

**Project Number:** 180367

**PID #:** 94401

**Contract ID:** RIC94401

**DBE Goal: 7%**

Richland

SR 39-05.86

(Cities of Galion & Mansfield)

E140(896)

FOUR LANE RESURFACING

Work Type Percentage Performed by Prime: 50

THE 2016 CONSTRUCTION AND MATERIAL SPECIFICATION BOOK IS PART OF THE  
BIDDING DOCUMENTS ON THIS PROJECT

# PROPOSAL

STATE OF OHIO

DEPARTMENT OF TRANSPORTATION

Jerry Wray, Director

June 7, 2018

Submitted by \_\_\_\_\_

Bidder Id \_\_\_\_\_

## TABLE OF CONTENTS

PN 019 – 01/20/2016 - PREPARATION OF PROPOSAL .....	2
PN 007 - 10/15/2004 - TRUCK LEASING.....	3
PN 033 - 04/18/2008 - AS PER PLAN DESIGNATION - PROPOSAL NOTE .....	4
PN 038 - 10/15/2004 - UNRESOLVED FINDING FOR RECOVERY .....	4
PN 039 - 10/15/2004 - ASSIGNMENT OF ANTITRUST CLAIMS IN STATE CONTRACT LANGUAGE.....	4
PN 015 - 07/06/2012 - CONTRACT PROVISIONS FOR FEDERAL-AID CONSTRUCTION CONTRACTS .....	5
PN 017 - 10/15/2004 -FEDERALLY REQUIRED EEO CERTIFICATION CLAUSE .....	5
PN 020 – 11/21/2011 - NOTICE OF REQUIREMENT OF AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY .....	5
PN 029 – 10/16/2015– ONTHEJOB TRAINING (OJT) PROVISIONS.....	7
PN 035 - 10/15/2004 - SPECIAL PROVISIONS OF FEDERAL-AID HIGHWAY PROGRAM OF MANUAL 6-4-1-2 .....	9
PN 026 - 10/15/2004 - CERTIFICATION OF NONSEGREGATED FACILITIES .....	13
PN 031 – 02/22/2016 - PROMPT PAYMENT.....	14
PN 046 - 10/15/2004 - SUBCONTRACT AGREEMENTS.....	15
PN 013 - 4/20/2018 - DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION PLAN AND GOOD FAITH EFFORTS .....	15
PN 090 - 01/21/2011 - WORK TYPE CODES AND DESCRIPTIONS .....	21
PN 059 - 10/15/2004 - WAGE DETERMINATION APPEALS PROCESS.....	22
PN 061 – 01/20/2016 -WAGE SCALE ON ALL FEDERAL-AID PROJECTS .....	23
PN 050 - 10/15/2004 - LIMITATION ON USE OF CONTRACT FUNDS FOR LOBBYING.....	24
PN 045 - 10/15/2004 - NON - COLLUSION AFFIDAVIT .....	25
PN 420 - 10/21/2016 - SURFACE SMOOTHNESS REQUIREMENTS FOR PAVEMENTS .....	25
PN 520 04/20/2018 - FUEL PRICE ADJUSTMENT .....	31
PN 534- 04/20/2018 - ASPHALT BINDER PRICE ADJUSTMENT.....	34

## **PN 019 – 01/20/2016 - PREPARATION OF PROPOSAL**

### **ELECTRONIC BIDDING REQUIREMENTS**

The Department uses the Bid Express website (<http://www.bidx.com>) as an official repository for electronic bid submittal. Bidders must prepare their bids electronically using Project Bids and submitted via Bid Express.

The Department will not accept handwritten bids or bids generated electronically from software other than that used and supplied by the Department. All handwritten bids and bids generated electronically from software other than that used and supplied by the Department shall be considered non-responsive and ineligible for award. The Department will only accept and consider bids that have been produced using Project Bids and submitted via Bid Express.

The Department's Office of Contracts will provide planholders with a proposal, plan set and any required addenda. 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>. Planholders will be notified of all addenda via email. All proposals, plans, Project Bids (EBSX) files and addenda are also available on the Office of Contracts web site.

Electronic 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.

Blank unit prices will be considered an invalid bid EXCEPT in the case of optional designs (projects where the bidder is required to bid on only one design). Unit prices of zero are not permitted at any time.

Addenda and/or amendments must be acknowledged in the Bid Acknowledgement section of the Project Bids (EBSX) file in order for your bid to be considered for award of this project. The section contains the certification of receipt of all hard copy proposals, addenda, amendments, plans, standard specifications and supplemental specifications. Supplemental Questionnaire information regarding the bidder's outstanding ODOT and non-ODOT work have also been included in this section. Bid Express will not accept bids that do not have amendments incorporated. Failure to incorporate changed quantities or items in your Project Bids (EBSX) submissions will result in the rejection of your bid.

Each bidder is required to file with his bid 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." Electronic bid bonds will be verified upon submission of bids through Bid Express. Bidders must obtain and verify a Bond ID number from the surety. This Bond ID must be entered in the "Bond ID Number" field in the Bid Bond Section of the Project Bids file.

If the contractor 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 10:00 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 awarded contract amount. (Ohio Revised Code Section 5525.16)

Any bid received after 10:00 a.m. on the scheduled day of opening 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.

The Department will ensure that this electronic bid depository is available for a two-hour period prior to the deadline for submission of bids. In the case of disruption of national communications or loss of services by <http://www.bidx.com> during this two-hour period, the Department will delay the deadline for bid submissions to ensure the ability of potential bidders to submit bids. If this occurs, instructions will be communicated to potential bidders.

### **PN 007 - 10/15/2004 - TRUCK LEASING**

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 contractor may receive credit for 100 percent of the cost of the materials or supplies toward the DBE goal. For purposes of this section, a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
2. When the materials or supplies are purchased from a DBE regular dealer or supplier the prime contractor 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 contractor who obtains goods, materials and supplies and fixes in place, for use, the same goods, materials and supplies. (e.g., DBE contractor 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 Contractor/Trucker who delivers materials, goods, or supplies to project site. 60% credit toward prime's DBE goal.

Tailgating - DBE Contractor/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 033 - 04/18/2008 - AS PER PLAN DESIGNATION - PROPOSAL NOTE**

For the last several years the "As Per Plan" designation has been added to some item descriptions in the proposal to assist the Contractors to easily identify standard items that have been altered by plan notes.

The "As Per Plan" designation has proven to be a very useful tool for the Contractors. However, its use was never intended to relieve the Contractors of their responsibility to read, bid and construct all items in accordance with all governing plan notes. Therefore, the absence of an "As Per Plan" designation on some item descriptions in the proposal for which there are clear and controlling plan notes does not relieve the Contractors of the responsibility to read, bid and construct those particular items in accordance with the governing plan notes.

Be advised that the item descriptions in the bidding proposal must be read or interpreted with the governing plan notes and the Ohio Department of Transportation Construction and Materials Specifications. A claim based upon an "order of precedence" basis will be denied. In the event that a conflict, either real or perceived, exists between the item description and the governing plan note, the Contractors are to request clarification through the pre-bid process.

#### **PN 038 - 10/15/2004 - UNRESOLVED FINDING FOR RECOVERY**

The Contractor 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 Contractor agrees that if this representation is deemed to be false, the contract shall be void ab initio as between the parties to this contract, and any funds paid by the state hereunder shall be immediately repaid to the Department, or an action for recovery may be immediately commenced by the Department for recovery of said funds.

#### **PN 039 - 10/15/2004 - ASSIGNMENT OF ANTITRUST CLAIMS IN STATE CONTRACT LANGUAGE**

It is the policy of the Ohio Department of Transportation that ODOT and the Contractor 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 Contractor acting herein by and through the person signing this contract on behalf of the Contractor as a duly authorized agent, hereby assigns, sells, conveys, and transfers to ODOT any and all right, title and interest to any and all claims and causes of action the Contractor now has or hereafter requires under state or federal antitrust laws provided that the claims or causes of action related to the goods or services that are the subject to the contract. In addition, the Contractor warrants and represents that it will require any and all of its subcontractors and first tier suppliers to assign any and all federal and state antitrust claims and causes of action to ODOT. 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 015 - 07/06/2012 - CONTRACT PROVISIONS FOR FEDERAL-AID CONSTRUCTION CONTRACTS**

The required contract provisions for federal-aid construction contracts (contained in Form FHWA 1273 revised May, 2012) 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 prime contractors 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 contractor 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 – 11/21/2011 - 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 Contractor's statewide workforce):  
<http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/Construction/StatewideAverages-ByTrade.pdf>

**The New Hire Definition is as follows:**

An individual who has a break in service (not on an employer's payroll) for a period of 12 months or longer and the person affected is not a salaried employee, but belongs to a union craft. 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 12 months or longer.

The time frame for a new hire shall be associated with the first project worked for that contractor regardless of whether it is public or private. When reporting new hires the contractor shall identify that employee as a new hire on that specific project only. Subsequent work, barring a break in service of 12 months or more, would **not** qualify the employee as a new hire for that contractor.

The Contractor'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 Contractor 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 Contractor to Contractor 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 contractor will be measured against the total work hours performed. Under FHWA, ODOT is the authority tasked with ensuring that the contractor adheres to the aforementioned regulations. In addition to complying with the Required Contract Provisions as outlined in the attached subcontract agreement the Contractor shall provide immediate written notification to the ODOT and the Prime Contractor when referral practices of the union or unions with which the Contractor 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 contractors 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 contractor's affirmative action efforts and employment practices. Under Executive Order 11246, the OFCCP may perform contract compliance reviews on contractors 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/ofccp/TAguides/consttag.pdf> page E-32

The Department of Administrative Services (DAS), Equal Opportunity Division, is responsible for ensuring state contractors 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 includes the issuance of certificates of compliance under [ORC 9.47](#) and [153.08](#), conducting project site visits and compliance reviews (desk audits) to ensure contractors 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 contractors 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 on 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 contractor'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 contractor or subcontractor completes performance of the state contract.  
<http://www.das.ohio.gov/Eod/ccinputform29.htm>

The Contractor 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 – 10/16/2015– ON THE JOB TRAINING (OJT) 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 Contractor's equal employment opportunity affirmative action training program:

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

The Contractor is not required to have a specific number of trainees assigned to this project. The Contractor will endeavor to meet ODOT's annual workforce goal of 7.6% for OJT trainees. The number of trainees will be distributed among the work classifications on the basis of the Contractor's needs and the availability of the journey persons in the various classifications. The Contractor will be credited for each trainee employed by him or her who is currently enrolled or becomes enrolled in an approved program.

Training and upgrading of minorities and women toward journey person status is a primary objective of this Training Special Provision. Accordingly, the Contractor must make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. This training commitment is not intended, and will not be used, to discriminate against any applicant for training, regardless of whether the applicant is a member of a minority group or not.

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

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



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

Each Contractor shall provide adequate reporting on trainees and their progress. The Contractor shall report all OJT trainees on its payroll submission to the Department via selecting the OJT designation in the labor code for each trainee.

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

All Contractors shall submit their own Training Program or Apprenticeship Certificate, for 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, Department of Job and Family Services, Ohio State Apprenticeship Council. 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.

**PN 035 - 10/15/2004 - 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 contractor 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 contractor 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 contractors and subcontractors.) The contractor 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 contractor will accept as his 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 contractor 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 contractor 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 contractor'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 contractor'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 contractor'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 contractor's equal employment opportunity obligations within thirty days following their reporting for duty with the contractor.

(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 contractor's procedures for locating and hiring minority group employees.

b. In order to make the contractor'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 contractor will take the following actions:

(1) Notices and posters setting forth the contractor's equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

(2) The contractor'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 contractor 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 contractor 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 contractor 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 contractor for employment consideration.

In the event the contractor 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 contractor'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 contractor to do the same, such implementation violates Executive Order 1 1246, as amended.)

c. The contractor 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 contractor 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 contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor 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 contractor will promptly investigate all complaints of alleged discrimination made to the contractor 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 contractor will inform every complainant of all of his avenues of appeal.

## **7. TRAINING AND PROMOTION**

a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor 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 contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor 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 contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her 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 contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

a. The contractor 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 contractor 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 contractor 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 contractor, the contractor 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 contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor 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 contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the State highway agency.

## **9. SUBCONTRACTING**

a. The contractor will use his best efforts to solicit bids from and to utilize minority group subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of minority-owned construction firms from State Highway Agency personnel.

b. The contractor will use his best efforts to ensure subcontractor compliance with their equal employment opportunity obligations.

## **10. RECORDS AND REPORTS**

a. The contractor will-keep such records as are necessary to determine compliance with the contractor's equal employment opportunity obligations. The records kept by the contractor 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 contractors 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 contractors 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 contractor 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 subcontractor and material supplier prior to the award of the subcontract or consummation of a material supply agreement if such subcontract or agreement exceeds \$10,000 and is not exempt from the provisions of the Equal Opportunity clause.

(b) Subcontractors and material suppliers are cautioned as follows: By signing the subcontract or entering into a material supply agreement, the subcontractor or material supplier will be deemed to have signed and agreed to the provisions of the "Certification of Nonsegregated Facilities" in the subcontract or material supply agreement. This certification provides that the subcontractor or material supplier does not maintain or provide for his employees facilities which are segregated on the basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the subcontractor or material supplier will not maintain such segregated facilities.

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

**PN 031 – 02/22/2016 - PROMPT PAYMENT**

The Code of Federal Regulations (CFR) 49, 26.29 requires that ODOT establish a mechanism to monitor Prompt Payment requirements to all subcontractors.

The Prime Contractor shall notify the Department that it has complied with the Prompt Payment requirements set forth in Construction and Materials Specification 107.21 utilizing the Civil Rights and Labor (CRL) System. The Prime Contractor will enter subcontractor payments within 10 calendar days of payment from ODOT.

CRL Requirements with interactive training guides can be found at <http://transportation.ohio.gov/crl/> under "Ohio DOT Reference Materials"

The affirmation of compliance shall include the following information:

- 1.) The name of the subcontractor or supplier that was paid;
- 2.) The dollar amount of the payment to the subcontractor or supplier;
- 3.) The date the subcontractor/supplier was paid.

Subcontractors or suppliers will affirm the payment was made in the CRL system, on the date and in the amount listed in the affirmation. The Prime Contractor shall include this affirmation requirement in all subcontractor and supplier contracts that it enters into and further require that all subcontractors and suppliers place the same payment obligation in each of their lower tier contracts.

#### **PN 046 - 10/15/2004 - SUBCONTRACT AGREEMENTS**

Prime contractors will not be required to submit executed C-92s with their subcontract agreements for Disadvantaged Business Enterprises (DBE) subcontractors prior to the execution of the prime contract with ODOT. The prime contractor must only furnish to the Department subcontract agreements from the DBE subcontractors with whom they propose to utilize to fulfill the project goal. Again, this requirement is at the time of contract execution with ODOT.

However, the prime contractor must submit C-92s prior to the DBE commencing work. At the time of submission of the C-92 the DBE subcontractor must have sufficient dollar and work type qualifications to perform the work. The prime contractor will be held accountable to meet the project goal.

#### **PN 013 – 04/20/2018 - DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION PLAN AND GOOD FAITH EFFORTS**

##### **DBE UTILIZATION PLAN**

All Bidders shall submit a DBE Utilization Plan at the time of bid setting forth specific information demonstrating how the Bidder will achieve the DBE goal. By submitting a DBE Utilization Plan, the Bidder is affirming that they will be using the DBE firms identified in the Utilization Plan to meet the DBE contract goal. The DBE Utilization Plan shall be submitted with the Project Bids (EBS)/Bid Express Online Submission through the DBE List folder at time of bid submission. Any bids received without electronic submission of the DBE Utilization Plan at or before bid time, will be deemed unresponsive. Bidders shall download the dbe.bin file from <http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/Construction/dbe-bids.bin>. This file contains the current list of certified DBEs and is updated regularly. The dbe-bids.bin file must be saved in the same directory as the Project Bids (EBS) file.

The DBE Utilization Plan shall include the following information:

- 1) The names and addresses of the certified DBE firm(s) that will be used to meet the DBE goal;
- 2) A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
- 3) Whether the DBE firm(s) being used to meet the goal will be utilized as a subcontractor, regular dealer, manufacturer, consultant or other capacity; and
- 4) The dollar amount of the participation of each DBE firm used to meet the DBE goal.

##### **PROJECTS AWARDED ON ALTERNATES**

In the event the project is awarded on alternates which increases or decreases the total dollar amount of the bid, a revision to the DBE Utilization Plan and DBE Affirmation Form(s) shall be submitted and approved by the Office of Small & Disadvantaged Business Enterprise within five (5) calendar days after the notification of the alternates.



## **DBE AFFIRMATION**

The Apparent Low Bidder shall ensure the DBE firms being utilized to meet the DBE goal affirm their participation in the bid within five (5) calendar days after the bid opening to ODOT. The contract dollar amount(s) and/or DBE firm(s) included in the Apparent Low Bidder's DBE Utilization Plan must match the contract dollar amount(s) and/or DBE firm(s) included on the DBE Affirmation Form(s). If the contract dollar amount(s) and/or DBE firm(s) do not match, the Apparent Low Bidder shall utilize the Request to Terminate/Substitute DBE Form located at <http://Transportation.ohio.gov/Divisions/ODI/SDBE/Pages/Resources.aspx> and submit for review and approval by the Office of Small & Disadvantaged Business Enterprise within five (5) calendar days of the bid opening.

The Apparent Low Bidder shall utilize the DBE Affirmation Form located at <http://Transportation.ohio.gov/Divisions/ODI/SDBE/Pages/Resources.aspx>. The DBE Affirmation Form will be utilized as written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the Bidder's DBE Utilization Plan. The Apparent Low Bidder shall submit a separate DBE Affirmation Form for each DBE it is utilizing for the DBE goal and their Good Faith Efforts package if they were not able to attain the DBE Goal via DBE participation.

All other Bidders shall submit a DBE Affirmation Form(s) if notified that the information is required in order for ODOT to complete its bid assessment. Bidders shall have five (5) calendar days from the date of notification to submit all required DBE Affirmation Forms to ODOT. Notification will be by phone or email.

In the event a DBE firm fails to confirm the information contained in the DBE Affirmation Form within five (5) calendar days of bid opening, the Apparent Low Bidder shall submit a Request to Terminate/Substitute DBE Form, as set forth herein. The Request to Terminate/Substitute DBE Form shall be submitted within five (5) calendar days after bid opening in order for the Apparent Low Bidder to still be considered for contract award. The Apparent Low Bidder shall include as its reason for termination the DBE firm's failure to provide a timely affirmation and should include all efforts the Apparent Low Bidder made to obtain the affirmation from the DBE firm and shall attach proof of these efforts, if available. If the Apparent Low Bidder intends to replace the DBE Firm, it shall include the replacement firm's information on the form. In the event the Apparent Low Bidder is unable to affirm a DBE firm included in its original DBE Utilization Plan at bid submission and it results in a goal shortfall, Good Faith Efforts (GFE's) must be submitted by the fifth calendar day after bid opening. All GFE documentation submitted for consideration should demonstrate the efforts the Bidder made prior to the time of bid submission to secure sufficient DBE participation on the project to meet the DBE goal although the Bidder was unable to do so. A DBE firm's failure to timely confirm information contained in the DBE Affirmation Form will be considered as good cause to terminate the DBE firm and will also be considered a part of the Apparent Low Bidder's Good Faith Efforts in meeting the goal.

## **DBE BIDDERS**

In the event that the Bidder is also a certified DBE firm, the Bidder is required to complete a DBE Utilization Plan as set forth above. In this instance, however, the certified DBE Bidder would not need to submit a DBE Affirmation Form for the work it is planning to self-perform in order to meet the goal. ODOT will consider the submission of the bid as the certified DBE Bidder's written confirmation that it is participating in the contract. However, a DBE Affirmation Form must be submitted for all other DBE firms that are being utilized toward the DBE goal.

## **JOINT VENTURES**

In the event that the Bidder is a Joint Venture, the Joint Venture will only be considered a Certified DBE firm if the Joint Venture itself has been certified. The Joint Venture may, however, utilize a Certified DBE firm that is also a partner in the Joint Venture as part of its DBE Utilization Plan. The Certified DBE Firm/Joint Venture Partner, however, does not need to submit a DBE Affirmation Form for any work that the Certified DBE Firm/Joint Venture Partner is going to perform to meet the goal. ODOT will consider submission of the Joint Venture's bid as the Certified DBE Firm/Joint Venture Partner's confirmation that it is participating in the contract.

## **GOOD FAITH EFFORTS (GFE's)**

In the event that the DBE contract goal established by ODOT is not met, the Apparent Low Bidder shall demonstrate that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so.

If the Apparent Low Bidder does not meet the goal at bid time, the Apparent Low Bidder shall submit its Good Faith Efforts (GFE's) documentation within five (5) calendar days of the bid opening. Submission of DBE affirmation(s) with additional participation sufficient to meet the DBE contract goal does not cure the Apparent Low Bidder's failure to meet the goal at bid time or eliminate the Apparent Low Bidder's responsibility of submitting GFE's within five (5) calendar days of the bid opening.

The Apparent Low Bidder shall demonstrate its GFE's by submitting the following information within five (5) calendar days after the bid opening:

- (1) All written quotes received from certified DBE firms;
- (2) All written (including email) communications between the Apparent Low Bidder and DBE firms;
- (3) All written solicitations to DBE firms, even if unsuccessful;
- (4) Copies of each non-DBE quote when a non-DBE was selected over a DBE for work on the contract;
- (5) Phone logs of communications with DBE firms.

The Apparent Low Bidder shall utilize the Pre-Bid GFE Template to document their GFE's. This template and supporting documentation shall be sent along with any DBE Affirmation Forms within five (5) calendar days of bid opening. ODOT has provided Good Faith Efforts Guidance located at <http://www.dot.state.oh.us/Divisions/ODI/SDBE/DBE%20Goal%20Forms/Contractors%20Good%20Faith%20Efforts%20Guidelines.pdf>

All other Bidders shall submit documentation of GFE's if notified that the information is required in order for ODOT to complete its bid assessment. Bidders shall have five (5) calendar days from the date of notification to submit all required GFE documentation. Notification will be by phone or email.

ODOT shall utilize the guidance set forth in 49 CFR §26.53 Appendix A in determining whether the Bidder has made adequate good faith efforts to meet the goal.

## **ADMINISTRATIVE RECONSIDERATION**

ODOT will review the GFE documentation and issue a written determination on whether adequate GFE's have been demonstrated prior to contract award. If ODOT determines that the Apparent Low Bidder has failed to demonstrate adequate GFE's to meet the goal, the Apparent Low Bidder will have an opportunity for administrative reconsideration prior to the contract being awarded.

As part of this reconsideration, the Apparent Low Bidder may provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. Such written documentation or argument must be provided to ODOT, attention to the Office of Chief Legal Counsel, 1980 West Broad Street, MS 1500, Columbus, Ohio 43223 (with copy to the Office of Contract Sales, MS 4110), within two (2) business days of ODOT's written determination that GFE's were not adequately demonstrated. The Apparent Low Bidder may also include in their written documentation a request for an in person meeting to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. ODOT's Office of Chief Legal Counsel will respond to the Apparent Low Bidder within five (5) business days of receiving written documentation or holding the in-person meeting.

ODOT will send the Apparent Low Bidder a written decision on reconsideration explaining the basis for finding that the Apparent Low Bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the United States Department of Transportation.

#### **TERMINATION OR REPLACEMENT OF A DBE**

By submitting a DBE Utilization Plan, the Bidder is committing to use the DBE firms identified in the plan. The Apparent Low Bidder/Awarded Contractor shall utilize the specific DBEs listed in the DBE Utilization Plan to perform the work and supply the materials for which each is listed unless the Apparent Low Bidder/Awarded Contractor obtains written consent as provided in this paragraph. In order to request termination or substitution of a DBE firm, the Apparent Low Bidder/Awarded Contractor shall utilize the Request to Terminate/Substitute DBE Form located at <http://Transportation.ohio.gov/Divisions/ODI/SDBE/Pages/Resources.aspx>.

This termination/replacement procedure applies only to DBE firms or the amount of work being utilized to meet the goal.

Without ODOT's written consent to terminate/replace a DBE firm being utilized to meet the goal, the Awarded Contractor shall not be entitled to any payment for DBE listed work or material unless it is performed or supplied by the listed DBE.

#### **GOOD CAUSE**

ODOT may provide written consent to terminate a DBE only if it agrees, for reasons stated in a concurrence document, that the Apparent Low Bidder/Awarded Contractor has good cause to terminate the DBE firm.

For purposes of this paragraph, good cause to terminate a DBE includes the following circumstances:

- 1) The listed DBE firm fails or refuses to provide the required DBE Affirmation Form or to execute a written contract;
- 2) The listed DBE firm fails or refuses to perform the work of its subcontract in a manner consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE firm to perform its work on the subcontract results from the bad faith or discriminatory action of the awarded contractor;
- 3) The listed DBE firm fails or refuses to meet the awarded contractor's reasonable, nondiscriminatory bond requirements.
- 4) The listed DBE firm becomes bankrupt, insolvent, or exhibits credit unworthiness;
- 5) The listed DBE firm is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1200 or applicable state law;
- 6) ODOT has determined that the listed DBE firm is not a responsible contractor;

- 7) The listed DBE firm voluntarily withdraws from the project and provides to you written notice of its withdrawal;
- 8) The listed DBE is ineligible to receive DBE credit for the type of work required;
- 9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract; and
- 10) Other documented good cause that ODOT determines compels the termination of the DBE firm. Provided, that good cause does not exist if the awarded contractor seeks to terminate a DBE it relied upon to obtain the contract so that the awarded contractor can self-perform the work for which the DBE contractor was engaged or so that the awarded contractor can substitute another DBE or non-DBE contractor after contract award.

## **REPLACEMENT**

When a DBE firm is terminated or fails to complete its work on the contract for any reason the Awarded Contractor must make GFEs to find another DBE firm to replace the original DBE. These GFEs shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal. The GFEs shall be documented by the Awarded Contractor. If ODOT requests documentation under this provision, the Awarded Contractor shall submit the documentation within seven (7) calendar days, which may be extended for an additional seven (7) calendar days if necessary at the request of the contractor, and ODOT shall provide a written determination to the contractor stating whether GFEs have been demonstrated.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions and substitutions of DBE firms put forward by Bidders in the DBE Utilization Plan.

## **ADDITION**

In the event additional DBE participation is required for the project, the Awarded Contractor shall utilize the DBE Affirmation Form located at <http://Transportation.ohio.gov/Divisions/ODI/SDBE/Pages/Resources.aspx>. The DBE Affirmation Form will be utilized as written confirmation from each DBE firm that it is participating in the contract in the kind and amount of work on the project.

## **WRITTEN NOTICE TO DBE**

Before transmitting to ODOT its request to terminate and/or substitute a DBE firm, the Apparent Low Bidder/Awarded Contractor must give notice in writing to the DBE firm, with a copy to ODOT, of its intent to request to terminate and/or substitute, and the reason(s) for the request.

The Apparent Low Bidder/Awarded Contractor must give the DBE five (5) calendar days to respond to the notice, advising ODOT and the Apparent Low Bidder/Awarded Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why ODOT should not approve the Apparent Low Bidder/Awarded Contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), ODOT may provide a response period shorter than five (5) days.

## **GOAL ATTAINMENT POST AWARD**

The Awarded Contractor shall make available upon request a copy of all DBE subcontracts. The Awarded Contractor shall ensure that all subcontracts or agreements with DBEs require that the subcontract and all lower tier subcontractors be performed in accordance with this Proposal Note.

Approval of a DBE Utilization Plan does not ensure approval of C-92 Requests to Sublet nor does approval of a DBE Utilization Plan indicate that the DBE goal has been met. ODOT will monitor goal attainment throughout the life of the project. It is the responsibility of the Awarded Contractor to advise ODOT of any changes to the DBE Utilization plan throughout the life of the project. The DBE goal of a project is stated as a percentage of the contract. In the event the contract amount increases or decreases, the actual dollar amount of the DBE goal for the project may increase or decrease accordingly.

## **SANCTIONS AND ADMINISTRATIVE REMEDIES**

### **PRE-BID**

Failure by the Apparent Low Bidder to do any of the following shall result in the bid being rejected as non-responsive in accordance with ORC §5525.08:

- 1) Failure to submit a complete DBE Utilization Plan at the time of bid;
- 2) Failure to submit DBE Affirmation Form(s) and/or failure to submit Request to Terminate/Substitute DBE Form(s) as required by this Proposal Note; or
- 3) Failure to meet the goal and/or failure to demonstrate GFEs to meet the goal as required by this Proposal Note.

### **POST-BID**

Failure by the Awarded Contractor to carry out the requirements of this Proposal Note, including the submission of adequate good faith efforts to meet the goal for a project, is a material breach of the contract and may result in the issuance of sanctions as follows:

1<sup>st</sup> Tier: Letter of Reprimand

2<sup>nd</sup> Tier: Damages equivalent to the DBE shortfall

3<sup>rd</sup> Tier: If a pattern of paying damages persists or the Contractor has falsified, misrepresented or withheld information, ODOT can pursue other remedies available by law including suspension, revocation, and/or debarment.

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

- the magnitude and the type of offense
- the degree of the Contractor's culpability
- any steps taken to rectify
- the Contractor's record of performance on other projects including, but not limited to:
  - annual DBE participation
  - annual DBE participation on projects without goals
  - the number of complaints ODOT has received regarding the Contractor
  - the number of times the Contractor has been previously sanctioned by ODOT

**PN 090 - 01/21/2011 - WORK TYPE CODES AND DESCRIPTIONS**

The Department will indicate the work type required for each pay item. If the line item 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.

However, the Contractor 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. The Contractor may also perform Work Type 26 (Structural steel painting) without holding the required work type provided the total area to be painted does not exceed 700 SF per structure. The Contractor may perform Work Type 57 (Sealing of Concrete Surfaces with Epoxy or Non-Epoxy Sealers) without holding the required work type provided the total area to be sealed does not exceed 75 SY per project.

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 the percentage included on the front cover of this proposal. This is a percentage of the total amount of the submitted bid price. The Director may, by insertion of a contract provision, reduce the fifty percent amount.

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

**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 – 01/20/2016 -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.

***Contractors 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 contractors.***

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

<https://www.wdol.gov/dba.aspx>

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

- 1) The U.S. Department of Labor Regulations, Title 29, Subtitle A, Part 5, Sections 5.5, 5.31, and 5.32, most recent revision at contract execution.
- 2) 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 Contractor and all subcontractors shall pay all wages and fringe benefits by company check. All payroll records and canceled pay checks shall be maintained for at least three years after final acceptance as defined in section 109.12 of the Ohio Department of Transportation Construction and Materials Specifications. The Contractor's and all subcontractors payroll records and canceled pay checks shall be made available for inspection by the Department and the U.S. Department of Labor, upon request, anytime during the life of the contract, and for three years thereafter by the U.S. Department of Labor. Additionally, the Contractor and all subcontractors shall permit such representatives to interview any employees during working hours while the employee is on the job.

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

The Contractor (both prime and sub) shall submit via the Department Civil Rights & Labor System (CRL), certified payrolls each week beginning three weeks after the start of work. The Department will not accept payrolls not uploaded via CRL (no handwritten payrolls). These payrolls shall include but not limited to the following:

1. Employee name, address, social security number, 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 contract ID and pay week dates.
4. Signature of an authorized company representative will be done online through CRL.



CRL Requirements with interactive training guides can be found at <http://transportation.ohio.gov/crl/>.

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. Instructions for attaching the apprenticeship certificate can also be found at <http://transportation.ohio.gov/crl/> under Attaching the Apprenticeship Certificate.

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

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

#### **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 420 - 10/21/2016 - SURFACE SMOOTHNESS REQUIREMENTS FOR PAVEMENTS**

**DESCRIPTION:** The surface tolerance specification requirements are modified as follows for all pavements of constant width with at least 1 centerline mile (1.6 km) of continuous paving. Short breaks in paving such as bridge decks, intersections, etc. are not considered breaks in continuous paving. Also included is pavement for ramps, acceleration lanes, and deceleration lanes greater than 0.5 miles (0.8 km) in length. Do not include pavement for turn lanes including center turn lanes, shoulders, crossovers, approach slabs, and bridge decks.

Roads with less than 1 centerline mile (1.6 km) of paving; ramps, acceleration lanes, and deceleration lanes less than 0.5 miles (0.8 km); and sections of undivided highways, as defined in this note, within corporation limits with posted speed limits less than 40 miles per hour require smoothness measurement and corrective action for all areas of localized roughness with an IRI in excess of 250 inches per mile (3.95 m/km) in 25 feet (7.6 m) only. Do not include pavement for turn lanes including center turn lanes, shoulders, crossovers, approach slabs, and bridge decks.

Areas not part of this specification 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 and references to the number of courses placed do not include the SS803 course.

**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 complete the Smoothness Profiler Verification Report found in Supplement 1058, Appendix A, to document profiler calibration prior to measurement.

The Engineer will verify the profile operator's certification against the operator list posted on the Office of Technical Services 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. Wheel paths are located parallel to the centerline or baseline of the roadway or ramp and approximately 3.0 feet (1.0 m) from the centerline of the lane or ramp, measured transversely in both directions. Ensure the path of the profiler is parallel to the lane centerline at all times. Measure the entire length of pavement, event marking the profile runs such that profile data can later be identified when the profile sensor(s) is within 1.0 foot (0.3 m) of any existing pavement not constructed on the project, pressure relief joint, approach slab, or other non pavement features (i.e. manholes, valve boxes). 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 measurements will be taken. Provide the Engineer at least 24 hours' notice prior to performing any measurements. Do not take measurements until project site verification is demonstrated to the Engineer according to Supplement 1058.

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 Technical Services.

Provide necessary traffic control and survey stationing for all surface smoothness measurements.

**MANDATORY CORRECTIVE ACTION:** Perform corrective action 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. Measure and evaluate these 40 foot (12.2 m) sections for localized roughness corrections. Provide a list of all mandatory corrective action locations, with station, lane, and proposed corrections to the Engineer for approval. Do not perform any corrective actions without approval of the Engineer.

**Asphalt Concrete Surface:** Classify asphalt pavement areas into one of the following types based on the work performed as part of the Project.

- Type A: Asphalt pavement specified as at least two uniform courses with the total thickness placed greater than or equal to 3 inches (75 mm).
- Type B: Asphalt pavement specified as either: a) at least one uniform course with the total thickness placed less than 3 inches (75 mm) and including Item 254 or SS897 planing prior to resurfacing, or b) at least two uniform courses with the total thickness less than 3 inches (75 mm) without including Item 254 or SS897 planing prior to resurfacing.
- Type C: Asphalt pavement specified as a single uniform course not meeting the criteria of Type B. The uniform course may be placed on a non-uniform leveling course.

TABLE 420-1 ASPHALT CONCRETE PAVEMENT CLASS CRITERIA				
	Divided Highways*		Undivided Highways*	
Pavement Class	Corrective Action	Pay Adjustment Schedule (Table 420-3)	Corrective Action	Pay Adjustment Schedule (Table 420-3)
Type A [ $\geq$ 3in. + 2-course]	[1],[5]	A	[2],[5]	A
Type B [ $<$ 3in. + Milling] or [ $<$ 3in. + 2-course]	[1],[5]	A	[3],[5]	A
Type C [ $<$ 3in. + 1-course]	[2],[5]	A	[4]	B

\* Divided highways have physical separation such as a grass median, raised concrete median, guardrail, or barrier between the two directions of travel. Highways with continuous two way left turn lanes are considered undivided. Undivided highways with short sections, less than 1000 feet (300 m), of physical separation are considered undivided for the entire length.

**Corrective Action:**

- [1] Correct all areas of localized 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).
- [2] Correct all areas of localized roughness having deviations, high or low points, with an IRI in excess of 200 inches per mile (3.16 m/km) in 25 feet (7.6 m).
- [3] Correct all areas of localized roughness having deviations, high or low points, with an IRI in excess of 225 inches per mile (3.55 m/km) in 25 feet (7.6 m).
- [4] Correct all areas of localized roughness having deviations, high or low points, with an IRI in excess of 250 inches per mile (3.95 m/km) in 25 feet (7.6 m).
- [5] Correct any 0.1-mile (0.16 km) sections having an IRI greater than 90 inches per mile (1.42 m/km).

Perform corrective action as required in Table 420-1 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. The total amount of grinding is limited to no more than 5% by longitudinal length of the lane-miles (lane-km) eligible for a pay adjustment.

Re-measure each 0.1-mile (0.16 km) section where corrective action was performed to ensure compliance with Table 420-1.

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:** Classify pavement areas into one of the following types based on the work performed as part of the Project.

- Type A: Concrete pavement with the total specified thickness greater than or equal to 8 inches (200 mm).
- Type B: Concrete pavement with the total specified thickness greater than 6 inches (150 mm) and less than 8 inches (200 mm).
- Type C: Concrete pavement with the total specified thickness less than or equal to 6 inches (150 mm).

<b>TABLE 420-2 PORTLAND CEMENT CONCRETE PAVEMENT CLASS CRITERIA</b>				
<b>Pavement Class</b>	<b>Divided Highways*</b>		<b>Undivided Highways*</b>	
	Corrective Action	Pay Adjustment Schedule (Table 420-3)	Corrective Action	Pay Adjustment Schedule (Table 420-3)
Type A [ $\geq 8$ in.]	[1],[5]	A	[1],[5]	A
Type B [ $> 6$ in. & $< 8$ in.]	[1],[5]	A	[2],[5]	A
Type C [ $\leq 6$ in.]	[2],[5]	A	[3]	B

\* Divided highways have physical separation such as a grass median, raised concrete median, guardrail, or barrier between the two directions of travel. Highways with continuous two way left turn lanes are considered undivided. Undivided highways with short sections, less than 1000 feet (300 m), of physical separation are considered undivided for the entire length.

**Corrective action:**

- [1] Correct all areas of localized 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).
- [2] Correct all areas of localized roughness having deviations, high or low points, with an IRI in excess of 200 inches per mile (3.16 m/km) in 25 feet (7.6 m).
- [3] Correct all areas of localized roughness having deviations, high or low points, with an IRI in excess of 225 inches per mile (3.55 m/km) in 25 feet (7.6 m).
- [5] Correct any 0.1-mile (0.16 km) sections having an IRI greater than 90 inches per mile (1.42 m/km).

Perform corrective action as required in Table 420-2 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 action was performed to ensure compliance with Table 420-2.

Complete all corrective action prior to determination of pavement thickness. If corrective action is required, the surface texture after diamond grinding is acceptable and no additional texturing is required.

**Asphalt and Portland Cement Concrete Surfaces:** If corrective action is required, develop a corrective action plan at least 7 days before beginning corrective action. Include in the plan identification and detailed location descriptions of all localized and lot violations and proposed corrective action. Do not begin corrective action until receiving the Engineer's acceptance of the corrective action plan. The corrective action plan is limited to grinding, pavement removal and replacement or a combination of the two. Upon completion of the corrective action, re-measure surface smoothness according to this specification. In the event the Contractor is not able to correct the surface smoothness to meet the Specification, the DCA may establish a deduction to the Contract in accordance with section 105.03 of the C&MS.

**EXEMPTED CORRECTIONS:** Required corrective action resulting from contract requirements for maintaining traffic and construction joints placed at the beginning and end of each work period are considered exempted corrections. The contractor will identify and define all exempted correction locations. Exempted corrections for maintaining traffic occur primarily at ramps or other access points where paving must be suspended. Required corrective action due to material availability, weather, or any other reason not listed above, is not considered an exempted correction. No exempted corrections for maintaining traffic 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 action.

**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 and calculations for each lane for each 0.1-mile (0.16 km) section. Payment will be based on a 12 foot (3.7 m) lane width, regardless of lane width. Pay adjustments are based on the weighted average bid unit cost per square yard for the section multiplied by the pay factor as determined in Table 420-3. 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 SS803 course, free draining base, aggregate base, stabilized subgrade, etc.

TABLE 420-3 PAY SCHEDULE			
SCHEDULE A		SCHEDULE B	
IRI	PAY ADJUSTMENT	IRI	PAY ADJUSTMENT
Inches per mile per 0.1 mile section (m/km per 0.16 km section)	Percentage of Unit Cost (PUC) (%)	Inches per mile per 0.1 mile section (m/km per 0.16 km section)	Percentage of Unit Cost (PUC) (%)
35 (0.55) or less	4	45 (0.71) or less	4
Over 35 to 50 (0.55 to 0.79)	$(50 - \text{IRI}) * \left(\frac{4}{15}\right)$	Over 45 to 60 (0.71 to 0.95)	$(60 - \text{IRI}) * \left(\frac{4}{15}\right)$
Over 50 to 70 (0.79 to 1.10)	0	Over 60 (0.95)	0
Over 70 to 90 (1.10 to 1.42)	$-(\text{IRI} - 70) * \left(\frac{6}{20}\right)$		
Over 90 (1.42)	(1)		

(1) Corrective action required

Asphalt Pavements:

$$WUC = \frac{(t_1 \times u_1) + (t_2 \times u_2) + (t_3 \times u_3) \dots}{36}$$

Where: *WUC* = weighted unit cost (\$/SY).

*t* = lift thickness (in.).

*u* = bid unit cost (\$/CY).

Concrete Pavements:

$$WUC = \text{bid unit cost } (\$/SY)$$

Pay Adjustment (*PA*):

$$PA = WUC \times 704 \times PUC$$

Where: *WUC* = weighted unit cost (\$/SY).

*PUC* = percentage of unit cost from Table 420-3, expressed as a decimal.

Pay adjustments will be based on the measured IRI after any mandatory corrective action however no incentive will be paid for any 0.1-mile (0.16 km) section where mandatory corrective action was performed regardless of the resulting IRI.

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 action 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 the Department may allow corrective action, in the form of diamond grinding, Item 254, or SS897 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 action 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 action and exempted corrections.

No payment will be made for any 0.1-mile (0.16 km) section subject to Schedule A that has an IRI greater than 90 inches per mile (1.42 m/km) until corrective action has been completed and the IRI has been reduced to less than 90 inches per mile (1.42 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.

## PN 520 04/20/2018 - FUEL PRICE ADJUSTMENT

**General:** This Fuel Price Adjustment (Fpa) provision is intended to minimize risk to the Contractor or Design Build Team, (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 Contractor/(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 Contractor/(DBT) for fluctuations in the cost of fuel consumed in the performance of certain items of work. The total price adjustment must be more than \$400. 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, 424, 441, 442, 443, 446, 448, 803, 826, 851, 857, 880	Gallons per cubic yard ( <b>Gallons</b> per cubic meter)	1.70 (2.22)
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,	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	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 **original** contract quantities or for Design Build Projects 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 Contractor/(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. Contractor/(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 Contractor/(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 534- 04/20/2018 – ASPHALT BINDER PRICE ADJUSTMENT**

### **A. Eligibility**

If the Department's asphalt binder index has increased or decreased in excess of 10%, asphalt concrete may be eligible for a price adjustment. The total price adjustment must be more than \$400.

### **B. Price Adjustment Criteria and Conditions:**

The Department will establish and publish the asphalt binder Bidding Index (BI) and Placing Index (PI) for each month of each calendar year. The asphalt binder indexes will be posted on the Department's website.

The Department will establish the asphalt binder indexes based on the data provided in the Poten & Partners, Inc., Asphalt Weekly Monitor® (AWM) (<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 of Illinois/Michigan/Ohio/Indiana/Kentucky for the Ohio cities/areas listed. The Department will average the Ohio cities/areas low and high selling prices as published in the last weekly publishing period of each month that includes the last Friday of the month to calculate the BI and PI. The calculated asphalt binder BI will be posted by the Department as the index for the following month. The calculated asphalt binder PI will be posted by the Department as the index for the current month.

The Director will determine the asphalt binder indexes in the event data from the AWM is unavailable for any reason.

### **C. Price Adjustment Calculations**

If the ratio of the PI to the BI is greater than 1.10 or less than 0.90, the Department will adjust the compensation the contractor receives for eligible quantities of asphalt concrete. The adjustment is based on the bid month and the month of asphalt concrete placement. The adjustment will apply to the price for asphalt binder used in eligible asphalt concrete quantities 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

BI = Bidding Index, the asphalt binder index for the month the project is bid

PI = Placing Index, the asphalt binder index for the month the asphalt concrete is placed

C = BI x percent virgin asphalt binder / 100

Q = Eligible quantity of asphalt concrete in tons (metric tons)

The percent of virgin asphalt binder used to calculate C is determined from the approved Job Mix Formula (JMF).

The eligible quantity of asphalt concrete, Q, is the complete, in-place, and accepted quantity in tons (metric tons) placed in the month being considered for price adjustment. If the quantity is paid in cubic yards (cubic meters), the Department will convert the volume into tons (metric tons) using the conversion factor established according to the Department's Construction and Material Specifications Item 401.21. If eligible asphalt concrete is placed beyond an approved Contract Completion Date, the Department will base price adjustments on either the PI for the last month of the approved Contract Completion Date, or the PI for the actual month of placing, using whichever PI is less.

At a minimum, the Department will calculate and apply price adjustments at the end of each construction season and as soon as practical after the completion of the project.

**D. Extra Work/Force Account:**

When new asphalt concrete pay items are added to the contract as Extra Work, in accordance with the provisions of C&MS Section 109.05, no price adjustments will be made.

**RICHLAND COUNY**  
**RIC-39-5.86; PID 94401**

**ASHLAND RAILWAY INC.**  
**Willard Line MP 67.5**

### **SPECIAL CLAUSES IN THE PROPOSAL**

The bidder, if awarded the contract for this improvement agrees:

1. To cooperate at all times with the local officials of the railroad company.
2. To use all reasonable care and diligence in the work in order to avoid accidents, damage or unnecessary delay to, or interference with the trains and other property of the railroad company.
3. To conduct his work in a manner satisfactory to the Chief Engineer of the railroad company or his authorized representative, to perform his work in such manner and at such time as not to unnecessarily interfere with the movements of trains or railroad traffic, and to hold his work at all times open to inspection of railroad company inspectors.
4. To cooperate with any public utility, railroad or other organizations having occasion to do work on or in connection with the improvement.
5. To avoid unnecessary use of railroad property without written permission of the railroad company and to leave railroad roadbed and property in a condition acceptable to the Chief Engineer of the railroad company.
6. To execute a bond conditioned according to Section 5525.16 of the Revised Code of Ohio, in favor of the State of Ohio, and further to carry insurance of the following kinds and amounts:

**a) Railroad Protective Liability Insurance.**

He shall furnish evidence to the highway department that, with respect to the operations he or any of his sub-contractors perform, he has provided for and in behalf of the ASHLAND RAILWAY, INC., in the amount of \$2,000,000 per occurrence and subject to that limit per occurrence, an aggregate limit in the amount of \$6,000,000 for each annual period.

The above railroad protective policy of insurance shall conform to the Railroad Liability requirements prescribed by the Federal Highway Administration in Federal-Aid Policy Guide 23 CFR 646A as amended.

The corporate name and address of the "Named Insured" as listed on the policy shall be as follows:

Ashland Railway, Inc.  
803 N. Main St.  
Mansfield, OH. 44903

Common Policy Conditions form

Any other endorsement/form not specifically authorized above.

**The number of trains operating through the improvement at both locations is estimated to be:**

0 Passenger trains per day @ \_\_\_\_ miles per hour.

2 Freight trains per day @ 25 miles per hour.

**(b) General Insurance Requirements**

The insurance hereinbefore specified shall be with an acceptable insurance company authorized to do business in the State of Ohio, and shall be taken out before execution of the Contract by the Director and kept in effect until all work required to be performed under the terms of the contract is satisfactorily completed as evidenced by the formal acceptance by the State. Such policies shall include thirty (30) days canceling notice. The cost of insurance hereinbefore specified in subsection (a) will be a specific bid item.

Notwithstanding the Department's Construction and Material Specification No. 107.14 "Evidence" as above set forth shall consist of furnishing the Director of Transportation three (3) certified copies of the railroad policy.

7. The Railroad company will assign, at the sole cost and expense of the Department, railroad flaggers or other protective services and devices as necessary to insure the safety and continuity of the work to be performed as a part of this contract. Said services and devices will be provided when necessary, as determined by the railroad company, because of any of the Contractor's operations over, under or adjacent to tracks over which trains are operating. The provision of such protective personnel and devices does not relieve the Contractor from the liability of payment for damage caused by his operations.

Such protection will be required when men or equipment are working within clearances limits of 25 feet of a rail or when work being performed adjacent to operating tracks may present hazards to tracks, train operation, or when equipment does or may infringe upon such limits. The Contractor will not be permitted to operate any of his own equipment on railroad tracks except under an acceptable arrangement with the railroad company. Such equipment and the operation of such equipment, or equipment rented from the railroad company, shall be arranged for by the Contractor with the railroad and the cost for its use, including protection or railroad traffic, shall be borne by the Contractor.

The Contractor shall notify the following named individual for each railroad company at least 30 days, or as directed by the authorized representative of the Railroad, in advance of starting any work which might require protection:

Ashland Railway, Inc.  
Mr. Bob Thompson / Roadmaster  
803 N. Main St.  
Mansfield, OH. 44903  
Telephone: 419-989-0685

The Contractor shall notify the railroad at least 5 working days in advance of suspending or ceasing operations that require a flagger.

Railroad protective personnel assigned to the project will be responsible for notifying the ODOT Area Engineer or Contractor's on-site representative upon arrival at the job site on the first working day that protective services begin and on the last day that he performs such services. This will be required for each separate period that such services are provided. The ODOT Area Engineer or Contractor's on-site representative will document such notification in the project diary.

The Contractor will be responsible for protective services provided at his request and not utilized due, in the opinion of the ODOT Area Engineer, to a change in the Contractor's construction schedule or if it is determined by the ODOT Area Engineer that the requested services were not necessary. The actual costs for such protective services so assessed to the Contractor will be deducted from the Contract.

The decision of the Director of Transportation shall be final in the event of controversy as to the necessity for any protection services provided and not utilized by the Contractor as described in the preceding paragraph.

8. To pay the railroad or owning company for any changes, requested for his convenience, to railroad property, facilities, wire, fiber optic and/or pipe lines other than shown on the plans for the project.
9. If at any time the contractor desires a temporary crossing of the railroad's tracks, he shall make a request for a temporary crossing from the railroad. If approved, he shall arrange with the railroad company, execute its regular form of private grade crossing agreement covering the crossing desired, paying all construction, maintenance, removal, protection and other costs.
10. Contractor will be required to submit, upon request from the railroad, any required schedules, erection procedures, remediation plans, etc. as may be required by the railroad, with no additional cost or delay claim to the railroad or the Department.

11. Methods and procedures for performing work on property of the **Ashland Railway, Inc.** must be approved by:

Ashland Railway, Inc.  
Mr. Bob Thompson / Roadmaster  
803 N. Main St.  
Mansfield, OH. 44903  
Telephone: 419-989-0685

End of Special Clauses



**RICHLAND COUNTY  
RIC-39-5.86, PID 94401  
NS Pittsburgh Division  
Fort Wayne Line MP PC-180.68**

**SPECIAL CLAUSES IN THE PROPOSAL**

The bidder, if awarded the contract for this improvement agrees:

1. To cooperate at all times with the local officials of the railroad company.
2. To use all reasonable care and diligence in the work in order to avoid accidents, damage or unnecessary delay to, or interference with the trains and other property of the railroad company.
3. To conduct his work in a manner satisfactory to the Chief Engineer of the railroad company or his authorized representative, to perform his work in such manner and at such time as not to unnecessarily interfere with the movements of trains or railroad traffic, and to hold his work at all times open to inspection of railroad company inspectors.
4. To cooperate with a public utility, railroad or other organizations having occasion to do work on or in connection with the improvement.
5. To avoid unnecessary use of railroad property without written permission of the railroad company and to leave railroad roadbed and property in a condition acceptable to the Chief Engineer of the railroad company.
6. To execute a bond conditioned according to Section 5525.16 of the Revised Code of Ohio, in favor of the State of Ohio, and further to carry insurance of the kinds and amounts as delineated on pgs. 9-12 in the railroad's 'Special Provisions for Protection of Railway Interest' (attached).

**The number of trains operating over the crossing at the indicated location is estimated to be:**

**0 Passenger trains per day @ a maximum authorized operating speed of     miles per hour.**

**22 Freight trains per day @ a maximum authorized operating speed of 50 miles per hour.**

- Norfolk Southern does not accept electronic submissions of insurance policies; they must be mailed as directed in section 14.E of the attached Norfolk Southern 'Special Provisions for Protection of Railway Interest'. The original railroad protective policy must be sent to Norfolk Southern.
- Contractors should submit their insurance to Norfolk Southern at least 30-45 days prior to their anticipated start date.
- It is recommended that the insurance is mailed overnight, with tracking.
- Allow two (2) weeks from the day that Norfolk Southern receives your submission for approval or denial.
- Including the NS file number on the cover page of the insurance transmittal will aid in quickly identifying the project for which the submission has been made. However, do not include milepost data or DOT #'s in the actual policy.
- Contractors should simultaneously submit their insurance policy to Norfolk Southern and the Department

**(a) General Insurance Requirements**

The insurance hereinbefore specified shall be with an acceptable insurance company authorized to do business in the State of Ohio, and shall be taken out before execution of the Contract by the Director and kept in effect until all work required to be performed under the terms of the contract is satisfactorily completed as evidenced by the formal acceptance by the State. Such policies shall include thirty (30) days canceling notice. The cost of insurance hereinbefore specified in subsection (a) will be a specific bid item.

Notwithstanding the Department's Construction and Material Specification No.107.12 "Evidence" as above set forth shall consist of furnishing the Director of Transportation three (3) certified copies of the railroad policy.

7. The Railroad company will assign, at the sole cost and expense of the Department, railroad flaggers or other protective services and devices as necessary to insure the safety and continuity of the work to be performed as a part of this contract. Said services and devices will be provided when necessary, as determined by the railroad company, because of any of the Contractor's operations over, under or adjacent to tracks over which trains are operating. The provision of such protective personnel and devices does not relieve the Contractor from the liability of payment for damage caused by his operations.

The Contractor shall notify the following named individual for each railroad company at least 30 days, or as directed by the authorized representative of the Railroad, in advance of starting any work which might require protection:

Kevin G. Hauschildt, Chief Engineer  
Bridges and Structures  
Norfolk Southern Corporation  
1200 Peachtree Street, N.E.  
Atlanta, GA 30309  
Attn: E.W. Chambers  
Telephone: (404) 529-1436

All email correspondence should include (at a minimum) either the ODOT Project Identification (PID) Number, and/or the NS File Number in the Subject line for ease of reference.

The Contractor shall notify the railroad at least 5 working days in advance of suspending or ceasing operations that require a flagger, and must provide the Project Name, PID number, railroad line and milepost information and/or AARDOT# as shown at the top of pg. SC-1.

The Contractor will be responsible for protective services provided at his request and not utilized due, in the opinion of the Engineer, to a change in the Contractor's construction schedule or if it is determined by the Engineer that the requested services were not necessary. The actual costs for such protective services so assessed to the Contractor will be deducted from the Contract.

The decision of the Director of Transportation shall be final in the event of controversy as to the necessity for any protection services provided and not utilized by the Contractor as described in the preceding paragraph.

8. To pay the railroad or owning company for any changes, requested for his convenience, to railroad property, facilities, wire, fiber optic and/or pipe lines other than shown on the plans for the project.
9. If at any time the contractor desires a temporary crossing of the railroad's tracks, he shall make a request for a temporary crossing from the railroad. If approved, he shall arrange with the railroad company, execute its regular form of private grade crossing agreement covering the crossing desired, paying any fees directly to the railroad necessary for construction, maintenance, removal, protection and other costs associated with the temporary crossing – See attached NS 'Private Road Crossing Application'

Contractor should be aware that submittal, review and approval of a temporary crossing application may take anywhere from 8-12 weeks after submittal of the application to the railroad, and Contractor should account for this in his construction schedule.

10. Methods and procedures for performing work on property of Norfolk Southern Railway Company, including temporary crossing applications, must be approved by:

E.W. Chambers  
Norfolk Southern Corporation  
Engineer – Public Improvements  
1200 Peachtree Street N.E.  
Atlanta, GA. 30309  
404-529-1436  
[eldridge.chambers@nscorp.com](mailto:eldridge.chambers@nscorp.com)

#### **AUTHORITY OF RAILROAD ENGINEER AND STATE ENGINEER**

The authorized representative of the Railroad company, hereinafter referred to as the Railroad Engineer, shall have final authority in all matters affecting the safe maintenance of railroad traffic of his company including the adequacy of the foundations and structures supporting the railroad tracks.

#### **NOTICE OF STARTING WORK**

- A. The Contractor shall not commence any work on Railroad right of way until he has complied with the following conditions:
1. Give the Railroad Engineer at least ten working day advance written notice, with copy to the Engineer, of the date he proposes to begin work on railroad right of way. Said notice shall be sent to Mr. Kevin G. Hauschildt, Chief Engineer, Bridges and Structures, Norfolk Southern Corporation, 1200 Peachtree Street, N.E., Atlanta, Georgia 30309 – Attn. EW Chambers
  2. Obtained written authorization from the Railroad Engineer to begin work on Railroad right of way.
  3. Obtained written approval from the Railroad of the Railroad Protective Liability Policy of Insurance.
- B. The Railroad Engineer's written authorization to proceed shall include the names, addresses, and telephone numbers of the railroad's local representatives who are to be notified as hereinafter required. Where more than one representative is designated, the area of responsibility shall be specified.

## **FLAGGING SERVICE**

### **A. WHEN REQUIRED**

Under the terms of the Agreement between the Department and the Railroad, the Railroad has the sole authority to determine the need for flagging required to protect its operations. In general, the requirements of such flagging services will be whenever the Contractor's men or equipment are, or are likely to be, working on the Railroad's right of way and is across, over, adjacent to, or under a track, or when such work has disturbed or is likely to disturb a railroad track structure, railroad roadbed or the track surface and alignment of any track to such an extent that the movement of trains must be controlled. Normally the Railroad will assign one flagger to a project; but in some cases, more than one may be necessary. However, if the contractor works within distances that violate instructions given by the Railroad's local representative, or performs work that has not been scheduled with the Railroad's local representative, additional flaggers may be required full time until the project has been completed. See pg. 4 in the railroad's 'Special Provisions for Protection of Railway Interest' (attached).

For Projects exceeding 30 days of construction, Contractor shall provide the flagmen a small work area with a desk/counter and chair within the field/site trailer, including the use of bathroom facilities, where the flagman can check in/out with the Project, as well as to the flagman's home terminal. The work area should provide access to two (2) electrical outlets for recharging radio(s), and a laptop computer; and have the ability to print off needed documentation and orders as needed at the field/site trailer. This should aid in maximizing the flagman's time and efficiency on the Project,

### **B: SCHEDULING AND NOTIFICATION**

The Contractor shall furnish to the Railroad's local representative and the Engineer a schedule for all work required to complete the portion of the project within the Railroad right of way and arrange for a job site meeting between the Contractor, Engineer and the Railroad's local representative. Flagging services may not be provided until such meeting has been conducted and the contractor's work scheduled.

The Contractor shall give the Railroad's local representative, copy to the Engineer, at least 10 working days of advance written notice of work to be performed within railroad right of way. Such notices shall include sufficient details of the proposed work to enable the Railroad's local representative to determine if flagging will be required. If flagging is required no work shall be undertaken until the flaggers are present at the job site. Railroad labor agreements usually require flaggers to be assigned to a project on a continual basis and therefore cannot be called for on a spot basis.

If flagging service becomes unnecessary and is suspended it may take up to thirty days to again obtain service from the Railroad. The Contractor shall give five working days notice to cease flagging service.

### **C: EMERGENCIES**

If emergencies arise which require the flagger's presence elsewhere, the Contractor shall delay his work until such time as the flaggers are again available.

D:     **SUSPENSION OF WORK**

If work is suspended the Contractor shall give the Railroad's local representative at least three working days notice before resumption of said work.

E.     **VERIFICATION**

The Railroad flagman assigned to the project will be responsible for notifying the State or Contractor's on-site project representative or Contractor Superintendant upon arrival at the job site on the first day (or as soon thereafter as possible) that flagging services begin and on the last day that he performs such services for each separate period that services are provided. The State or Contractor's on-site project representative will document such notification in the project records. When requested, the State or Contractor's on-site project representative will also sign the flagman's diary, timesheet or flagging report showing daily time spent and activity at the project site.

End of Special Clauses

## A. Norfolk Southern – Special Provisions for Protection of Railway Interests

### RESURFACING ONLY

#### 1. AUTHORITY OF RAILROAD ENGINEER AND SPONSOR ENGINEER:

Norfolk Southern Railway Company, hereinafter referred to as “Railroad”, and their authorized representative shall have final authority in all matters affecting the safe maintenance of railroad traffic including the adequacy of the foundations and structures supporting the railroad tracks. For Public Projects impacting the Railroad, the Railroad’s Public Projects Engineer, hereinafter referred to as “Railroad Engineer”, will serve as the authorized representative of the Railroad.

The authorized representative of the Project Sponsor (“Sponsor”), hereinafter referred to as the “Sponsor’s Engineer”, shall have authority over all other matters as prescribed herein and in the Project Specifications.

The Sponsor’s Prime Contractor, hereinafter referred to as “Contractor” shall be responsible for completing any and all work in accordance with the terms prescribed herein and in the Project Specifications. These terms and conditions are subject to change without notice, from time to time in the sole discretion of the Railroad. Contractor must request from Railroad and follow the latest version of these provisions prior to commencing work.

#### 2. NOTICE OF STARTING WORK:

- A. The Contractor shall not commence any work on railroad rights-of-way until he has complied with the following conditions:
  1. Signed and received a fully executed copy of the required Norfolk Southern Contractor Right of Entry Agreement.
  2. Given the Railroad written notice in electronic format to the Railroad Engineer, with copy to the Sponsor’s Engineer who has been designated to be in charge of the work, at least ten days in advance of the date he proposes to begin work on Railroad rights-of-way.
  3. Obtained written approval from the Railroad of Railroad Protective Liability Insurance coverage as required by paragraph 14 herein. It should be noted that the Railroad does not accept notation of Railroad Protective insurance on a certificate of liability insurance form or Binders as Railroad must have the full original countersigned policy. Further, please note that mere receipt of the policy is not the only issue but review for compliance. Due to the number of projects system-wide, it typically takes a minimum of 30-45 days for the Railroad to review.
  4. Obtained Railroad’s Flagging Services as required by paragraph 7 herein.
  5. Obtained written authorization from the Railroad to begin work on Railroad’s rights-of-way, such authorization to include an outline of specific conditions with which he must comply.
  6. Furnished a schedule for all work within the Railroad’s rights-of-way as required by paragraph 7.B.1.

- B. The Railroad's written authorization to proceed with the work shall include the names, addresses, and telephone numbers of the Railroad's representatives who are to be notified as hereinafter required. Where more than one representative is designated, the area of responsibility of each representative shall be specified.

3. INTERFERENCE WITH RAILROAD OPERATIONS:

- A. The Contractor shall so arrange and conduct his work that there will be no interference with Railroad's operations, including train, signal, telephone and telegraphic services, or damage to the property of the Railroad or to poles, wires, and other facilities of tenants on the rights-of-way of the Railroad. Whenever work is liable to affect the operations or safety of trains, the method of doing such work shall first be submitted to the Railroad Engineer for approval, but such approval shall not relieve the Contractor from liability. Any work to be performed by the Contractor which requires flagging service or inspection service shall be deferred by the Contractor until the flagging service or inspection service required by the Railroad is available at the job site.
- B. Should conditions arising from, or in connection with the work, require that immediate and unusual provisions be made to protect operations and property of the Railroad, the Contractor shall make such provisions. If in the judgment of the Railroad Engineer, or in his absence, the Railroad's Division Engineer, such provisions is insufficient, either may require or provide such provisions as he deems necessary. In any event, such unusual provisions shall be at the Contractor's expense and without cost to the Railroad or the Sponsor.

4. TRACK CLEARANCES:

- A. The minimum track clearances to be maintained by the Contractor during construction are shown on the Project Plans. If temporary clearances are not shown on the project plans, the following criteria shall govern the use of falsework and formwork above or adjacent to operated tracks.
  - 1. A minimum vertical clearance of 22'-0" above top of highest rail shall be maintained at all times.
  - 2. A minimum horizontal clearance of 13'-0" from centerline of tangent track or 14'-0" from centerline of curved track shall be maintained at all times. Additional horizontal clearance may be required in special cases to be safe for operating conditions. This additional clearance will be as determined by the Railroad Engineer.
  - 3. All proposed temporary clearances which are less than those listed above must be submitted to Railroad Engineer for approval prior to construction and must also be authorized by the regulatory body of the State if less than the legally prescribed clearances.
  - 4. The temporary clearance requirements noted above shall also apply to all other physical obstructions including, but not limited to: stockpiled materials, parked equipment, placement or driving of piles, and bracing or other construction supports.
- B. Before undertaking any work within Railroad right-of-way, and before placing any obstruction over any track, the Contractor shall:
  - 1. Notify the Railroad's representative at least 72 hours in advance of the work.



2. Receive assurance from the Railroad's representative that arrangements have been made for flagging service as may be necessary.
3. Receive permission from the Railroad's representative to proceed with the work.
4. Ascertain that the Sponsor's Engineer has received copies of notice to the Railroad and of the Railroad's response thereto.

5. CONSTRUCTION PROCEDURES:

A. General:

1. Construction work and operations by the Contractor on Railroad property shall be:
  - a. Subject to the inspection and approval of the Railroad Engineer or their designated Construction Engineering Representative.
  - b. In accordance with the Railroad's written outline of specific conditions.
  - c. In accordance with the Railroad's general rules, regulations and requirements including those relating to safety, fall protection and personal protective equipment.
  - d. In accordance with these Special Provisions.
2. Submittal Requirements
  - a. The Contractor shall submit all construction related correspondence and submittals electronically to the Railroad Engineer.
  - b. The Contractor shall allow for 30 days for the Railroad's review and response.
  - c. All work in the vicinity of the Railroad's property that has the potential to affect the Railroad's train operations or disturb the Railroad's Property must be submitted and approved by the Railroad prior to work being performed.
  - d. All submittals and calculations must be signed and sealed by a registered engineer licensed in the state of the project work.
  - e. All submittals shall first be approved by the Sponsor's Engineer and the Railroad Engineer, but such approval shall not relieve the Contractor from liability.
  - f. For all construction projects, the following submittals, but not limited to those listed below, shall be provided for review and approval when applicable:
    - (1) General Means and Methods
    - (2) Roadway Protection and/or Phasing Plans
    - (3) Anticipated Schedule of Work

B. Track Monitoring

1. At the direction of the Railroad Engineer, any activity that has the potential to disturb the Railroad track structure may require the Contractor to submit a detailed track monitoring program for approval by the Railroad Engineer.
2. If any movement has occurred as determined by the Railroad Engineer, the Railroad will be immediately notified. Railroad, at its sole discretion, shall have the right to immediately require all Contractor operations to be ceased and determine what corrective action is required. Any corrective action required by the Railroad or performed by the Railroad including the monitoring of corrective action of the Contractor will be at project expense.

C. Storage of Materials and Equipment:

1. Materials and equipment shall not be stored where they will interfere with Railroad operations, nor on the rights-of-way of the Railroad without first having obtained permission from the Railroad Engineer, and such permission will be with the understanding that the Railroad will not be liable for damage to such material and equipment from any cause and that the Railroad Engineer may move or require the Contractor to move, at the Contractor's expense, such material and equipment.
2. All grading or construction machinery that is left parked near the track unattended by a watchman shall be effectively immobilized so that it cannot be moved by unauthorized persons. The Contractor shall protect, defend, indemnify and save Railroad, and any associated, controlled or affiliated corporation, harmless from and against all losses, costs, expenses, claim or liability for loss or damage to property or the loss of life or personal injury, arising out of or incident to the Contractor's failure to immobilize grading or construction machinery.

D. Cleanup:

1. Upon completion of the work, the Contractor shall remove from within the limits of the Railroad rights-of-way, all machinery, equipment, surplus materials, falsework, rubbish or temporary buildings of the Contractor, and leave said rights-of-way in a neat condition satisfactory to the Railroad Engineer or his authorized representative.

6. DAMAGES:

- A. The Contractor shall assume all liability for any and all damages to his work, employees, servants, equipment and materials caused by Railroad traffic.
- B. Any cost incurred by the Railroad for repairing damages to its property or to property of its tenants, caused by or resulting from the operations of the Contractor, shall be paid directly to the Railroad by the Contractor.

7. FLAGGING SERVICES:

A. Requirements:

1. Flagging services will not be provided until the Contractor's insurance has been reviewed & approved by the Railroad.

2. Under the terms of the agreement between the Department and the Railroad, the Railroad has sole authority to determine the need for flagging required to protect its operations. In general, the requirements of such services will be whenever the Contractor's personnel or equipment are or are likely to be, working on the Railroad's right-of-way, or across, over, adjacent to, or under a track, or when such work has disturbed or is likely to disturb a Railroad structure or the Railroad roadbed or surface and alignment of any track to such extent that the movement of trains must be controlled by flagging.
3. Normally, the Railroad will assign one flagman to a project; but in some cases, more than one may be necessary, such as yard limits where three (3) flagmen may be required. However, if the Contractor works within distances that violate instructions given by the Railroad's authorized representative or performs work that has not been scheduled with the Railroad's authorized representative, a flagman or flagmen may be required full time until the project has been completed.
4. For Projects exceeding 30 days of construction, Contractor shall provide the flagmen a small work area with a desk/counter and chair within the field/site trailer, including the use of bathroom facilities, where the flagman can check in/out with the Project, as well as to the flagman's home terminal. The work area should provide access to two (2) electrical outlets for recharging radio(s), and a laptop computer; and have the ability to print off needed documentation and orders as needed at the field/site trailer. This should aid in maximizing the flagman's time and efficiency on the Project.

B. Scheduling and Notification:

1. The Contractor's work requiring Railroad flagging should be scheduled to limit the presence of a flagman at the site to a maximum of 50 hours per week. The Contractor shall receive Railroad approval of work schedules requiring a flagman's presence in excess of 40 hours per week.
2. Not later than the time that approval is initially requested to begin work on Railroad right-of-way, Contractor shall furnish to the Railroad and the Sponsor a schedule for all work required to complete the portion of the project within Railroad right-of-way and arrange for a job site meeting between the Contractor, the Sponsor, and the Railroad's authorized representative. Flagman or Flagmen may not be provided until the job site meeting has been conducted and the Contractor's work scheduled.
3. The Contractor will be required to give the Railroad representative at least 10 working days of advance written notice of intent to begin work within Railroad right-of-way in accordance with this special provision. Once begun, when such work is then suspended at any time, or for any reason, the Contractor will be required to give the Railroad representative at least 3 working days of advance notice before resuming work on Railroad right-of-way.

Such notices shall include sufficient details of the proposed work to enable the Railroad representative to determine if flagging will be required. If such notice is in writing, the Contractor shall furnish the Engineer a copy; if notice is given verbally, it shall be confirmed in writing with copy to the Engineer.

If flagging is required, no work shall be undertaken until the flagman, or flagmen are present at the job site. It may take up to 30 days to obtain flagging initially from the Railroad.

When flagging begins, the flagman is usually assigned by the Railroad to work at the project site on a continual basis until no longer needed and cannot be called for on a spot basis. If flagging becomes unnecessary and is suspended, it may take up to 30 days to again obtain from the Railroad. Due to Railroad labor agreements, it is necessary to give 5 working days' notice before flagging service may be discontinued and responsibility for payment stopped.

4. If, after the flagman is assigned to the project site, an emergency arises that requires the flagman's presence elsewhere, then the Contractor shall delay work on Railroad right-of-way until such time as the flagman is again available. Any additional costs resulting from such delay shall be borne by the Contractor and not the Sponsor or Railroad.

C. Payment:

1. The Department will be responsible for paying the Railroad directly for any and all costs of flagging which may be required to accomplish the construction.
2. The estimated cost of flagging is the current rate per day based on a 10-hour work day. This cost includes the base pay for the flagman, overhead, and includes a per diem charge for travel expenses, meals and lodging. The charge to the Department by the Railroad will be the actual cost based on the rate of pay for the Railroad's employees who are available for flagging service at the time the service is required.
3. Work by a flagman in excess of 8 hours per day or 40 hours per week, but not more than 12 hours a day will result in overtime pay at 1 and 1/2 times the appropriate rate. Work by a flagman in excess of 12 hours per day will result in overtime at 2 times the appropriate rate. If work is performed on a holiday, the flagging rate is 2 and 1/2 times the normal rate.
4. Railroad work involved in preparing and handling bills will also be charged to the Department. Charges to the Department by the Railroad shall be in accordance with applicable provisions of Subchapter B, Part 140, Subpart I and Subchapter G, Part 646, Subpart B of the Federal-Aid Policy Guide issued by the Federal Highway Administration on December 9, 1991, including all current amendments. Flagging costs are subject to change. The above estimates of flagging costs are provided for information only and are not binding in any way.

D. Verification:

1. Railroad's flagman will electronically enter flagging time via Railroad's electronic billing system. Any complaints concerning flagging must be resolved in a timely manner. If the need for flagging is questioned, please contact the Railroad Engineer. All verbal complaints will be confirmed in writing by the Contractor within 5 working days with a copy to the Department's Engineer. Address all written correspondence electronically to Railroad Engineer.

2. The Railroad flagman assigned to the project will be responsible for notifying the Department Engineer upon arrival at the job site on the first day (or as soon thereafter as possible) that flagging services begin and on the last day that he performs such services for each separate period that services are provided. The Department's Engineer will document such notification in the project records.

When requested, the Department's Engineer will also sign the flagman's diary showing daily time spent and activity at the project site.

#### 8. COOPERATION AND DELAYS:

- A. It shall be the Contractor's responsibility to arrange a schedule with the Railroad for accomplishing stage construction involving work by the Railroad or tenants of the Railroad. In arranging his schedule he shall ascertain, from the Railroad, the lead time required for assembling crews and materials and shall make due allowance therefore.
- B. No charge or claim of the Contractor against either the Sponsor or the Railroad will be allowed for hindrance or delay on account of railroad traffic; any work done by the Railroad or other delay incident to or necessary for safe maintenance of railroad traffic or for any delays due to compliance with these special provisions.

#### 9. TRAINMAN'S WALKWAYS:

- A. Along the outer side of each exterior track of multiple operated track, and on each side of single operated track, an unobstructed continuous space suitable for trainman's use in walking along trains, extending to a line not less than 10 feet from centerline of track, shall be maintained. Any temporary impediments to walkways and track drainage encroachments or obstructions allowed during work hours while Railroad's protective service is provided shall be removed before the close of each work day. If there is any excavation near the walkway, a handrail, with 10'-0" minimum clearance from centerline of track, shall be placed and must conform to AREMA and/or FRA standards.

#### 10. GUIDELINES FOR PERSONNEL ON RAILROAD RIGHT-OF-WAY:

- A. The Contractor and/or the Department's personnel authorized to perform work on Railroad's property as specified in Section 2 above are not required to complete Norfolk Southern Roadway Worker Protection Training; However the Contractor and the Department's personnel must be familiar with Norfolk Southern's standard operating rules and guidelines, should conduct themselves accordingly, and may be removed from the property for failure to follow these guidelines.
- B. All persons shall wear hard hats. Appropriate eye and hearing protection must be used. Working in shorts is prohibited. Shirts must cover shoulders, back and abdomen. Working in tennis or jogging shoes, sandals, boots with high heels, cowboy and other slip-on type boots is prohibited. Hard-sole, lace-up footwear, zippered boots or boots cinched up with straps which fit snugly about the ankle are adequate. Wearing of safety boots is strongly recommended. In the vicinity of at-grade crossings, it is strongly recommended that reflective vests be worn.
- C. No one is allowed within 25' of the centerline of track without specific authorization from the flagman.

- D. All persons working near track while train is passing are to lookout for dragging bands, chains and protruding or shifted cargo.
- E. No one is allowed to cross tracks without specific authorization from the flagman.
- F. All welders and cutting torches working within 25' of track must stop when train is passing.
- G. No steel tape or chain will be allowed to cross or touch rails without permission from the Railroad.

11. GUIDELINES FOR EQUIPMENT ON RAILROAD RIGHT-OF-WAY:

- A. No crane or boom equipment will be allowed to set up to work or park within boom distance plus 15' of centerline of track without specific permission from Railroad official and flagman.
- B. No crane or boom equipment will be allowed to foul track or lift a load over the track without flag protection and track time.
- C. All employees will stay with their machines when crane or boom equipment is pointed toward track.
- D. All cranes and boom equipment under load will stop work while train is passing (including pile driving).
- E. Swinging loads must be secured to prevent movement while train is passing.
- F. No loads will be suspended above a moving train.
- G. No equipment will be allowed within 25' of centerline of track without specific authorization of the flagman.
- H. Trucks, tractors or any equipment will not touch ballast line without specific permission from Railroad official and flagman. Orange construction fencing may be required as directed.
- I. No equipment or load movement within 25' or above a standing train or Railroad equipment without specific authorization of the flagman.
- J. All operating equipment within 25' of track must halt operations when a train is passing. All other operating equipment may be halted by the flagman if the flagman views the operation to be dangerous to the passing train.
- K. All equipment, loads and cables are prohibited from touching rails.
- L. While clearing and grubbing, no vegetation will be removed from Railroad embankment with heavy equipment without specific permission from the Railroad Engineer and flagman.
- M. No equipment or materials will be parked or stored on Railroad's property unless specific authorization is granted from the Railroad Engineer.
- N. All unattended equipment that is left parked on Railroad property shall be effectively immobilized so that it cannot be moved by unauthorized persons.

- O. All cranes and boom equipment will be turned away from track after each work day or whenever unattended by an operator.
- P. Prior to performing any crane operations, the Contractor shall establish a single point of contact for the Railroad flagman to remain in communication with at all times. Person must also be in direct contact with the individual(s) directing the crane operation(s).

## 12. INSURANCE:

- A. In addition to any other forms of insurance or bonds required under the terms of the contract and specifications, the Prime Contractor will be required to carry insurance of the following kinds and amounts:

1. a. Commercial General Liability Insurance having a combined single limit of not less than \$2,000,000 per occurrence for all loss, damage, cost and expense, including attorneys' fees, arising out of bodily injury liability and property damage liability during the policy period. Said policy shall include explosion, collapse, and underground hazard (XCU) coverage, shall be endorsed to name Railroad specified in item A.2.c. below both as the certificate holder and as an additional insured, and shall include a severability of interests provision.
- b. Automobile Liability Insurance with a combined single limit of not less than \$1,000,000 each occurrence for injury to or death of persons and damage to or loss or destruction of property. Said policy or policies shall be endorsed to name Railroad specified in item A.2.c. below both as the certificate holder and as an additional insured and shall include a severability of interests provision.
2. Railroad Protective Liability Insurance having a combined single limit of not less than \$2,000,000 each occurrence and \$6,000,000 in the aggregate applying separately to each annual period.  
If the project involves track over which passenger trains operate, the insurance limits required are not less than a combined single limit of \$5,000,000 each occurrence and \$10,000,000 in the aggregate applying separately to each annual period. Said policy shall provide coverage for all loss, damage or expense arising from bodily injury and property damage liability, and physical damage to property attributed to acts or omissions at the job site.

The standards for the Railroad Protective Liability Insurance are as follows:

- a. The insurer must be rated A- or better by A.M. Best Railroad, Inc.  
**NOTE: NS does not accept from insurers Chartis (AIG or Affiliated Company including Lexington Insurance Company), Hudson Group or Liberty or Affiliated Company, American Contractors Insurance Company and Erie Insurance Company including Erie Insurance Exchange and Erie Indemnity Company.**
- b. The policy must be written using one of the following combinations of Insurance Services Office ("ISO") Railroad Protective Liability Insurance Form Numbers:
  - (1) CG 00 35 01 96 and CG 28 31 10 93; or
  - (2) CG 00 35 07 98 and CG 28 31 07 98; or

- (3) CG 00 35 10 01; or
- (4) CG 00 35 12 04; or
- (5) CG 00 35 12 07; or
- (6) CG 00 35 04 13.

c. The named insured shall read:

(As named in the Project Agreement with Project Sponsor)  
Three Commercial Place  
Norfolk, Virginia 23510-2191  
Attn: S. W. Dickerson Risk Management

**(NOTE: Norfolk Southern does not share coverage on RRPL with any other entity on this policy)**

- d. The description of operations must appear on the Declarations, must match the project description in this agreement, and must include the appropriate Sponsor project and contract identification numbers.
- e. The job location must appear on the Declarations and must include the city, state, and appropriate highway name/number. **NOTE: Do not include any references to milepost, valuation station, or mile marker on the insurance policy.**
- f. The name and address of the prime Contractor must appear on the Declarations.
- g. The name and address of the Sponsor must be identified on the Declarations as the "Involved Governmental Authority or Other Contracting Party."
- h. Endorsements/forms that are **required** are:
  - (1) Physical Damage to Property Amendment
  - (2) Terrorism Risk Insurance Act (TRIA) coverage must be included.
- i. Other endorsements/forms that will be accepted are:
  - (1) Broad Form Nuclear Exclusion – Form IL 00 21
  - (2) 30-day Advance Notice of Non-renewal or cancellation
  - (3) Required State Cancellation Endorsement
  - (4) Quick Reference or Index Form CL/IL 240
- j. Endorsements/forms that are NOT acceptable are:
  - (1) Any Pollution Exclusion Endorsement except CG 28 31
  - (2) Any Punitive or Exemplary Damages Exclusion
  - (3) Known injury or Damage Exclusion form CG 00 59
  - (4) Any Common Policy Conditions form
  - (5) An Endorsement that limits or excludes Professional Liability coverage
  - (6) A Non-Cumulation of Liability or Pyramiding of Limits Endorsement



- (7) An Endorsement that excludes TRIA coverage
- (8) A Sole Agent Endorsement
- (9) Any type of deductible endorsement or amendment
- (10) Any other endorsement/form not specifically authorized in item no. 2.h above.

- B. If any part of the work is sublet, similar insurance, and evidence thereof as specified in A.1 above, shall be provided by or on behalf of the subcontractor to cover its operations on Railroad's right of way.
- C. All insurance required under the preceding subsection A shall be underwritten by insurers and be of such form and content, as may be acceptable to the Company. Prior to entry on Railroad right-of-way, the original Railroad Protective Liability Insurance Policy shall be submitted by the Prime Contractor to the Sponsor at the address below for its review and transmittal to the Railroad. In addition, certificates of insurance evidencing the Prime Contractor's and any subcontractors' Commercial General Liability Insurance shall be issued to the Railroad and the Sponsor at the addresses below, and forwarded to the Department for its review and transmittal to the Railroad. The certificates of insurance shall state that the insurance coverage will not be suspended, voided, canceled, or reduced in coverage or limits without (30) days advance written notice to Railroad and the Sponsor. No work will be permitted by Railroad on its right-of-way until it has reviewed and approved the evidence of insurance required herein.

SPONSOR:

RAILROAD:

Risk Management  
Norfolk Southern Railway Company  
Three Commercial Place  
Norfolk, Virginia 23510-2191

- D. The insurance required herein shall in no way serve to limit the liability of Sponsor or its Contractors under the terms of this agreement.
- E. Insurance Submission Procedures
  - 1. Railroad will only accept initial insurance submissions via US Mail or Overnight carrier to the address noted in C above. Railroad will NOT accept initial insurance submissions via email or faxes. **Please provide point of contact information with the submission including a phone number and email address.**
  - 2. Railroad requires the following two (2) forms of insurance in the initial insurance submission to be submitted under a cover letter providing details of the project and contact information:
    - a. The full original or certified true countersigned copy of the railroad protective liability insurance policy in its entirety inclusive of all declarations, schedule of forms and endorsements along with the policy forms and endorsements.

- b. The Contractor's commercial general, automobile, and workers' compensation liability insurance certificate of liability insurance evidencing a combined single limit of a minimum of \$2M per occurrence of general and \$1M per occurrence of automobile liability insurance naming Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510 as the certificate holder and as an additional insured on both the general and automobile liability insurance policy.
3. It should be noted that the Railroad does not accept notation of Railroad Protective insurance on a certificate of liability insurance form or Binders as Railroad must have the full original countersigned policy. Further, please note that mere receipt of the policy is not the only issue but review for compliance. Due to the number of projects system-wide, it typically takes a minimum of 30-45 days for the Railroad to review.

13. FAILURE TO COMPLY:

- A. In the event the Contractor violates or fails to comply with any of the requirements of these Special Provisions:
  1. The Railroad Engineer may require that the Contractor vacate Railroad property.
  2. The Sponsor's Engineer may withhold all monies due the Contractor on monthly statements.
- B. Any such orders shall remain in effect until the Contractor has remedied the situation to the satisfaction of the Railroad Engineer and the Sponsor's Engineer.

14. PAYMENT FOR COST OF COMPLIANCE:

- A. No separate payment will be made for any extra cost incurred on account of compliance with these special provisions. All such costs shall be included in prices bid for other items of the work as specified in the payment items.

End of Norfolk Southern Special Provisions for Protection of Railway Interests  
RESURFACING ONLY

**Project Number: 180367**

To the Director of the Ohio Department of Transportation: The undersigned, having full knowledge of the site, plans and specifications for the following improvement and the conditions of this proposal, hereby agrees to furnish all services, labor, materials, and equipment necessary to complete the entire project, according to the plans, specifications and completion dates, and to accept the unit prices specified below for each item as full compensation for the work in this proposal.

Date Set for Completion: **10/31/2018**

---

**Unit Price Contract**

FOR IMPROVING SECTIONS OF SR 39 AND SR 309 IN THE CITIES OF GALION AND MANSFIELD, TOWNSHIPS OF JACKSON, MADISON, SANDUSKY, AND SPRINGFIELD, RICHLAND COUNTY, OHIO, IN ACCORDANCE WITH PLANS AND SPECIFICATIONS BY RESURFACING.

Project Length: 11.2 Miles

Work Length: 11.2 Miles

Pavement Width: Varies

Project Number: 180367

**Section 0001 ROADWAY**

Line	Alt	Item Code	Item Description	WT	Unit	Quantity
0001		202E38000	GUARDRAIL REMOVED (WT: NR)	NR	FT	2,000.000
0002		202E42000	ANCHOR ASSEMBLY REMOVED, TYPE A (WT: NR)	NR	EACH	11.000
0003		202E42010	ANCHOR ASSEMBLY REMOVED, TYPE E (WT: NR)	NR	EACH	4.000
0004		202E47000	BRIDGE TERMINAL ASSEMBLY REMOVED (WT: NR)	NR	EACH	4.000
0005		203E20000	EMBANKMENT (WT: 06)	06	CY	69.000
0006		209E15000	RESHAPING UNDER GUARDRAIL (WT: 06)	06	STA	31.880
0007		209E72051	PREPARING SUBGRADE FOR SHOULDER PAVING, AS PER PLAN (WT: 06)	06	MILE	20.410
0008		209E80000	GRADING MAILBOX APPROACHES (WT: 06)	06	EACH	112.000
0009		606E13000	GUARDRAIL, TYPE 5 (WT: 36)	36	FT	50.000
0010		606E15050	GUARDRAIL, TYPE MGS (WT: 36)	36	FT	1,950.000
0011		606E17000	RAISING TYPE 5 GUARDRAIL (WT: 36)	36	FT	587.500
0012		606E26100	ANCHOR ASSEMBLY, TYPE E (WT: 36)	36	EACH	5.000
0013		606E26150	ANCHOR ASSEMBLY, MGS TYPE E (WT: 36)	36	EACH	4.000
0014		606E26500	ANCHOR ASSEMBLY, TYPE T (WT: 36)	36	EACH	6.000
0015		606E35002	MGS BRIDGE TERMINAL ASSEMBLY, TYPE 1 (WT: 36)	36	EACH	4.000
0016		611E99654	MANHOLE ADJUSTED TO GRADE (WT: 35)	35	EACH	9.000
0017		617E10100	COMPACTED AGGREGATE (WT: 06)	06	CY	1,119.000
0018		623E39500	MONUMENT BOX ADJUSTED TO GRADE (WT: NR)	NR	EACH	78.000
0019		626E00110	BARRIER REFLECTOR, TYPE 2 (BIDIRECTIONAL) (WT: NR)	NR	EACH	25.000
0020		690E50100	SPECIAL - MAILBOX SUPPORT SYSTEM, SINGLE (WT: NR)	NR	EACH	5.000
0021		690E50200	SPECIAL - MAILBOX SUPPORT SYSTEM, DOUBLE (WT: NR)	NR	EACH	2.000

**Section 0002 PAVEMENT**

Line	Alt	Item Code	Item Description	WT	Unit	Quantity
0022		251E01042	PARTIAL DEPTH PAVEMENT REPAIR (ASPHALT CONCRETE BASE) (WT: 16)	16	CY	1,400.000
0023		253E02000	PAVEMENT REPAIR (WT: 16)	16	CY	225.000
0024		254E01000	PAVEMENT PLANING, ASPHALT CONCRETE(1.50") (WT: 13)	13	SY	360,477.000
0025		254E01600	PATCHING PLANED SURFACE (WT: 16)	16	SY	3,602.000
0026		407E20000	NON-TRACKING TACK COAT (WT: 10)	10	GAL	28,741.000
0027		442E00201	ASPHALT CONCRETE SURFACE COURSE, 9.5 MM, TYPE A (446), AS PER PLAN (1.50") (WT: 10)	10	CY	15,068.000

Project Number: 180367

0028		442E00201	ASPHALT CONCRETE SURFACE COURSE, 9.5 MM, TYPE A (446), AS PER PLAN (SAFTEY EDGE) (WT: 10)	10	CY	319.000
------	--	-----------	---	----	----	---------

**Section 0003 TRAFFIC CONTROL**

Line	Alt	Item Code	Item Description	WT	Unit	Quantity
0029		614E40000	LONGITUDINAL CHANNELIZER (WT: 39)	39	FT	109.000
0030		618E41000	EDGE LINE, RUMBLE STRIPE (ASPHALT CONCRETE) (WT: NR)	NR	MILE	18.320
0031		620E00501	DELINEATOR, POST GROUND MOUNTED, AS PER PLAN (WT: NR)	NR	EACH	10.000
0032		621E00100	RPM (WT: 41)	41	EACH	2,464.000
0033		621E54000	RAISED PAVEMENT MARKER REMOVED (WT: NR)	NR	EACH	2,464.000
0034		642E00104	EDGE LINE, 6", TYPE 1(WHITE) (WT: 45)	45	MILE	22.460
0035		642E00104	EDGE LINE, 6", TYPE 1(YELLOW) (WT: 45)	45	MILE	0.600
0036		642E00204	LANE LINE, 6", TYPE 1 (WT: 45)	45	MILE	15.700
0037		642E00300	CENTER LINE, TYPE 1 (WT: 45)	45	MILE	17.000
0038		644E00404	CHANNELIZING LINE, 12" (WT: 45)	45	FT	3,146.000
0039		644E00500	STOP LINE (WT: 45)	45	FT	785.000
0040		644E00600	CROSSWALK LINE (WT: 45)	45	FT	652.000
0041		644E00700	TRANSVERSE/DIAGONAL LINE(WHITE) (WT: 45)	45	FT	413.000
0042		644E00700	TRANSVERSE/DIAGONAL LINE(YELLOW) (WT: 45)	45	FT	704.000
0043		644E01000	RAILROAD SYMBOL MARKING (WT: 45)	45	EACH	2.000
0044		644E01110	SCHOOL SYMBOL MARKING, 96" (WT: 45)	45	EACH	2.000
0045		644E01300	LANE ARROW(LEFT) (WT: 45)	45	EACH	102.000
0046		644E01510	DOTTED LINE, 6" (WT: 45)	45	FT	380.000
0047		646E10010	EDGE LINE, 6" (WT: 45)	45	MILE	0.080
0048		646E10110	LANE LINE, 6" (WT: 45)	45	MILE	0.080
0049		646E10200	CENTER LINE (WT: 45)	45	MILE	0.080

**Section 0004 TRAFFIC SIGNALS**

Line	Alt	Item Code	Item Description	WT	Unit	Quantity
0050		809E69000	ADVANCE RADAR DETECTION (WT: 55)	55	EACH	5.000
0051		809E69100	STOP-BAR RADAR DETECTION (WT: 55)	55	EACH	3.000

**Section 0005 MAINTENANCE OF TRAFFIC**

Line	Alt	Item Code	Item Description	WT	Unit	Quantity
0052		614E11110	LAW ENFORCEMENT OFFICER WITH PATROL CAR FOR ASSISTANCE (WT: 39)	39	HOUR	120.000

Project Number: 180367

0053		614E13000	ASPHALT CONCRETE FOR MAINTAINING TRAFFIC (WT: 39)	39	CY	25.000
0054		614E18600	PORTABLE CHANGEABLE MESSAGE SIGN (WT: 39)	39	SNMT	6.000
0055		614E20550	WORK ZONE LANE LINE, CLASS III, 4", 642 PAINT (WT: 39)	39	MILE	31.480
0056		614E21550	WORK ZONE CENTER LINE, CLASS III, 642 PAINT (WT: 39)	39	MILE	34.060
0057		614E22350	WORK ZONE EDGE LINE, CLASS III, 4", 642 PAINT (WT: 39)	39	MILE	46.200
0058		614E23680	WORK ZONE CHANNELIZING LINE, CLASS III, 8", 642 PAINT (WT: 39)	39	FT	6,292.000
0059		614E26610	WORK ZONE STOP LINE, CLASS III, 642 PAINT (WT: 39)	39	FT	1,570.000

**Section 0006 STRUCTURE REPAIR (RIC-39-9.67)**

Line	Alt	Item Code	Item Description	WT	Unit	Quantity
0060		202E11300	PORTIONS OF STRUCTURE REMOVED (WT: 29)	29	CY	8.000
0061		257E10000	DIAMOND GRINDING PORTLAND CEMENT CONCRETE PAVEMENT (WT: 13)	13	SY	1,315.000
0062		511E34440	CLASS QC2 CONCRETE, BRIDGE DECK (WT: 29)	29	SY	3.000
0063		511E34448	CLASS QC2 CONCRETE, BRIDGE DECK (PARAPET) (WT: 29)	29	CY	3.000
0064		511E44111	CLASS QC1 CONCRETE, ABUTMENT NOT INCLUDING FOOTING, AS PER PLAN (WT: 29)	29	CY	1.000
0065		511E53012	CLASS QC2 CONCRETE, MISC.:APPROACH SLAB REPAIR (WT: 29)	29	CY	1.000
0066		512E10100	SEALING OF CONCRETE SURFACES (EPOXY-URETHANE) (WT: 57)	57	SY	328.000
0067		512E10400	TREATING OF CONCRETE BRIDGE DECK WITH SRS (WT: 29)	29	SY	1,315.000
0068		516E31000	JOINT SEALER (WT: 29)	29	FT	118.000
0069		516E45304	REFURBISH BEARING DEVICE (WT: 29)	29	EACH	3.000
0070		516E47001	JACKING AND TEMPORARY SUPPORT OF SUPERSTRUCTURE, AS PER PLAN (WT: 29)	29	LS	1.000

**Section 0007 INCIDENTALS**

Line	Alt	Item Code	Item Description	WT	Unit	Quantity
0071		100E00300	PREMIUM ON RAILROADS' PROTECTIVE PUBLIC LIABILITY AND PROPERTY DAMAGE LIABILITY INSURANCE (WT: NR)	NR	LS	1.000
0072		103E05000	PREMIUM FOR CONTRACT PERFORMANCE BOND AND FOR PAYMENT BOND (WT: NR)	NR	LS	1.000
0073		614E11000	MAINTAINING TRAFFIC (WT: 39)	39	LS	1.000
0074		619E16010	FIELD OFFICE, TYPE B (WT: NR)	NR	MNTH	5.000
0075		623E10000	CONSTRUCTION LAYOUT STAKES AND SURVEYING (WT: NR)	NR	LS	1.000
0076		624E10000	MOBILIZATION (WT: NR)	NR	LS	1.000