:

- a. The Escrow Documents are proprietary and confidential.
  - b. Access to the documents will take place only in the presence of authorized representatives from the Department, DBT, and the applicable subcontractors/subconsultants.
  - c. The DBT shall designate, in writing, the personnel from within the DBT's organization who are authorized to examine the Escrow Documents. Submit this designation with the Escrow Documents. The Director or the designees may examine the Escrowed Documents.
8. **Final Disposition.** The Department will return the Escrow Documents to the DBT after completion of the Contract and after all disputes and claims have been settled.

**9. Escrow Agreement for Contract Bid Documents.** The following Escrow Agreement shall be executed within ten (10) days after award of the Contract.

THIS AGREEMENT is made and entered into this \_\_\_<sup>th</sup> day of Month, \_\_\_\_\_, by and among the Ohio Department of Transportation, an agency of the State of Ohio, hereinafter called the "Department", \_\_\_\_\_ the Design Build Team (DBT), and the \_\_\_\_\_, hereinafter called the "Escrow Agent".

WHEREAS, the Department and DBT entered into that certain contract dated \_\_\_\_\_, hereinafter called the "Contract", for the design and construction of Project Number \_\_\_\_\_, pursuant to which the DBT shall cause the work therein to be performed; and

WHEREAS, the Department and DBT are desirous of entering into an Escrow Agreement, to provide for specific contingencies governing the escrow and control of contract bid documentation; hereinafter called "Bid Documents"; and

WHEREAS, the Department and DBT desire the Escrow Agent to hold the Bid Documents of the DBT;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, it is agreed by and between the parties hereto that:

**ARTICLE I - Contract Escrow Bid Documentation**

The parties hereto agree to the establishment of Escrow of the Bid Documents for the contract pursuant to the Department's specifications pertaining to construction under the contract. It is the understanding of the parties hereto that the Department shall pay the Escrow Agent, as determined by separate agreement, for the escrow of the Bid Documents submitted to the Escrow Agent under the terms of this Agreement.

**ARTICLE II - Acknowledgment**

By its signature below, the Escrow Agent hereby acknowledges receipt from the Department and DBT of a sealed container bearing the DBT's name, address and Contract Project Number assigned by the Department and containing the Bid Documents.

**ARTICLE III - Deposit of Bid Documents**

The Bid Documents shall remain on deposit with the Escrow Agent until those conditions of release, as specified in Article IV "Release from Escrow", are met. As long as the Bid Documents remain in escrow with the Escrow Agent, the Escrow Agent shall not allow any person access, to gain possession, or to in any way interfere with the sealed Bid Document container.

**ARTICLE IV - Release from Escrow**

Upon being presented, by the Department, with documentation that the Final Estimate for the Contract has been paid to the DBT, the Escrow Agent shall deliver to the DBT the sealed container bearing the DBT's name, address and Contract Project Number on it. The Escrow Agent is also authorized to release the Bid Document sealed container to the Department without the DBT's signed consent subject to the following conditions:



- \* The DBT has provided written notification to the Department of the DBT's intention to file a claim related to the Contract; or
- \* The DBT has initiated litigation against the Department relating to the Contract.

Prior to any release from escrow to the Department, the Escrow Agent shall verify that either condition of release to the Department, as stated above, has been met by providing written notice to the DBT of the Escrow Agent's intention to release the Bid Documents to the Department. Such written notice from the Escrow Agent shall be sent by overnight mail no less than ten (10) calendar days prior to release to the Department. Further, the written notice shall recite a date and time certain when the escrow documents will be released to the Department. The DBT may be present at the time of release and also while the Department reviews the documents. Upon any release from escrow of the Bid Document container, the Escrow Agent shall cause the execution of Exhibit A, "ESCROW RELEASE for Contract Bid Documents," as attached hereto and incorporate herein as if fully contained, by the party receiving the Bid Document container.

#### **ARTICLE V - Indemnity**

The DBT agrees to indemnify and hold the Escrow Agent harmless against any loss, claim, damage, liability or expenses incurred in connection with any action, suit, proceeding, claim or alleged liability arising from this Escrow Agreement, provided, however, that the Escrow Agent shall not be so indemnified or held harmless for its negligence or acts of bad faith by it or any of its agents or employees.

The Escrow Agent shall have no responsibility as to the genuineness of the signature or the validity of any document deposited in the escrow, nor as to the legal capacity or identity of the parties to this escrow, and the Escrow Agent shall be justified in every act, omission or forbearance in reliance upon the Escrow Agreement so long as and to the extent that it shall act or have acted in good faith.

All of the terms and conditions in connection with the Escrow Agent's duties and responsibilities, and the rights of the undersigned parties are contained in the Escrow Agreement. The **Escrow Agent** is not required to be familiar with the provisions of any other instrument or agreement and shall not be charged with any responsibility or liability in connection with the observance or non-observance, by any person, of the provisions of any other such instrument or agreement.

The Escrow Agent shall not be responsible for the determination of any facts or conditions on which the parties may give notice, but the Escrow Agent may rely solely on the notice received from the parties as to the existence of such facts or conditions.

The Escrow Agent may act or refrain from acting in respect of any matter referred to in the Escrow Agreement or additional instructions received in the performance of its duties in full reliance upon the advice of counsel which may be selected by it, and shall be fully protected in so acting or refraining from acting upon the advice of such counsel.

The Escrow Agent may obey and comply with any order or process of a court (whether or not such court shall have jurisdiction) commanding it to do or to refrain from some act in relation to the subject matter of this escrow. It may rely and continue to rely conclusively upon such orders or process, notwithstanding that it may found subsequently to be void or voidable, until one of the Officers of the Escrow Agent, shall have actual knowledge that such order or process shall have been modified, annulled, set aside, vacated or quashed.

#### **ARTICLE VI - Notices**

All notices and other communication shall be in writing and shall be deemed to have been duly given and delivered if mailed by certified mail, return receipt requested, postage prepaid to the addresses stated herein:

**Department:**

The Ohio Department of Transportation  
Jolene Molitoris, Director  
1980 West Broad Street  
Columbus, Ohio 43223

**DBT:**

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

**Escrow Agent:**

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

**ARTICLE VII - Duties of Escrow Agent**

The duties and responsibilities of the Escrow Agent shall be limited to those expressly set forth herein and the Escrow Agent shall act only in accordance with this Escrow Agreement. Notwithstanding specific provisions hereunder, the Escrow Agent shall at all times act upon and in accordance with the joint written instructions of the Department and DBT.

**ARTICLE VIII - Laws**

This Escrow Agreement shall be deemed to have been executed in Franklin County, Ohio and the laws of the State of Ohio shall apply.

**ARTICLE IX - Assignment**

This Escrow Agreement shall not be assigned without the written consent of all the parties hereto.

**ARTICLE X - Survival of Contract**

Except as may be expressly modified, all terms and conditions of this Escrow Agreement remain in full force and effect. The establishment of this Escrow Agreement is limited solely by the contingency of release of the Bid Documents by the DBT to the Department, as established by Article IV, Release from Escrow. Nothing contained herein shall alter the rights of the parties hereto.

The covenants herein contained shall, except as otherwise provided, accrue to the benefit of and be binding upon the successors and assigns of the parties hereto.

In witness whereof, the parties have hereunto set their hands and seals the day above first written.

**The DBT:**

By: \_\_\_\_\_

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Date)

**The Ohio Department of Transportation:**

By: \_\_\_\_\_

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Date)

\_\_\_\_\_ **(Escrow Agent):**

By: \_\_\_\_\_

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Date)

**EXHIBIT A - ESCROW RELEASE for Contract Bid Documents**

This is to certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the sealed container identified as:

**Bid Documentation**

**DBT:** \_\_\_\_\_

\_\_\_\_\_  
(Address)

**Contract Project Number:** \_\_\_\_\_

**Date of Submittal:** \_\_\_\_\_

**(Evidence by Agreement dated \_\_\_\_\_),**

was released from escrow and personally handed to the below name individual acknowledging receipt, representing the DBT/Department, by the Escrow Agent upon the presentation of the required documentation pursuant to Article IV, Release from Escrow, of that agreement dated \_\_\_\_\_, 20\_\_\_\_, a copy of such documentation is attached hereto.

**Acknowledgment of Receipt:**

\_\_\_\_\_

**Acknowledgment of Release:**

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(Escrow Agent)

**PN-136 - MODIFIED - REVISIONS TO THE 2010 C&MS FOR VALUE BASED DESIGN BUILD PROJECTS**

**101.01**

On page 1, **Add** the following: NOTE:

The fact that the bid items for this Design-Build project are general rather than specific shall not relieve the **DBT** of the requirement that all work performed and all materials furnished shall be in reasonable close conformity with the specifications as defined in 105.03. The **DBT's** Consultant shall reference in the plans the appropriate Construction and Materials Specifications for all work to be performed and all materials to be furnished.

**101.02 Abbreviations**

On page 5, **Add** to the end of the abbreviation list the following new abbreviations:

ATC = Alternative Technical Concept  
DB = Design Build  
DBT = Design Build Team  
RFP = Request for Proposal  
RFQ = Request for Qualifications  
SOQ = Statement of Qualifications

**101.03 Definitions**

On pages 5 thru 10, **Replace section 101.03 Definitions** with the following new section 101.03 Definitions:

**101.03 Definitions.** The following terms or pronouns, when used in the Contract Documents, are defined as follows:

**Advertisement.** The public announcement, as required by law, inviting Bids for Work to be performed or materials to be furnished.

**Alternative Technical Concept.** A change to the Project Scope which provides a solution that is equal to or better than what is required by the scope as determined by the Department. The use of Alternative Technical Concepts allows for innovation, flexibility, time reductions and cost savings to ultimately obtain the best value for the public.

**Award.** The written acceptance by the Director of a Bid.

**Basic Configuration.** The Project Scope in its entirety and elements of the Conceptual Plans, as indicated in the Project Scope. The Technical Proposal must be consistent with the basic configuration subject only to such changes approved by the Department in accordance with Alternative Technical Concept procedures defined in the Selection Criteria.

**Bid.** The offer of a Bidder, on the prescribed form properly signed and guaranteed, to perform the Work and to furnish the labor and materials at the prices quoted.

**Bid Documents.** The Bid Documents include the Selection Criteria, Project Scope, Addenda, Proposal, Expedite file, contract form and required bonds, Specifications, Supplemental Specifications, Special Provisions, general and detailed plans, Plan notes, standard construction drawings, notice to DBT, and any other document designated by the Department as a Bid Document, all of which constitute one instrument.

**Bidder.** An individual, firm, or corporation submitting a Bid for the advertised Work, acting directly or through the duly authorized representative, and qualified as provided in ORC 5525.02 to 5525.09.

**Buildable Unit.** Portions of the project that can be designed, reviewed and constructed with only limited controls and assumptions coming from the design of other portions of the project. Often a Buildable Unit will be defined by a geographic area within the plan, but it may also be defined by types of work or construction stages which may require or permit similar, nearby work to be divided into separate Buildable Units.

**Business Days.** Any day, or portion of a day, on the calendar other than Saturdays, Sundays, and state legal holidays, beginning and ending at midnight.

**Bridge.** A structure, including supports, erected over a depression or an obstruction, such as water, a highway, or a railway, and having a track or passageway for carrying traffic or other moving loads and having a length measured along the center of roadway of 10 feet (3.048 m) or more between undercopings of abutments or extreme limits of openings for multiple boxes.

**A. Length.** The length of a bridge structure is the over-all length measured along the centerline of the roadway surface.

**B. Roadway Width.** The clear width measured at right angles to the longitudinal centerline of the bridge between the bottom of curbs or guard timbers or, in the case of multiple heights of curbs, between the bottoms of the lower risers. For curb widths of 1 foot (0.3 m) or less, the roadway width is measured between parapets or railings.

**Calendar Day or Day.** Every day shown on the calendar.

**Certified Test Data.** A test report from a manufacturer's or an independent laboratory approved by the Director listing actual test results of samples tested for compliance with specified Department requirements. The Department will accept certified test data from manufacturers' laboratories if their products have been used satisfactorily on prior Department contracts and their test data has been confirmed. Include a statement that the test data furnished is representative of the material furnished to a Department project or to a supplier. The report is identified by number or date and identifies the Department project or supplier to which the material is shipped. Submit reports signed by a person having legal authority to act for the manufacturer or independent laboratory.

**Change Order.** A written order issued by the Director to the **DBT**, covering changes to the terms and conditions, plans and/or quantities, within or beyond the scope of the Contract and establishing the basis of payment and time adjustments for the work affected by the changes.

**Claims.** Disputes that are not settled through Steps 1 and 2 of the Dispute Resolution and Administrative Claim Process and for which the Contractor has documented costs or time incurred as a result of such disputes. The Dispute becomes a Claim when the Contractor submits a Notice of Intent to File a Claim.

**Completion Date.** The date, as shown in the Contract Documents, on which the Work contemplated shall be completed.

**Conceptual Plans.** Drawings provided by the Department; portions of which provide basic configuration and other requirements for various aspects of the project.

**Construction Documents.** Drawings (plans) and specifications developed by the Design Build Team which give a detailed and precise representation of the configurations and arrangements of the materials and items being constructed. Documents must be checked, reviewed and sealed in accordance with the Project Scope before being released for construction.

**Contract.** The written agreement between the Department and the **DBT** setting forth the obligations of the parties, including, but not limited to, the performance of the Work and the basis of payment.

**Contract Bond.** The approved forms of security, executed by the **DBT** and its Sureties, guaranteeing complete execution of the Work as required by the Contract Documents and the payment of all legal debts pertaining to the construction of the Project which security shall comply with and be subject to ORC 5525.16 and 5525.13, and related provisions.

**Contract Documents.** The Contract Documents include the Invitation for Bids, Addenda, Proposal, contract form and required bonds, Selection Criteria, Specifications, Supplemental Specifications, Special Provisions, Project Scope, general and detailed plans, Plan notes, standard construction drawings, notice to DBT, Change Orders, Supplemental Agreements, Extra Work Contracts, and any other document designated by the Department as a Contract Document, all of which constitute one instrument. This includes all documents listed in the Document Inventory as being part of the Contract Documents (including those depicting the Basic Configuration).

**Contract Item (Pay Item).** A specifically described unit of Work for which a price is provided in the Contract.

**Contract Price.** The amount of compensation bid by the Contractor for a Contract Item in the Proposal or the amount of compensation established for a Contract Item added or modified pursuant to the Contract Documents.

**Contract Time.** The number of workdays or calendar days, including authorized adjustments, allowed for completion of the Project. When a specified Completion Date is shown in the Contract Documents instead of the number of workdays or calendar days, completion of the Project shall occur on or before that date. Specified Completion Date and Calendar Day Contracts shall be completed on or before the day indicated even when that date is a Saturday, Sunday, or holiday.

**County.** The designated county in which the Work specified is to be done.

**Culvert.** Any structure not classified as a Bridge that provides an opening under the roadway.

**Department.** The Department of Transportation, State of Ohio.

**Design Build Contract.** Contract which combines the design and construction phases of project delivery. This term can also encompass contracts involving design, right of way acquisition and construction (i.e., Design Acquire Build).

**Design Build Contractor.** The lead construction firm in charge of the portion of the Design Build Team which physically constructs the project. May be the same legal entity as the Design Build Team.

**Design Build Designer.** The lead design firm in charge of the portion of the Design Build Team which prepares plans and specifications based on contract requirements. May be the same legal entity as the Design Build Team only if the Design Build Team holds a Certificate of Authorization from the Ohio State Board of Registration for Professional Engineers and Surveyors.

**Design Build Team (DBT).** A legal entity contracting with the Department to perform the work (i.e., design, acquisition, construction, etc.) included in a design build contract and qualified under the provisions of ORC 5525.02 to 5525.09 inclusive, and any amendments thereto.

**Design Documents.** Drawings, specifications, calculations, records, reports or other documents, including shop drawings, prepared by the Design Build Team, which may be used for design, manufacture, fabrication, installation, testing, examination and certification of items.

**Director.** Administrative head of the Department appointed by the Governor.

**Disputes.** Disagreements, matters in question and differences of opinion between the Department's personnel and the Contractor that may include a request for additional money and/or time.

**Engineer.** Duly authorized agent of the Department acting within the scope of its authority for purposes of engineering and administration of the Contract.

**Engineer of Record.** An individual, or individuals, properly registered as a Professional Engineer with the Ohio State Board of Registration for Professional Engineers and Surveyors, who seals the construction plans and associated documents/calculations. Also known as Designer of Record.

**Equipment.** All machinery and equipment, together with the necessary supplies for upkeep and maintenance, and also tools and apparatus necessary for the proper design, construction and acceptable completion of the Work.

**Extra Work.** An item of Work not provided for in the Contract as awarded but found essential to the satisfactory completion of the Contract within its intended scope.

**Extra Work Contract.** A Contract concerning the performance of Work or furnishing of materials involving Extra Work. Such Extra Work may be performed at agreed prices or on a force account basis as provided in ORC 5525.14.

**Fabricator.** The individual, firm, or corporation that fabricates structural metals or prestressed concrete members as an agent of the DBT.

**Final Inspector.** An Engineer appointed by the DDD (District Deputy Director) who inspects the completed Work and accepts it if it complies with the Contract Documents.

**Inspector.** The Engineer's authorized representative assigned to make detailed inspections of Contract performance.

**Laboratory.** The testing laboratories of the Department, including the Office of Materials Management located at 1600 West Broad Street, Columbus, Ohio, and various District testing facilities.

**Materials.** Any materials or products specified for use in the construction of the Project and its appurtenances.

**Plans.** The plans, profiles, typical cross-sections, standard construction drawings, working drawings, and supplemental drawings provided by the Department or produced by the Design Build Team Designer, approved in accordance with the contract, or exact reproductions thereof, that show the location, character, dimensions, and details of the Work.

**Prebid Question.** A written inquiry submitted by a prospective bidder.

**Price Proposal.** The offer of a DBT in the prescribed format, properly signed and guaranteed, to perform all work as described in the contract documents, at the prices quoted.

**Profile Grade.** The trace of a vertical plane intersecting the top surface of the proposed wearing surface, usually along the longitudinal centerline of the roadbed. Profile grade means either elevation or gradient of such trace according to the context.

**Project Right-of-Way.** That portion of the Right-of-Way between the beginning and end of the Project.

**Project.** The specific section of the highway together with all appurtenances and Work to be performed thereon under the Contract.

**Progress Schedule.** Critical Path Method (CPM) schedule submitted by the DBT.

**Project Proposal.** Defines various contractual requirements (historically called Proposal Notes) associated with the contract.

**Project Scope.** Document detailing requirements which ensure that the project is designed and constructed to meet the needs determined by the Department.

**Proposal.** The approved form on which the Department requires Bids to be prepared and submitted for the Work.

**Proposal Guaranty.** The security furnished with a Bid to guarantee that the Bidder will enter into the Contract if its Bid is accepted.



**Proposer.** The legal entity submitting a proposal to the Department to perform the advertised work. Also known as bidder or offeror.

**Questionnaire.** The specified forms on which the DBT shall furnish required information as to its ability to perform and finance the Work required under ORC 5525.01.

**Reasonably Close Conformity.** Reasonably close conformity means compliance with reasonable and customary manufacturing and construction tolerances where working tolerances are not specified. Where working tolerances are specified, reasonably close conformity means compliance with such working tolerances. Without detracting from the complete and absolute discretion of the Engineer to insist upon such tolerances as establishing reasonably close conformity, the Engineer may accept variations beyond such tolerances as reasonably close conformity where they will not materially affect the value or utility of the Work and the interests of the Department.

**Reference Documents.** Documents provided by the Department for informational purposes.

**Registered Engineer.** An engineer registered with the Ohio State Board of Registration for Professional Engineers and Surveyors to practice professional engineering in the State of Ohio.

**Registered Surveyor.** A surveyor registered with the Ohio State Board of Registration for Professional Engineers and Surveyors to practice professional surveying in the State of Ohio.

**Released for Construction Plans.** Construction plans that have been thoroughly checked, reviewed and sealed in accordance with the Project Scope.

**Request for Proposal.** A document that describes the procurement process and forms the basis for final Technical and Price Proposals.

**Request for Qualifications.** A document that describes the project in enough detail to allow potential proposers to determine if they wish to compete for a design build contract and which details the requirements for submitting a Statement of Qualifications.

**Right-of-Way.** A general term denoting land, property, or interest therein, usually in a strip, acquired for or devoted to a highway.

**Road.** A general term denoting a public way for purposes of vehicular travel, including the entire area within the Right-of-Way, as defined in ORC 5501.01.

**Roadbed.** The graded portion of a highway within top and side slopes, prepared as a foundation for the pavement structure and shoulder.

**Roadside.** The areas between the outside edges of the shoulders and the Right-of-Way boundaries. Unpaved median areas between inside shoulders of divided highways and infield areas of interchanges are included.

**Roadside Development.** Those items necessary to the highway that provide for the preservation of landscape materials and features; the rehabilitation and protection against erosion of all areas disturbed by construction through seeding, sodding, mulching, and the placing of other ground

covers; such suitable planting; and other improvements as may increase the effectiveness and enhance the appearance of the highway.

**Roadway.** The portion of a highway within limits of construction.

**Selection Criteria** Document that defines the process used by the Department to select a Design Build Team; includes information on requirements for the Statement of Qualifications, Technical Proposal and Price Proposal.

**Short-listed Design Build Team** Design Build Team selected, based on their Statement of Qualifications, to develop Technical and Price Proposals.

**Shop Drawings.** The drawings provided by the Contractor or Supplier that describe any portion of the Work that will remain in place permanently.

**Shoulder.** The portion of the roadway contiguous to the traveled way for accommodation of stopped vehicles, for emergency use, and for lateral support of base and surface courses.

**Sidewalk.** That portion of the roadway primarily constructed for the use of pedestrians.

**Signatures on Contract Documents.** All signatures on Contract Documents must meet the requirements of 102.06.

**Special Provisions.** Additions and revisions to the standard and Supplemental Specifications covering conditions peculiar to an individual Project.

**Specifications.** The directions, provisions, and requirements contained herein as supplemented by the Supplemental Specifications and Special Provisions.

**State.** The State of Ohio acting through its authorized representative.

**Statement of Qualifications.** A document submitted by a proposer detailing the proposer's capabilities and project understanding.

**Street.** A general term denoting a public way for purpose of vehicular travel, including the entire area within the Right-of-Way.

**Structures.** Bridges, culverts, catch basins, drop inlets, retaining walls, cribbing, manholes, endwalls, buildings, sewers, service pipes, underdrains, foundation drains, and other features that may be encountered in the Work and not otherwise classed herein.

**Subcontractor.** An individual, firm, or corporation to whom the **DBT** sublets part of the Contract to be performed on the job site, who prior to such undertaking receives the written consent of the Director, and who is qualified under ORC 5525.02 through 5525.09 inclusive.

**Subconsultant.** Any person or organization to whom the Design Build Designer has subcontracted, transferred, or assigned any portion of its contractual obligations.

**Subgrade.** The portion of a Roadbed upon which the pavement structure and shoulders are constructed.

**Substructure.** All of that part of the structure below the bearings of simple and continuous spans, skewbacks of arches, and tops of footings of rigid frames, together with backwalls and wings.

**Superintendent.** The DBT's authorized representative in responsible charge of the Work.

**Superstructure.** The entire structure except the Substructure.

**Supplement.** A list of requirements for fabrication plants, methods of test, or other miscellaneous requirements that are maintained on file in the Office of the Director.

**Supplemental Agreement.** A written agreement executed by the DBT and by the Director covering necessary alterations.

**Supplemental Specifications.** Detailed specifications supplemental to or superseding these Specifications.

**Surety.** The corporation, partnership, or individual, other than the DBT, executing a bond furnished by the DBT.

**Technical Proposal.** The part of a proposer's written offer detailing technical elements of design and construction; including schedule, management, design features and construction features.

**Titles (or Headings).** The titles or headings of the sections and subsections herein are intended for convenience of reference and shall not be considered as having any bearing on their interpretation.

**Value Based Design Build.** A procurement process in which proposals contain both price and qualitative technical components and award is based upon a combination of price and qualitative considerations.

**Waters of the United States.** Waters that are under the jurisdiction of the Corps of Engineers under the Clean Water Act as defined by 33 CFR Ch. II Part 328, which as applied to Ohio means: the Ohio River and Lake Erie and any other river, stream, creek, lake, pond, or wetland that drains directly or indirectly into the Ohio River or Lake Erie.

**Work.** All labor, materials, equipment, tools, transportation, supplies, and other incidentals and all tasks that comprise the project or any portion thereof, as described by the Contract Documents.

**Workday.** A calendar day that the DBT normally works.

**Working Drawings.** Stress sheets, shop drawings, erection plans, falsework plans, installation plans, certified drawings, frame work plans, cofferdam plans, bending diagrams for reinforcing steel, or any other supplementary plans or similar data that the **DBT** is required to submit for acceptance. Working drawings do not include design plans prepared by the Design Build Designer

**102.01 Prequalification of Bidders**

On page 11, **Replace section 102.01** with the following new section:

**102 DESIGN/BUILD BIDDING REQUIREMENTS AND CONDITIONS**

**102.01 Prequalification of Bidders.** A Design Build Team seeking to bid must be prequalified by the Department according to [ORC Chapters 5525 & 5526](#), and the rules and regulations governing prequalification in order to submit a bid. Upon request, the Department will provide a prequalification application, applicable rules and regulations, and other relevant information. For prospective Bidders that are not yet prequalified, furnish the Department with a properly completed prequalification application at least 30 days before the date specified for the receipt of Bids. The prequalification certificate is the Bidder's license to Bid and perform construction for the Department.

For foreign DBTs, refer to [ORC 5525.18](#) and Ohio Administrative Rule 5501:2-3-07.

**102.02 Contents of Bid Documents**

On page 11, **Replace section 102.02** with the following new section

**102.02 Contents of Bid Documents.** Use the Proposal to prepare and submit Bids for the Work. Upon request, the Department will provide the Scope of Services that include or reference the following:

- A. Location and description of the Project.
- B. Time to complete the Work.
- C. Amount of the Proposal Guaranty.
- D. Department's deadline for receiving a completed Bid.
- E. Schedule of contract items.
- F. Standard Specifications, Special Provisions, Supplemental Specifications.
- G. Proposal
- H. Project Scope
- I. Selection Criteria
- J. Document Inventory

**102.04 Interpretation of Quantities in Proposal.**

On page 11, **Delete section 102.04**

**102.05 Examination of Bid Documents and Project Site and Submission of Prebid Questions**

On page 11 and 12, **Replace section 102.05** with the following new section

**102.05 Examination of Bid Documents and Project Site and Submission of Prebid Questions.** Carefully examine the Bid Documents and perform a reasonable site investigation before submitting a Bid. Submitting a Bid is an affirmative statement that the Bidder has investigated the Project site and is satisfied as to the character, quality, quantities, and the conditions to be encountered in performing the Work. A reasonable site investigation includes investigating the Project site, borrow sites, hauling routes, and all other locations related to the performance of the Work.

When available, the Department will include in the Contract Documents or provide for the Bidder's review at the Department's District or other offices, one or more of the following:

- A. Record drawings.
- B. Available information relative to subsurface exploration, borings, soundings, water levels, elevations, or profiles.
- C. The results of other preliminary investigations.
- D. Other documents as referenced in the Document Inventory

A reasonable site investigation includes a review of these documents.

**102.06 Preparation of Bids**

On page 12, **Replace section 102.06** with the following new section

**102.06 Preparation of Bids.** Prepare a Bid according to this subsection and the requirements found in the Scope of Services Documents. Properly complete the Expedite file and submit it using the software specified in the Bid Documents rather than completing it by handwriting, typing, or using unauthorized computer-generated forms.

Indicate the total Bid amount by adding the values entered in the “Bid Amount” column for the listed items. Submit the Expedite file specified in the Bid Documents.

<b>ENTITY SUBMITTING PROPOSAL REQUIRED SIGNATURE</b>	
Individual	The individual or a duly authorized agent.
Partnership	A partner or a duly authorized agent.
Joint Venture	A member or a duly authorized agent of at least one of the joint venture firms.
Corporation	An authorized officer or duly authorized agent of the corporation. Also, show the name of the state chartering the corporation and affix the corporate seal.
Limited Liability Company	A manager, a member, or a duly authorized agent.

**102.07 Duty to Notify of Errors in Bid Documents**

On page 13, **Replace section 102.07** with the following new section

**102.07 Duty to Notify of Errors in Bid Documents.** Notify the Department of errors and omissions in the Bid Documents. The **DBT**'s duty to disclose errors and omissions is not only a bidding requirement but is also a legal requirement that cannot be ignored. Submit a Prebid Question to the office designated by the Department in the Proposal for receipt of bidding questions and providing information to the Bidder. The Department will determine the manner in which said Prebid Questions are answered and will publish the information on the Department's website. Failure to provide such a Prebid Question prior to the opening of bids shall constitute a waiver by the **DBT** for any claim based upon any apparent or patent ambiguity arising from insufficient data or obvious errors in the Bid documents.

**102.08 Unbalanced Bidding**

On page 13, **Replace section 102.08** with the following new section

**102.08 Unbalanced Bidding.** Bid all items correctly in the Scope of Services Documents. The Department will reject a Mathematically Unbalanced Bid if the Bid is also Materially Unbalanced. A Mathematically Unbalanced Bid is a Bid containing lump sum items that do not include reasonable labor, equipment, and material costs plus a reasonable proportionate share of the Bidder's overhead

costs, other indirect costs, and anticipated profit. A Bid is Materially Unbalanced when the Department determines that an award to the Bidder submitting a Mathematically Unbalanced Bid will not result in the lowest ultimate cost to the Department.

**102.09 Proposal Guaranty**

On page 13 and 14, **Replace section 102.09** with the following new section

**102.09 Proposal Guaranty.** The Department will reject a Bid submitted without a Proposal Guaranty in the amount designated and payable to the Director. Submit the required Proposal Guaranty in one of the following forms:

- A. Properly executed project Bid bond submitted on the Department's form.
- B. Properly executed electronic bid transfer to the Department's account.
- C. Certified check drawn on the account of the Bidder submitting the Bid.
- D. Cashier's check.

When submitting a Bid bond, ensure that the Surety is licensed to do business in the State.

**102.13 Public Opening of Bids**

On page 14, **Replace section 102.13** with the following new section

**102.13 Public Opening of Bids.** The Department will publically announce, by posting on the Department's internet site, its short-listing selection on the date indicated in the Proposal. Names of all Short-Listed and non-Short-Listed DBTs will be announced. SOQ scores will not be provided until after award.

Announcement of Technical Proposal scores and opening of Price Proposals will occur on the date indicated in the Proposal. The Department will announce the total score for each Technical Proposal and then announce the total bid amount for each Price Proposal.

Bidders or their authorized agent and other interested persons are invited to the opening. The Department may postpone the receipt of Bid time or the opening of Bids time. If the Department changes the hour or the date of the receipt of Bids or the opening of Bids, it will issue an addendum or public notice to notify prospective Bidders.

**102.14 Disqualification of Bidders**

On page 14 and 15, **Replace section 102.14** with the following new section

**102.14 Disqualification of Bidders.** The Department will declare a Bid non-responsive and ineligible for award when any of the following occur:

- A. The Bidder lacks sufficient prequalification work types or dollars to be eligible for award.
- B. The Bidder fails to furnish the required Proposal Guaranty in the proper form and amount.
- C. The Bid contains unauthorized alterations or omissions.
- D. The Bid contains conditions or qualifications not provided for in the Bid Documents.
- E. The Proposal is not prepared as specified.
- F. A single entity, under the same name or different names, or affiliated entities submits more than one Bid for the same Project.
- G. The Bidder is debarred from submitting Bids.
- H. The Bidder has defaulted, has had a Contract terminated for cause by the Department, has either agreed not to Bid or has had debarment proceedings initiated against the Bidder's company and/or its key personnel.
- I. The Bidder submits its Bid or Proposal Guaranty on forms other than those provided by the Department.
- J. The Bidder fails to acknowledge addenda.
- K. The Department finds evidence of collusion.

- L. Any other omission, error, or act that, in the judgment of the Department, renders the Bidder's bid non-responsive.

**103.01 Consideration of Proposals**

On page 15 and 16, **Replace section 103.01** with the following new section

**103 AWARD AND EXECUTION OF CONTRACT**

**103.01 Consideration of Proposals.** After opening and announcing the Bids, the Department will compare the Bidders' proposed prices and technical proposal scores.

The Department may reject any or all Bids, waive technicalities, or advertise for new Bids without liability to the Department.

**103.02 Award of Contract**

On page 16, **Replace section 103.02** with the following new section

**103.02 Award of Contract.** The Department will award a Contract or reject Bids within 10 days after Technical Scores are announced and Price Proposals are opened. The Department will mail a letter to the address on the Bid notifying the successful Bidder of Bid acceptance and Contract award. The Department will award to the competent and responsible bidder that receives the highest score based on the Value Based Scoring system. The Department will not award a Contract until it completes an investigation of the apparent best value Bidder.

**103.04 Return of Proposal Guaranty**

On page 16, **Replace section 103.04** with the following new section

**103.04 Return of Proposal Guaranty.** Within 10 days after opening price proposals, the Department will return the Proposal Guaranties of the two remaining unsuccessful Bidders. After the successful Bidder submits the signed Contract, Contract Bonds, and other Contract Documents, and after the Department signs the Contract, the Department will return the Proposal Guaranty to the successful Bidder. The Department will not return Bid bonds.

**104.01 Intent of the Contract Documents**

On page 16, **Replace 104.01** to the following:

**104.01 Intent of the Contract Documents.** The intent of the Contract Documents is to provide for the design, construction and completion of the Work. Perform the Work according to the Contract Documents.

**104.02.B Differing Site Conditions**

**104.02.B Differing Site Conditions**

On page 17, **Revise 104.02 B**

**104.02.B Differing Site Conditions.** Notify the Engineer as specified in C&MS 104.05 upon discovery of any of the following conditions:

- 1) Subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents and are not discoverable from an investigation and analysis of the site by the DBT meeting the standard of care for such an investigation and analysis.

2) Unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract Documents, are encountered at the site.

Provide required notification before disturbing any differing site condition.

Irrespective of the previous paragraph, the following will not be considered Differing Site Conditions for purposes of this section:

Work involving utility relocations or utility coordination. This work will be addressed in accordance with the Project Scope, Section 6.

Upon notification from the DBT, the Engineer will investigate potential differing site conditions. The Engineer will determine if differing site conditions have been encountered and notify the DBT of the Department's determination.

If the Department determines that conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any Work under the Contract, the Department will make an adjustment and modify the Contract as specified in CMS 109.05 and as follows:

- 1) The first \$250,000 of direct costs and associated impact will be the responsibility of the DBT.
- 2) All costs which exceed the amount identified in item #1 above will be computed and paid to the DBT without any markup.

The Department acknowledged differing site condition Work is excusable, compensable, as defined by CMS 108.06 D except as noted in this section.

**104.05,**

On Page 20, **Replace** the sentence starting with "Upon notification, the Engineer will..." with the following:

This unilateral authority to pay by the Department does not preclude or limit the rights of the Department and the **DBT** to negotiate and agree to the amounts to be paid to the **DBT**.

**104.05 (G)(1) Director's Claim Board Hearing**

On Page 23, **Add** the following paragraph to the end of the section:

Any claim certified and submitted to the Board shall be resolved within one hundred twenty days after certification unless extended by mutual written agreement of the parties. After the end of this one hundred twenty-day period, the contractor shall be deemed to have exhausted all administrative remedies for purposes of proceeding with a Claim to the Ohio Court of Claims.

**104.06 Pay Adjustments**

On page 24, **Add** the following:

**104.06 Pay Adjustments**

Pay adjustments will be made according to the applicable governing Contract Documents and requirements. Pay adjustments shall be based on the required adjustment computation method or procedure as defined by the applicable specification or contract provision. Pay adjustments as per the most current version of the Standard Procedure entitled "Acceptance of Non-specification Material on Construction Projects" are also applicable.

For pay adjustments based on a unit bid price/cost or a contract unit price/bid price, the Office of Estimating Historical Bid Data adjusted for inflation for the calendar year immediately preceding the calendar year in which the relevant item of work is constructed shall be used unless such price/cost data is specifically contained within the bid or Contract Documents. The



applicable average awarded bid amount shall be used as the unit price/cost component when calculating the applicable pay adjustment. Moreover, the actual adjustment will be the difference between the average awarded bid amount and the computed adjustment to that amount for the applicable number of units as appropriate. Pay adjustments will be paid or deducted on the Contractor/DBT progress estimates through the change order process. The Office of Estimating Historical Bid Data is located at the following web address:  
<http://www.dot.state.oh.us/Divisions/ConstructionMgt/Estimating/Pages/default.aspx>

**105.02 Plans and Working Drawings**

On page 24, in the first sentence **Revise** "show" to "shall show".

**105.04 Coordination of the Contract Documents**

On page 25 and 26, **Replace** Items A thru F with the following

- A. Addenda
- B. Proposal and Special Provisions
- C. Selection Criteria
- D. Technical Proposal elements that exceed the requirements of other contract documents. (In other words, if the Technical Proposal includes statements that can reasonably be interpreted as offers to provide higher quality items or additional services than otherwise required by the by the remaining contract documents, the DBT's obligations will include compliance with these offers.)
- E. Approved Alternative Technical Concept documentation (when the approved ATC is used in the Technical Proposal).
- F. Project Scope and Project Scope Appendices except those that are identified as Reference Documents.
- G. Supplemental Specifications
- H. Standard Construction Drawings
- I. Standard Specifications

**105.05 Cooperation by DBT**

On page 26, **Replace** the entire section as follows:

**105.05 Cooperation by DBT.** Provide the constant attention necessary to progress the Work according to the Contract Documents. Cooperate with the Engineer, inspectors, and all other DBTs on or adjacent to the Project.

**105.06 Superintendent**

On page 26, **Replace** the entire section as follows:

**105.06 Design Build Project Personnel.**

Provide a Design Build Project Manager that is responsible for all aspects of the Project; experienced in the type of Work being performed; and will be available and responsive.

Provide a Design Project Manager that is responsible for all aspects of the Project's design; experienced in the type of design being performed; and will be available and responsive. This

individual must be licensed as a Professional Engineer in the State of Ohio by the State Board of Registration for Professional Engineers and Surveyors.

Provide a Design Build Construction Project Manager/Engineer that is responsible for all aspects of the Project's construction; experienced in the type of work being performed; will be on the project at all times; and will be responsible for all aspects of the construction Work.

**105.07 Cooperation with Utilities**

On page 26, **Replace** the second paragraph as follows:

The Project Scope will define utility coordination and relocation responsibilities. Provide utility owners adjusting facilities during construction with adequate notification of the scheduled Work to prevent conflict with the DBT's schedule of operations.

**105.07 Cooperation with Utilities**

On page 26, **Replace** the last paragraph as follows:

If the utility owners fail to relocate or adjust utilities as provided for in the Contract Documents and the **DBT** sustains losses or delays that could not have been avoided by the judicious design efforts, and reasonable accommodation or by judicious handling of forces, equipment, and plant, or by reasonable revisions to the schedule of operations, then the Engineer will adjust the Contract according to 108.06 and 109.05.

**105.13 Haul Roads**

On page 28, **Replace** the entire section as follows:

**105.13 Haul Roads.** Prior to hauling equipment or materials, provide written notification to the Engineer of the specific roads or streets on the haul route. If the haul route includes roads and streets that are not under the jurisdiction and control of the State and the DCE determines that State controlled roads are not available or practical for a haul route, the DBT may use local roads and streets that are not restricted by local authorities. If the DCE determines that state controlled roads are available and practical for a haul route, revise the proposed haul route provided in the original written notification and resubmit to the DCE.

If the Engineer determines that the haul route roads were damaged, then the Engineer may order the DBT to perform immediate and practical repairs to ensure reasonably normal traveling conditions at no cost to the Department.

The DBT shall not file a claim for delays or other impacts to the Work caused by disputes with the local authorities regarding the use of local roads or streets as haul routes. The DBT shall save the State harmless for any closures or hauling restrictions outside the Project limits beyond the control of the Department.

**107.02, Permits, Licenses, and Taxes**

On page 36, **Add**:

It is the responsibility of the DBT to obtain any permits, bonds, or costs required by the local road or street agency for the road use.

**107.10, Protection and Restoration of Property**

On Page 37, last paragraph and continuing on Page 34, sentence one, **REVISE** to:

When specified in the plans, the DBT will construct the Monument Assemblies with the iron pin and Reference Monuments with the iron pin and cap.

On Page 39, **REVISE the paragraph starting with “If monument,s cornerstones, and boundary ...”** with the following”

Monuments, cornerstones, and boundary survey markers of the Public Land Survey System control corners encountered in the performance of the Work, and adjustable monument assemblies, will be furnished and installed under the supervision of the Department in their precise location and installed in conformity with ORC 5519.05. The Work will be incidental to the Contract. Perform relocation Work under the supervision of a registered surveyor.

**107.11.B , Contractor’s Use of Portable Plants Within the Project Right-of-Way or on Other Department-Owned Property**

On page 41 **Delete** the last paragraph of **107.11.B** starting with “However, the Department...”

**Staging Area Within State Right Of Way**

No specific areas for the **DBT** to use as staging areas have been noted in the contract documents. The **DBT** is permitted to stage within the project limits and permanent right of way of this project. No D-6 permit will be required for the **DBT** to utilize these locations. The **DBT** shall submit a written description of their planned use to the Project Engineer for concurrence. All uses of the R/W shall be coordinated by the Project Engineer.

No concrete or asphalt plants are allowed. No crushing operations are allowed. The **DBT** shall not utilize this project’s staging area for other projects. The **DBT** shall not stockpile material on top of existing drainage pipes and underground utilities. The use of temporary right of way for staging areas is prohibited.

The **DBT** shall be responsible for compliance with all applicable regulatory requirements.

The **DBT** shall be responsible for all restoration of the staging area(s). In addition to section 104.04 of the CMS, restoration work shall be completed at no additional cost to the state:

1. Removal of at least 4 inches of material and replacement with 4 inches of topsoil conforming to Item 653.
2. Seed and mulch the area conforming to Item 659
3. Replacement of all trees removed or damaged by **DBT** on caliper-inch basis an include a one (1) year warranty

**107.12. Responsibility for Damage Claims and Liability Insurance**

On page 43, **Add** the following section D:

D. Commencing on the date on which the Department issues the Request for Proposal, the Design Build Team shall provide and maintain or cause its Design Build Designer to provide and maintain professional liability coverage, through a specific project professional liability policy, with limits not less than \$10,000,000 per negligent act, error or omission limit and \$10,000,000 aggregate. The professional liability coverage shall protect against any negligent act, error or omission arising out of design or engineering services performed by the Design Build Designer or its lower tier design subconsultants. The policy shall have a retroactive date no later than the date on which the Request for Proposal documents are issued and shall have a five-year extended reporting period from the date of Final Acceptance and Payment (per 109.12 (D.)) with respect to claims or suits which were not made or brought during the term of the policy. The coverage shall include the Design Build Designer’s subconsultants of any tiers. The policy shall include a Notice of Circumstance provision. The policy shall not contain any exclusion for cost estimates or delay in project completion. Notwithstanding any other provisions of the Design Build Contract the project policy shall not be cancellable, except for non-payment of premium, fraud or material misrepresentation.

The insurance company shall be rated A- or better by A.M. Best at the time the contract is executed by the Director.

**Replace the existing section 107.17 with the following:**

**107.17 Furnishing Right-of-Way.** The Department is responsible for securing all necessary Right-of-Way in advance of the construction except as defined in the Project Scope.

**108.07, Failure to Complete on Time**

On Page 56 **Replace** table 108.07-1 with the following table:

Original Contract Amount (Total Amount of the Bid)		Amount of Liquidated Damages to be Deducted for Each Calendar Day of Overrun in Time
From More Than	To and Including	
\$150,000,000	\$300,000,000	\$12,000
Over \$300,000,000		\$15,000

**108.09 Termination of the Contract for Convenience of the Department**

On page 56, **Revise** the second sentence in the first paragraph to: The Department will compensate the **DBT** for design work under the provisions of the "Specifications for Consulting Services" and for construction work according to 109.04 and 109.05 for termination of the Contract for the convenience of the Department.

**108.11, Post Construction Meeting**

On Page 52, in 108.11 **Replace** the second paragraph with the following:  
Both parties will discuss their performance including sublet portions of the Project. This shall include the **DBT's** C95 evaluation form, the **DBT** feedback form, and other forms required in the Scope of Services. Conduct a partnering evaluation survey to help get participants' feedback and improve the partnering process. (Sample evaluations are shown in the ODOT *Partnering Handbook*.)

**109.05, Changes and Extra Work**

On page 64, **Replace** 109.05. C.1.f with the following:

f. Documentation of the following:

- (1) For surveying or design work in accordance with 109.05.C.9 provide:

Documentation for all work performed by the Design Build Designer and any Subconsultants that provided services. Documentation shall consist of records of all Actual Allowable Costs broken down as direct labor charges, indirect costs (overhead), non-salary direct costs and facilities capital cost of money. In addition, the Department will pay a profit of twelve percent

(12%) of the sum of direct labor costs plus overhead. The Department will not pay an additional percent markup to the DBT on these costs.

“Actual Allowable Costs” are incurred costs based on the cost principles and procedures set forth in Part 31 of the Federal Acquisition Regulation (Codified at 48 CFR Part 31), the ODOT Contract Audit Circulars, the State of Ohio Travel Regulations (Ohio Administrative Code Rule 126-1-02), and the AASHTO Uniform Audit and Accounting Guide, all as amended from time to time.

- (2) For all surveying, professional, or similar specialized Work not normally part of a Design Build contract as set forth in 109.05.C.9, provide documentation showing payment to a firm hired by the DBT.

On page 73, **Replace** 109.05. C.9 with the following:

Professional and Specialized Work will be paid for according to the following:

- a. The following work, when performed by the Design Build Designer and any Subconsultants, is paid as set forth in 109.05.C.1.f.
  - (1) Design Costs
  - (2) Surveying Costs
- b. The following work, when performed by a firm hired by the Design Build Team, is paid at the reasonable and fair market invoiced cost plus a 5 percent mark up. The mark up is limited to \$10,000 for all the work performed by the firm.
  - (1) Specialized work that is not part of this Design Build Contract and is not normally subject to prevailing wage.
  - (2) Installation, periodic maintenance, and removal of traffic control devices under Item 614 performed by a traffic control service or rental company, provided the workers are not on the Project full-time. Maintenance of Traffic services performed by LEO.
  - (3) Other professional or specialized work not contemplated at the time of Bid.

**109.05.C.10, Payment for Force Account Work**

On Page 74, **Replace** the change order web link to:

HTTP://W W  
W.DOT.STATE.OH.US/DIVISIONS/CONSTRUCTIONMGT/ADMIN/PAGES/DEFAULT.ASPX

**109.05.D.2.e (1) Field Overhead,**

On page 75, Replace with the following:

The **DBT** has incurred an excusable, compensable delay that delays the Work at least 10 Calendar Days beyond the original Completion Date. These days are cumulative throughout the project.

If the delay is 30 days or less, the Department will pay the salaries and fringes, plus a 5 percent mark up and payroll taxes and insurance without any mark up, for the **DBT**'s personnel that were assigned full time to Project supervision, design and administration and were physically located at the Project site one month before the delay and were there when the delay began.

On page 76 **Replace the TABLE 109.05-4** with the following:

If the delay is more than 30 days:

The Design Build Project Manager

The Design Project Manager  
 The **DBT** Project Manager  
 Nine any combination of Engineers, Superintendents or Assistant Superintendents,  
 Three Clerk/Administrative Assistants

On page 77 **Replace the TABLE 109.05-5** with the following:

Original Contract Amount	C
\$150,000,000 to \$300,000,000	0.030
Over \$300,000,000	0.025

**109.09 Estimates**

On page 79, **Revise** the first sentence in the 1<sup>st</sup> paragraph with the following sentences:

If satisfactory progress is being made, the **DBT** may submit monthly invoices for payment based upon lump sums bid. For each work activity, the **DBT** shall estimate the current percentage completion of that work activity based on the approved cost-loaded CPM schedule. The Engineer shall review each proposed current percentage completion and revise the percentage based on the Engineer's judgment of the percent completed. The percentage of completion accepted by the Engineer, multiplied by the lump sum price shown in the cost loaded schedule bid, will define the gross amount due the **DBT** for that item of work.

**109.12.B, Punch List**

On Page 81, **Replace** the last sentence with:

Failure of the **DBT** to complete the punch list items by the stipulated time will result in the assessment of fifty percent of the Liquidated Damages according to 108.07 for each Calendar Day for every day beyond the stipulated time the punch list work remains incomplete and beyond the revised Completion Date.

**109.12.C, Finalization**

On Page 81, **Add** the following after the existing first sentence.

The prescribed 30 Calendar Day period can be modified by mutual agreement of the **DBT** and the District Construction Engineer.

On Page 82, **Replace** the last paragraph with the following:

Failure to submit these acceptably completed documents will result in the assessment of fifty percent of the Liquidated Damages according to 108.07 for each Calendar Day for every day that any of the required documents remain delinquent, starting 30 Calendar Days after receipt of written notification from the Engineer of a document deficiency.

**PN 520 - 02/08/2011 - DESIGN BUILD FUEL PRICE ADJUSTMENT**

**General:** This Fuel Price Adjustment (Fpa) provision is intended to minimize risk to the DBT due to fuel price fluctuations that may occur during the Contract. This provision is not designed to estimate actual quantities of fuel used in construction operations, but to provide a reasonable basis for calculating a fuel price adjustment based on average conditions.

The Department determines adjustments under the provisions of this Proposal Note, and presumes that the DBT has relied on these provisions when determining unit bid prices. The monthly application range for percent change (Mbp/Cbp) will not exceed 50% for a Fuel Price Adjustment increase or decrease as outlined in Section B, Calculation of Fuel Price Adjustment.

**A. Price Adjustment Criteria:** These requirements provide for a price adjustment, positive or negative, to payments due the DBT for fluctuations in the cost of fuel consumed in the performance of certain items of work. These price adjustment provisions apply only to those items in the contract as grouped by category and identified in Table A-1. All adjustments will be made based on fuel consumption indicated by Table A-1, and no changes will be made for actual consumption rates.

Category descriptions and the fuel usage factors which are applicable to each are as follows:

<b>Fuel Adjustment Categories, Table A-1</b>				
<b>Category</b>	<b>Basis of Calculation and Threshold Quantity</b>	<b>Eligible Items</b>	<b>Units</b>	<b>Fuel Usage Factor</b>
Earthwork	Apply only to the greater of the sum of all Excavation quantities or the sum of all Borrow and Embankment quantities. Threshold Quantity* = 30,000 c.y. (22,936 c.m.)	203, 204	Gallons per cubic yard ( <b>Gallons</b> per cubic meter)	0.50 (0.65)
Aggregate Bases	Apply to quantity calculated based on the Method of Measurement and Basis of Payment. Threshold Quantity* = 2,500 c.y. (1,912 c.m.)	304, 307	Gallons per cubic yard ( <b>Gallons</b> per cubic meter)	0.75 (0.98)
Select Granular Backfill	Apply to quantity calculated based on the Method of Measurement and Basis of Payment. Threshold Quantity* = 2,000 c.y. (1,529 c.m.)	840	Gallons per cubic yard ( <b>Gallons</b> per cubic meter)	0.75 (0.98)
Flexible Bases and Pavements	Apply to quantity calculated based on the Method of Measurement and Basis of Payment. Threshold Quantity* = 1,200 c.y. (917 c.m.)	301, 302, 308, 424, 442, 443, 446, 448, 803, 826, 857, 880	Gallons per cubic yard ( <b>Gallons</b> per cubic meter)	4.50 (5.88)
Rigid Bases and Pavements	Apply to quantity calculated based on the Method of Measurement and Basis of Payment. Threshold Quantity* = 1,200 c.y. (917 c.m.)	305, 306, 451, 452, 526, 884, 888, 896	Gallons per cubic yard ( <b>Gallons</b> per cubic meter)	1.00 (1.31)
Structural Concrete	Apply to quantity calculated based on the Method of Measurement and Basis of Payment. Threshold Quantity* = 350 c.y. (268 c.m.)	511, 524, 842, 892, 893, 894, 898	Gallons per cubic yard ( <b>Gallons</b> per cubic meter)	4.00 (5.23)

\* A Fuel Price Adjustment will only apply when the sum of all completed in-place accepted final quantities for the category meet or exceed the specified Threshold Quantity. When a Fuel Price Adjustment applies, calculate the Fuel Price Adjustment for the sum of all quantities for the category per this proposal note.

**B. Calculation of Fuel Price Adjustment:** Fuel Price Adjustments may be either positive or negative. A positive Fuel Price Adjustment will result in a payment to the DBT while a negative Fuel Price Adjustment will result in a deduction.

The Department will calculate a Monthly Base Price (Mbp) for fuel for each month of each calendar year beginning with January 2001. The method for calculating the Monthly Base Price (Mbp) will be on file in the Division of Construction Management. The Monthly Base Price (Mbp) will be used to calculate all Fuel Price Adjustments. The Contract Base Price (Cbp) will be the Monthly Base Price

(Mbp) for the month the contract was bid. All Monthly Base Price (Mbp) values will be posted on the Division of Construction Management, Office of Construction Administration website at: <http://www.dot.state.oh.us/Divisions/ConstructionMgt/Admin/Pages/PriceIndexes.aspx>

During each month of the contract the Engineer will select the applicable Monthly Base Price (Mbp) and calculate the ratio of the Monthly Base Price (Mbp) divided by the Contract Base Price (Cbp). The formulas below allow for a variation in fuel prices without recognizing cost increases/ decreases within the range of 90% to 110% of the Contract Base Price (Cbp).

When, and only when, the Monthly Base Price (Mbp) divided by the Contract Base Price (Cbp) is less than 0.90 or greater than 1.10 will the Engineer calculate a Fuel Price Adjustment (Fpa).

Cost increases in excess of 150% of the Contract Base Price (Cbp) will not be recognized. When, the Monthly Base Price (Mbp) divided by the Contract Base Price (Cbp) is greater than 1.50, the Fpa shall be calculated using a Cbp/Mbp ratio of 1.50.

Cost decreases in excess of 50% of the Contract Base Price (CBP) will not be recognized. When, the Monthly Base Price (Mbp) divided by the Contract Base Price (Cbp) is less than 0.50, the Fpa shall be calculated using a Cbp/Mbp ratio of 0.50.

**For a Price Increase:**

$$Fpa = [(Mbp/Cbp) - 1.10] \times Cbp \times Q$$

**For a Price Decrease:**

$$Fpa = [(Mbp/Cbp) - 0.90] \times Cbp \times Q$$

Where:

**Fpa** = Fuel Price Adjustment

**Mbp** = Monthly Base Price

**Cbp** = Contract Base Price

**Q** = The number of gallons of fuel used in the placement of items identified in Table A-1 during that month at the specified Fuel Usage Factor. Q will be determined by the Engineer for each category by multiplying the applicable Fuel Usage Factor by the sum of quantities of completed and accepted work for the specified items.

The total Monthly Fuel Price Adjustment will be the algebraic sum of the Fuel Price Adjustments for materials placed during the month for each applicable category identified in Table A-1. The Total Fuel Price Adjustment for the project will be the algebraic sum of all Monthly Fuel Price Adjustments. The

Department will calculate the Monthly and Total Fuel Price Adjustment on a monthly basis and make contract modifications as provided in Section C, Payment/Deduction.

**C. Payment/Deduction:** The Fuel Price Adjustment will be paid, or deducted, upon approval of a change order prepared after completion of all work. DBT markups are not permitted. Partial payments or deductions will be processed prior to total completion when the unpaid accrued Total Fuel Price Adjustment exceeds \$10,000 or once every 12 months.

**D. Expiration of Contract Time:** When eligible items of work grouped by category and identified in Table A-1 are performed after expiration of contract time and liquidated damages are chargeable, the value of Monthly Base Price (Mbp) used to compute the price adjustment will be either the Monthly



Base Price (Mbp) at the time of actual performance or the Monthly Base Price (Mbp) at the time contract time expired, whichever is less.

**E. Extra Work:** When eligible items of work grouped by category and identified in Table A-1 are added to the contract as Extra Work and for which a unit price is negotiated the DBT must use the appropriate price for fuel when preparing required backup data for the negotiated price. No Fuel Price Adjustment will be made for fuel consumed in the performance of eligible work added to the contract as Extra Work at a negotiated price when the work commences within 90 days of the approval of the change order authorizing said extra work. If the eligible work at a negotiated price commences more than 90 days after the approval of the change order authorizing said extra work a Fuel Price Adjustment will be made if said extra work quantities exceed the applicable threshold quantity in Table A-1. The Fuel Price Adjustment will be calculated using the Monthly Base Price (Mbp) value for the month the change order authorizing said extra work was approved as the value for its Contract Base Price (Cbp).

When Extra Work is added to the contract as a Force Account operating costs for equipment used in the performance of this work will be paid in accordance with C&MS 109.05.C.4 with no further adjustment.

**F. Final Quantities:** Upon completion of the work and determination of final pay quantities a change order will be prepared to reconcile any difference between estimated quantities previously paid and the final quantities. In this situation, the value for the Monthly Base Price (Mbp) used in the price adjustment formula will be the average of all Monthly Base Price (Mbp) values previously used for computing price adjustments.

#### **PN 525 – 4/16/2010 - Steel Price Adjustment**

**A. General:** This proposal note acknowledges fluctuations in the cost of manufactured steel used in the materials defined below and placed as part of the applicable construction work in the form of a pay adjustment. This proposal note will be used in bidding documents only for as long as the price of the steel products set out below are subject to volatile spikes as determined solely by the Department.

These price adjustment provisions apply to items in the contract including any modified standard or non-standard item where the work to be performed involves the placement or installation of one or more of the steel products specified herein.

The Department will post monthly adjustment indices for steel using data obtained in Table B-1.

#### **For Category 1, Table B-1:**

The Department will post monthly adjustment indices (BI and MI) for wide flange steel beams plus a scrap surcharge using data obtained from the steel producers listed.

[http://www.stld-cci.com/pdf/Price\\_list.pdf](http://www.stld-cci.com/pdf/Price_list.pdf)

<http://www.gerdauameristeel.com/products/mp/pl.cfm>

<http://www.nucoryamato.com/>

#### **For Category 2, Table B-1:**

The Department will post monthly adjustment indices (BI and MI) for steel using data obtained on the last Wednesday of the month from the American Metal Market (**AMM**), based on the price for Steel Plate, Cut-to-length as reported for National Mills;

**B. Price Adjustment Criteria and Conditions:** The BI monthly values apply to projects sold during the same month in which the data is posted. The MI monthly values apply to projects for which

qualifying items are shipped from the mill during the same month in which the data is posted.

<b>Product Relationship Table B-1</b>	
<b>Steel Product (Title)</b>	<b>BI, MI</b>
<b>Category 1:</b> Structural Steel Members, Levels UF, 1, 2, and 3 Steel H-Piling	Average of lowest and highest 27" to 36" tall, 10"-12" wide flange beams, up to 256 lbs./ft., prices plus scrap surcharge from Nucor-Yamato, SDI, and Gerdau Ameristeel
<b>Category 2:</b> Structural Steel Members, Levels 4, 5, and 6 Stay in-place steel casing (Piling & Caissons)	AMM Product Designation: Steel Plate, Cut-to-length (National Mills)

Adjustments will be made to the contract for fluctuations in the cost of steel used in the manufacture of the primary components of only the steel products listed in Table B-1:

Nuts, bolts, rebar chairs, connecting bands and other miscellaneous hardware items shall not be included in the price adjustment. No other steel products shall be considered for a price adjustment.

Adjustments will only be made for fluctuations in the cost of the steel used in the above products as shipped from the producing mill. No adjustment will be made for changes in the cost of manufacturing, fabrication, shipping, storage, etc.

Adjustments may be positive, negative, or non-existent depending on the circumstances. Adjustments for the steel price will be calculated by the Engineer and processed by change order on the Contractor's progress estimate.

No steel price adjustments will be made for any products manufactured from steel having a mill shipping date prior to the letting date.

Furnish the following documentation for all Table B-1 steel products to be incorporated into the work. Submit all documentation to the Engineer prior to incorporation of the steel into the work. The Department will withhold progress payments if the documentation is not provided and at the discretion of the Engineer the work is allowed to proceed. Progress payments will be made upon receipt of the delinquent documentation. Submit separate documentation packages for each steel product in Table B-1 and for each quantity represented by items 2) c and d below. Label each documentation package with a unique number.

- 1) An affidavit signed by the Contractor stating that the documentation provided is true and accurate.
- 2) Identification of the steel product subject to adjustment.
  - a. Documentation package number: PN525 – (Insert the steel product "title" from Table B-1) – (Insert sequential package number beginning with "1"). Example: PN525 – Steel H Piling – 1, PN 525 – Structural Steel – 2, etc...
  - b. The steel product quantity in pounds (kg).
  - c. Steel Certification and Mill Test Reports for the steel product.
  - d. The date the steel product, subject to adjustment, was shipped from the producing mill.

Upon the incorporation of the steel product into the work provide the Engineer the following:

- 1) An affidavit signed by the Contractor stating that the documentation provided is true and accurate.
- 2) Identification of the steel product subject to adjustment.
  - a. Documentation package number that was initially established for the steel product for which the price adjustment will be calculated.
  - b. The actual steel product quantity in pounds (kg) that was incorporated into the work.

**Price Adjustment Calculations**

The below formulas allow for a variation in steel prices without recognizing cost increases/decreases within the range of - 90 % to 110% of the Bidding Index (BI). The total steel price adjustment (SPA) will not be computed unless the percent % **Change** is - 10% or more, increase or decrease:

$$\% \text{ Change} = [(MI/BI) - 1] \times 100$$

**For a Price Increase:**

$$SPA = [(MI/BI) - 1.10] \times BI \times Q$$

**Example:** If the Project was bid on 4/8/2008, the BI for a category 1 pay item in March 2008 is \$46.475. If wide flange beams have a documented weight of 34500 pounds and the mill date of 9/8/2009, the MI for September 2008 is \$60.225.

Check threshold:

$$\% \text{ Change} = [(\$60.225/CWT / \$46.475/CWT) - 1] \times 100 = 29.586,$$

Is ABS (29.586) > 10? Yes

$$\begin{aligned} \text{Calculate SPA} &= [(\$60.225/CWT / \$46.475/CWT) - 1.10] \times \$46.475/CWT \times 34,500 \text{ lbs}/100 \\ &= \$3,140.36 \text{ (positive adjustment)} \end{aligned}$$

**For a Price Decrease:**

$$SPA = [(MI/BI) - 0.90] \times BI \times Q$$

**Example:** If the Project was bid on 1/8/2009, the BI for a category 1 pay item in January 2009 is \$47.825. If wide flange beams have a documented weight of 34500 pounds and the mill date of 4/8/2009, the MI for April 2009 is \$37.375.

Check threshold:

$$\% \text{ Change} = [(\$37.375/CWT / \$47.825/CWT) - 1] \times 100 = -21.85,$$

Is ABS (-21.85) > 10? Yes

$$\begin{aligned} \text{Calculate SPA} &= [(\$37.375/\text{CWT}/\$47.825/\text{CWT})-0.90] \times \$47.825/\text{CWT} \times 34,500 \text{ lbs}/100 \\ &= -\$1,955.29 \text{ (negative adjustment)} \end{aligned}$$

Where:

SPA = Steel Price Adjustment

MI = Mill Shipping Index. - Use the adjustment indices from the month the steel was shipped from the producing mill and properly documented. The adjustment indices will be posted on ODOT's website.

BI = Bidding Index. - Use the adjustment indices from the month in which the project is bid. The adjustment indices will be posted on ODOT's website.

Q = Quantity of the steel product, pounds (- actually incorporated into the work as documented by the Contractor and verified by the Engineer. -

**C. Price Adjustment Limitations:** The price adjustments are limited to a % Change of 50%, increase or decrease.

**Example 1:** When the Project was bid, the BI for a category 1 pay item with a quantity of 50,000 pounds, was \$39.00, and the MI for the month in which the steel was shipped was \$60.225.

Check threshold:

$$\% \text{ Change} = [(\$60.225/\text{CWT}/\$39.00/\text{CWT})-1] \times 100 = 54.423\%$$

The limit is 50%, thus the SPA is calculated as follows:

$$\begin{aligned} \text{SPA} &= [1.50 - 1.10] \times \text{BI} \times \text{Q} \\ \text{SPA} &= [1.50-1.10] \times \$39.00/\text{CWT} \times 50,000 \text{ lbs}/100 \\ &= \$7,800.00 \end{aligned}$$

**Example 2:** When the Project was bid, the BI for a category 1 pay item with a quantity of 50,000 pounds, was \$60.225, and the MI for the month in which the steel was shipped was \$29.00

Check threshold:

$$\% \text{ Change} = [(\$29.00/\text{CWT}/\$60.225/\text{CWT})-1] \times 100 = -51.847\%$$

The limit is -50 %, thus the SPA is calculated as follows:

$$\begin{aligned} \text{SPA} &= [0.50-0.90] \times \text{BI} \times \text{Q} \\ \text{SPA} &= [0.50-0.90] \times \$60.225/\text{CWT} \times 50,000 \text{ lbs}/100 \end{aligned}$$

= -\$12,045.00

**D. Payment/Deductions:** The price adjustment will be paid, or deducted from the Contractor's progress estimate, upon approval of a change order.

If the price adjustment is based on estimated material quantities for that time, and a revision to the total material quantity is made in a subsequent or final estimate, an appropriate adjustment will be made to the price adjustment previously calculated. The adjustment will be based on the same indices used to calculate the price adjustment which is being revised. If the shipping date(s) of the revised material quantity cannot be determined, the adjustment for the quantity in question, will be based on the indices utilized to calculate the steel price adjustment for the last initial documentation package submission, for the steel product subject to adjustment, that was incorporated into the particular item of work, for which quantities are being finalized.

**Example:** Structural steel for a particular bridge was provided for in three different shipments with each having a different mill shipping date. The quantity of structural steel actually used for the bridge was calculated and a steel price adjustment was made in a progress payment. At the conclusion of the work an error was found in the calculation of the final quantity of structural steel used for the bridge. The quantity to be adjusted can not be directly related to any one of the three mill shipping dates. The steel price adjustment for the quantity in question would be calculated using the indices that were utilized to calculate the steel price adjustment for the quantity of structural steel represented by the last initial structural steel documentation package submission. The package used would be the one with the greatest sequential number.

**E. Expiration of Contract Time:** When steel products are shipped from the mill after expiration of contract time and liquidated damages are chargeable, steel price adjustments will be based on the MI for the month in which contract time expired.

**F. Documentation Review:** The Department reserves the right to inspect the records of the Contractor, its subcontractors, material fabricators and suppliers to verify the accuracy of the documentation submitted to the Department.

**G. Extra Work/Force Account:** When steel product, as specified herein, are added to the contract as Extra Work, in accordance with the provisions of C&MS Section 109, no steel price adjustments will be made for any products manufactured from steel having a mill shipping date 5 business days after the Department's request. Price adjustments will be made as provided herein however the BI shall be based on the month - of the Department's request. The MI will be based on the month the steel was shipped from the producing mill and after the Extra Work request. For extra work performed on force account basis, reimbursement of actual material costs, along with the specified overhead and profit markup, will be considered to include full compensation for the current cost of steel and no steel price adjustments will be made.

#### **PN 420 - 4/18/2008 - SURFACE SMOOTHNESS REQUIREMENTS FOR PAVEMENTS**

**DESCRIPTION:** The surface tolerance specification requirements are modified as follows for all mainline lanes and collector-distributor road pavements of constant width. Surface tolerance requirements for other areas such as ramps, acceleration and deceleration lanes, side roads, shoulders, crossovers, approach slabs, bridge decks, etc., are not a part of this specification and are subject to the requirements of the original item(s) specified.

If the pavement surface is Rubberized Open Graded Asphalt Friction Course (Supplemental Specification 803), this specification applies to the surface of the course immediately below.

**MATERIALS AND EQUIPMENT:** Provide smoothness measuring equipment conforming to Supplement 1058. Furnish the Department's approval letter of the profiler and the operator to the

Engineer. The Engineer will verify the smoothness measuring equipment conforms to Supplement 1058. The Engineer will verify the profile operator's certification against the operator list posted on the Office of Pavement Engineering webpage. Furnish equipment meeting the requirements of C&MS 257.02 for performing corrective diamond grinding.

**SMOOTHNESS MEASUREMENT:** Measure the pavement surface smoothness in both wheel paths. Wheelpaths are located parallel to the centerline of the pavement and approximately 3.0 feet (1.0 m) inside all lane edges, measured transversely. Ensure the path of the profiler is parallel to the lane edges at all times. Measure the entire length of pavement, starting and stopping the profile runs when the profile sensor(s) is within 1.0 foot (0.3 m) of any existing pavement, pressure relief joint, approach slab, or other non pavement features (i.e. manholes, valveboxes). Remove any objects such as dirt, debris, curing covers, etc., prior to performing the surface smoothness measurements. Replace any curing covers after the measurements are taken. Repair any membrane curing damaged during the measurements.

Do not perform any surface smoothness measurements until the pavement has cured sufficiently to allow measuring without damaging the pavement. When the pavement will not support the profiler on the next working day, notify the Engineer and inform the Engineer when the profile will be run. Notify the Engineer each day prior to performing any measurements.

Develop an International Roughness Index (IRI) according to ASTM E 1926 for each 0.1-mile (0.16 km) section. Submit two copies of the summary report from ProVAL conforming to Supplement 1110 and two electronic copies of all longitudinal pavement profiles in ProVAL compatible format to the Engineer. The Engineer will submit one copy of the summary report and one electronic copy of the profiles to the Office of Pavement Engineering.

Provide necessary traffic control and survey stationing for all surface smoothness measurements.

**MANDATORY CORRECTIVE WORK:** Perform corrective work for the applicable surface type as required. Do not include pavement within 40 feet (12.2 m) of a bridge deck or approach slab in any 0.1-mile (0.16 km) section evaluated for pay adjustment. These 40 feet (12.2 m) sections will be measured and evaluated for localized roughness corrections

**Asphalt Concrete Surface:** Correct all localized areas of roughness having deviations, high or low points, with an IRI in excess of 160 inches per mile (2.53 m/km) in 25 feet (7.6 m). Correct any 0.1-mile (0.16 km) sections having an IRI greater than 95 inches per mile (1.50 m/km). Perform corrective work by removing and replacing to the depth necessary to correct the deviations or by diamond grinding. Use asphalt concrete meeting the contract requirements for the replacement work. Apply Item 407 Tack Coat prior to placing the surface course. Limit the length of any one diamond grinding location to no more than 30 feet (10 m), measured longitudinally. The amount of diamond grinding per 0.1-mile (0.16 km) section is limited to no more than 10% of the section length, otherwise, remove and replace is required. The total amount of grinding is limited to no more than 5% of the lane-miles (lane-km) eligible for a pay adjustment.

Re-measure each 0.1-mile (0.16 km) section where corrective work was performed to ensure the IRI is less than 95 inches per mile (1.50 m/km) and there are no localized areas of roughness with an IRI in excess of 160 inches per mile (2.53 m/km) in 25 feet (7.6 m). Perform additional corrective work until the IRI is less than 95 inches per mile (1.50 m/km) for each 0.1 mile (0.16 km) section and any localized roughness areas have an IRI less than 160 inches per mile (2.53 m/km) in 25 feet (7.6 m).

If the final surface course is Item 803, seal any diamond ground areas with material meeting the requirements of 702.04 prior to placing the Item 803.

**Portland Cement Concrete Surface:** Correct all localized areas of roughness having deviations,

high or low points, with an IRI in excess of 160 inches per mile (2.53 m/km) in 25 feet (7.6 m). Correct any 0.1-mile (0.16 km) section having an IRI greater than 95 inches per mile (1.50 m/km). Perform corrective work by diamond grinding or removing and replacing. Use Portland cement concrete meeting the contract requirements for the replacement work.

Re-measure each 0.1-mile (0.16 km) section where corrective work was performed to ensure the IRI is less than 95 inches per mile (1.50 m/km) and there are no localized areas of roughness with an IRI in excess of 160 inches per mile (2.53 m/km) in 25 feet (7.6 m) or less. Perform additional corrective work until the IRI is less than 95 inches per mile (1.50 m/km) for each 0.1 mile (0.16 km) section and any localized roughness areas have an IRI less than 160 inches per mile (2.53 m/km) in 25 feet (7.6 m).

Complete all corrective work prior to determination of pavement thickness.

If corrective work is required the surface texture after diamond grinding is acceptable and no additional texturing is required.

**EXEMPTED CORRECTIONS:** Required corrective work resulting from contract requirements for maintaining traffic are considered exempted corrections. Exempted corrections occur primarily at ramps or other access points where paving must be suspended in order to maintain traffic. Required corrective work due to paving suspensions at the end of a work period, material availability, weather, or any reason other than maintaining traffic are not considered exempted corrections. No exempted corrections exist on projects where the maintenance of traffic plan does not interfere with paving operations. Perform exempted corrections according to the requirements for mandatory corrective work.

**METHOD OF MEASUREMENT:** Determine the IRI for each lane for each 0.1-mile (0.16 km) section of paving. The IRI for a 0.1-mile (0.16 km) section is the average of the IRI of the two wheel paths.

**PAY ADJUSTMENTS:** A lump sum pay adjustment will be made according to the following schedule for each lane for each 0.1-mile (0.16 km) section, regardless of lane width. Pay adjustments are based on pavement thickness. Pavement thickness is the total thickness of asphalt concrete, Portland cement concrete, or both placed as part of the contract and does not include any free draining base, aggregate base, stabilized subgrade, etc.

PAY SCHEDULE		
IRI	PAY ADJUSTMENT	
Inches per mile per 0.1 mile section (m/km per 0.16 km section)	Pavement Thickness less than 8 inches (200mm)	Pavement Thickness 8 inches (200 mm) and greater
45 (0.71) or less	\$375.00	\$875.00
Over 45 to 50 (0.71 to 0.79)	\$225.00	\$525.00
Over 50 to 55 (0.79 to 0.87)	\$150.00	\$350.00
Over 55 to 60 (0.87 to 0.95)	\$75.00	\$175.00
Over 60 to 70 (0.91 to 1.10)	\$0.00	\$0.00

Over 70 to 75 (1.10 to 1.18)	-\$150.00	-\$350.00
Over 75 to 80 (1.18 to 1.26)	-\$300.00	-700.00
Over 80 to 85 (1.26 to 1.34)	-\$450.00	-1,050.00
Over 85 to 90 (1.34 to 1.42)	-600.00	-\$1,400.00
Over 90 to 95 (1.42 to 1.50)	-750.00	-\$1,750.00
Over 95 (1.50)	(1)	(1)

(1) Corrective work required

Pay adjustments will be based only on the measured IRI after any mandatory corrective work or corrective work due to localized roughness, however no incentive will be paid for any 0.1-mile (0.16 km) section where mandatory corrective work was performed regardless of the resulting IRI.

Negative pay adjustments apply to sections with mandatory corrective work and exempted corrections. One-tenth mile (0.16 km) sections with exempted corrections only are eligible for incentive pay based on IRI measurements taken after completion of the exempted corrections. At the Contractor's option, corrective work may be performed on any section with an IRI greater than 70 inches per mile (1.10 m/km) to reduce or eliminate the negative pay adjustment. however, no incentive will be paid regardless of the resulting IRI.

As an option perform corrective work in the form of diamond grinding or Item 254 pavement planing to improve the profile on any course prior to the surface course. If the final course is Item 803 do not perform corrective work on the Item 803. Only diamond grinding may be performed on the course immediately below Item 803.

Negative pay adjustments apply to sections with mandatory corrective work and exempted corrections.

No payment will be made for any 0.1-mile (0.16 km) section with an IRI greater than 95 inches per mile (1.50 m/km), until corrective work has been completed and the IRI has been reduced to less than 95 inches per mile (1.50 m/km).

**BASIS OF PAYMENT:** Include the cost of all labor, equipment, and materials necessary to meet this specification in the contract unit or lump sum price for the applicable pavement items. The Department will pay for exempted corrections according to 109.04

#### **PN 535 - 01/15/2010 - Asphalt Binder Price Adjustment for Multi-Year Projects**

Any contract line item specifying more than 2500 cy of asphalt concrete is eligible for a price adjustment, if the Department's asphalt binder index shows the price for asphalt binders has increased or decreased in excess of 10% and the adjustment is more than \$100 for any individual item.

If the ratio of the placing index (PI) to the bidding index (BI) is greater than 1.10 or less than 0.90, the Department will adjust compensation the Contractor receives for work done each month under applicable contract items specifying asphalt concrete. The adjustment will apply to the price for asphalt binder used in those contract items according to the following formula:

For a price increase:

$$PA = \left( \frac{PI}{BI} - 1.10 \right) \times C \times Q$$



For a price decrease:

$$PA = \left( \frac{PI}{BI} - 0.90 \right) \times C \times Q$$

Where:

- PA = price adjustment
- C = BI x percent virgin asphalt binder / 100
- PI = Placing Index, the asphalt index for the month the asphalt concrete is placed
- Q = quantity of asphalt concrete in tons (metric tons)
- BI = Bidding Index, the asphalt index for the month the project is bid

The Asphalt Index is based on the data provided in the Poten & Partners, Inc., Asphalt Weekly Monitor® (<http://www.poten.com/copyright.asp>). The Department will use the selling price for PG 64-22 paving grade asphalt from the Midwest / Mid-continent Markets, Illinois / Michigan / Ohio / Indiana / Kentucky, for the Cleveland, Toledo and Cincinnati areas. The Department will average the three city areas low and high selling prices (6 numbers) as in effect on the last Wednesday of the month. Only the calculated average price will be published by the Department. If the price is not available for any reason, then the Director's determination will be final.

The percent of virgin asphalt binder used to calculate C is determined from the approved JMF.

The quantity of asphalt concrete (Q) is the authorized constructed quantity in tons placed in the month being considered. Calculate and submit the asphalt concrete quantity in tons using the conversion factor established according to 401.21. Provide the Engineer with the Asphalt Binder Price Adjustment calculations and resultant adjustment amounts.

If contract items specifying asphalt concrete are placed beyond an approved Contract Completion Date and liquidated damages are applied for completion of the contracts, the Department will base price adjustments on either the PI for the last month before liquidated damages were applicable or the PI for the actual month of placing, whichever is less.

At a minimum, the Department will verify and apply price adjustments at the end of each construction season and as soon as practical after the completion of the project.

## **PN 623 – MODIFIED - PROVIDING ELECTRONIC EQUIPMENT FOR CONSTRUCTION LAYOUT**

The requirements of Item 623 apply, except as modified below:

### **623.02 General**

If the Contractor elects to perform any portion of the projects construction layout by electronic methods according to Item 623, then provide the Department's Project Engineer with a real time survey grade global positioning satellite (GPS) receiver and data collector. Provide a device that has a radio able to receive real time correctors and has an accuracy of 0.10 of a foot in both horizontal and vertical from true stationing. These requirements will permit the Department to verify the construction layout, perform check sections, and document pay items.

Provide all 3D models, control points, alignments, templates, and all other pertinent design files and information used to construct the project, including, but not limited to: DEM's (digital elevation models), DTM's (digital terrain models), TIN's (triangulated irregular network), DXF's (drawing exchange formats), DWG's (autocad files), DGN's (microstation), PRO's (terramodel)...ect." Provide the computer to run the necessary software.

Provide the technical assistance to the Engineer and train the Engineer on how to use the provided equipment and software. Sixteen hours shall be spent with the authorized manufacture representative, the engineer, and the contractor. Upon completion of the project, this equipment will remain property of the Contractor.

### **PN 130 - 07/21/2006 - EXTENSION TO THE COMPLETION DATE FOR WEATHER**

Extensions of time for the duration of the entire project will be for calendar days and calculated in accordance with Section 108.06 of the Construction and Materials Specifications except delays caused by weather or seasonal conditions should be anticipated and will be considered as the basis for an extension of time only when the actual work days lost exceeds the number of work days lost each month due to inclement weather as determined by the following schedule:

<b>Month</b>	<b>Number of Work Days Lost Due to Weather</b>
January	8
February	8
March	7
April	6
May	5
June	5
July	4
August	4
September	5
October	6
November	6
December	6

This table applies to the duration between contract execution and original completion date. Extensions for weather days beyond the original completion date will be determined in accordance with 108.06.C.

### **Project Completion:**

The final project completion shall be 1281 days after execution of the contract. If the DBT proposes a shorter project duration in the technical proposal, the shorter duration shall become the project duration and will be used to calculate the final project completion date.

### **FRA-71-17.76 REFERENCE ITEM DESCRIPTIONS**

1. **Item Special- Misc: 100% City Of Columbus:** This item includes all work described in section 6.9.2 to place utility conduits on Long Street Bridge. This item, also, includes the following items detailed in appendix AE-02:
  - a. Granite curb items.
  - b. Brick sidewalk for the urban street corners.
  - c. Brick pavers for brick crosswalks at urban street intersections.

**2/3. Item Special- Misc: Approximately 50% of New Bridge Costs:** This item includes all work described in the Contract documents for bridges listed below.

<i>Old SFN</i>	<i>New SFN</i>	<i>Bridge Number</i>	<i>Feature Description</i>
n/a	2507617	FRA-71-1784B	NB CD over Ramp V2, Spring Street over Ramp V2(tunnel)
n/a	2507641	FRA-71-1802	NB I-71 over Ramp V3
n/a	2507668	FRA-71-1799B	Ramp V6 over Ramp V3
n/a	2507706	FRA-71-1819	Ramp W2 over Ramps W1, W3, W4, and Jack Gibbs Blvd
n/a	2506416	FRA-670-0444	I-670 EB over Ramps V3,W1,W2,W4,W5,X4, and I-71
n/a	2517825	FRA-670-0492A	Ramp V2 over Jack Gibbs Blvd.
n/a	2517515	FRA-670-0433A	Ramp X3 over Cleveland Ave.

**4/5. Item Special- Misc: Approximately 50% of Non BR Eligible Bridge Costs:** This item includes all work described in the Contract documents for bridges listed below.

<i>Old SFN</i>	<i>New SFN</i>	<i>Bridge Number</i>	<i>Feature Description</i>
2506548	2506556	*FRA-71-1779	Long Street & North & South Integral Caps
2506483L/ 2506513R	2506521	*FRA-71-1790	Spring Street & North & South Integral Caps
2507625	2507633	FRA-71-1804A	Ramp W1 over Ramps X2, X3, and V3
2507684	2507692	FRA-71-1796L	I-71 SB over Ramps X2, X3, and V3
2507714	2507722	FRA-71-1836A	Ramp W3 over Jack Gibbs Blvd.
2507773	n/a	FRA-71-1835L	I-71 SB over Jack Gibbs Blvd.
2507749	n/a	FRA-71-1835R	I-71 NB over Jack Gibbs Blvd.
2506491	2517817	FRA-670-0491	I-670 EB over Jack Gibbs Blvd.
2517558	2517604	FRA-670-0508	I-670 EB over St. Clair Ave.
2506394	2517507	FRA-670-0433L	Ramp V3 over Cleveland Ave.
2506424	2517477	FRA-670-0433R	I-670 EB over Cleveland Ave.

\* Enhancements(Items not detailed on sheets 108-115 of AE-02) described in Appendix AE-02 of the Project Scope for these structures are to be included in Reference 7 - Bridge Enhancements(Caps).

**6. Item Special- Misc: BR Eligible Bridges – FRA-670-0457:** This item includes all work described in the Contract documents for bridges listed below.

<i>Old SFN</i>	<i>New SFN</i>	<i>Bridge Number</i>	<i>Feature Description</i>
2506459	2506444	FRA-670-0457	Ramp X4 over Ramps V3, W1, W2, X3, and I-71

7. **Item Special- Misc: Bridge Enhancements (Caps):** This item includes all work described in the Contract documents for bridges listed below.

<i>Old SFN</i>	<i>New SFN</i>	<i>Bridge Number</i>	<i>Feature Description</i>
N/A	2507919	FRA-71-1777	Long Street South Cap Structure over I-71

This item, also, includes Enhancements described in Appendix AE-02 of the Project Scope for Spring Street bridge(FRA-71-1790), Long Street bridge(FRA-71-1779), and Long Street Cap bridge(FRA-71-1777). Structural work for the entire width of Long Street bridge(FRA-71-1779) and Spring Street bridge(FRA-71-1790) are to be included in references 4 and 5.

8. **Item Special- Misc: Project Enhancements (Aesthetics):** This item includes all enhancement work described in Section 14 of the scope and/or detailed in appendix AE-02, except work that is included in references 1 and 7.

- 9/10/11. **Item Special-Misc: Approximately 33 1/3% of Interstate Construction Costs:**  
 This item includes all work described in the Contract documents excluding the bridge work. This includes but is not limited to pavement, excavation, embankment, retaining walls, etc. This item includes work on I-71, I-670, and all ramps leading from or to these interstate roadways.

12. **Item Special- Misc: Non Interstate Construction:** This item includes all work described in the Contract documents excluding the bridge work. This includes but is not limited to pavement, excavation, embankment, retaining walls, etc. This item includes work on all roadways not listed in reference 9/10/11 above.

13. **Item Special-Dispute Resolution Board:** The work included in this item will include providing a DRB as described in proposal note 108 of the Proposal. The amount will be set at \$350,000 and each DBT will use this amount in their bid. See PN 108 for a detailed description of what is included.

14. **Item Special- Misc: Field Office:** This item includes providing a Project Management Office as described in section 1.17.1 of the Project Scope.

Pay Items

Proj 11-3000 FRA-71/670-17.76/4.19 PID#77369

DBT:

LINE NUMBER	ITEM NUMBER	DESCRIPTION	UNIT	QUANTITY	BID AMOUNT	
<b>SECTION 001 ITEMS OF WORK</b>						
					DOLLAR	CENTS
0001	530E99100	SPECIAL - MISC.: 100% CITY OF COLUMBUS	LUMP	1		
0002	530E99100	SPECIAL - MISC.: APPROXIMATELY 50% OF NEW BRIDGE COSTS	LUMP	1		
0003	530E99100	SPECIAL - MISC.: APPROXIMATELY 50% OF NEW BRIDGE COSTS	LUMP	1		
0004	530E99100	SPECIAL - MISC.: APPROXIMATELY 50% OF NON BR ELIGIBLE BRIDGE COSTS	LUMP	1		
0005	530E99100	SPECIAL - MISC.: APPROXIMATELY 50% OF NON BR ELIGIBLE BRIDGE COSTS	LUMP	1		
0006	530E99100	SPECIAL - MISC.: BR ELIGIBLE BRIDGES - FRA-670-0457	LUMP	1		
0007	530E99100	SPECIAL - MISC.: BRIDGE ENHANCEMENT (CAPS)	LUMP	1		
0008	530E99100	SPECIAL - MISC.: PROJECT ENHANCEMENT (AESTHETICS)	LUMP	1		
0009	690E21000	SPECIAL - MISC.: APPROXIMATELY 33 1/3% OF INTERSTATE CONSTRUCTION COSTS	LUMP	1		
0010	690E21000	SPECIAL - MISC.: APPROXIMATELY 33 1/3% OF INTERSTATE CONSTRUCTION COSTS	LUMP	1		
0011	690E21000	SPECIAL - MISC.: APPROXIMATELY 33 1/3% OF INTERSTATE CONSTRUCTION COSTS	LUMP	1		
0012	690E21000	SPECIAL - MISC.: NON INTERSTATE CONSTRUCTION	LUMP	1		
SECTION 0001 SUB-TOTAL:						
<b>SECTION 002 INCIDENTALS</b>						
0013	100E50000	SPECIAL - DISPUTE REVIEW BOARD	LUMP	1	\$350,000	.00
0014	619E99000	SPECIAL - FIELD OFFICE	LUMP	1		
SECTION 0002 SUB-TOTAL:						
<b>BID TOTAL</b>						