

## **PN 126 - 1/18/2008 - REVISIONS TO THE 2008 C&MS FOR DESIGN BUILD PROJECTS**

### **101.01**

On page 1, **Add** the following: NOTE: The fact that the bid items for this Design-Build project are general rather than specific shall not relieve the Contractor of the requirement that all work performed and all materials furnished shall be in reasonable conformity with the specifications. The Contractor's Consultant shall reference in the plans the appropriate Construction and Materials Specifications for all work to be performed and all materials to be furnished.

### **101.03 Definitions**

On page 6, **Add** the following to the definition list of Contract Documents: Conceptual Documents

### **101.03 Definitions**

On page 6, **Add** the definition of Consultant or Contractor's Consultant. The Contractor's Design firm which is on the Department's Pre-Qualified list for the type or work involved. Also the Engineer or Engineering firm, or other pre-qualified specialized entity identified to perform specialized or professional services as a signatory to an agreement with the Contractor or as a part of the Contractors' staff.

### **101.03 Definitions**

On page 6, **Add** the definition of Conceptual Documents. Any graphic or written materials, criteria and information concerning the Department's requirements for the Project. These items include the Addenda, Proposal including the Scope Of Services and Attachments, Plans, Special Provisions, Specifications, Design Standards and parts of the "Specifications for Consulting Services" which show or describe the character and scope of, or relate to, the work to be performed or furnished and which have been prepared by or for the Department.

### **101.03 Definitions**

On page 7, **Add** the definition of Design-Build Scope Of Services (SOS). A project specific written document prepared for or by the Department to define services including but not limited to the survey, design, construction and general requirements of the project.

### **101.03 Definitions**

On page 7, **Add** the definition of Design-Build Team (DBT). The team consisting of the Contractor, as defined in 101.03, and the Contractor's Consultant, as defined in 101.03.

### **101.03 Definitions**

On page 7, **Revise** the definition of Equipment: All machinery and equipment, together with the necessary supplies for upkeep and maintenance, and also tools and apparatus necessary for the proper design, construction and acceptable completion of the Work.

### **101.03 Definitions**

On page 7, **Revise** the definition of Contractor to be: The individual, firm, or corporation contracting with the Department for performance of prescribed Work, acting directly or through a duly authorized representative and qualified under the provisions of ORC 5525.02 to 5525.09 and 5517.01, inclusive, and any amendments thereto.

### **101.03 Definitions**

On page 8, **Revise** the definition of Plans: The plans, profiles, typical cross-sections, standard construction drawings, working drawings, and supplemental drawings provided by the Department or produced by the contractor's consultant, approved by the Department, or exact reproductions thereof, that show the location, character, dimensions, and details of the Work.

### **101.03 Definitions**

On page 8, **Add** the definition of Progress Schedule. Critical Path Method (CPM) schedule or Relationship Bar Chart schedule submitted by the Contractor

### **101.03 Definitions**

On page 8, **Add** the definition of Project Engineer. The Department's construction representative to the DBT.

### **101.03 Definitions**

On page 8, **Add** the definition of Project Manager. The Department's design representative to the DBT.

### **101.03 Definitions**

On page 9, **Revise** the definition of Subcontractor. An individual, firm, or corporation to whom the Contractor sublets part of the Contract to be performed on the job site, who prior to such undertaking receives the written consent of the Director, and who is qualified under ORC 5525.02 through 5525.09 inclusive. This may also include the Consultant(s), retained by the Contractor, to provide the detailed design of the project.

### **101.03 Definitions**

On page 10, **Revise** the definition of Work. The entire completed design and construction of the various separately identifiable parts thereof required to be performed or furnished under the Contract Documents that comprise the project or any portion thereof. Work includes and is the result of performing or furnishing Professional Design Services and Construction required by the Contract Documents.

### **101.03 Definitions**

On page 10, **Add** the following to the Working Drawing definition: But not including the design plans prepared by the Contractor's Consultant.

## **102.01 Prequalification of Bidders**

On page 11, **Add** the following after the first paragraph: The Bidder shall select a Consultant which is currently determined by the Department to be qualified to perform the class(es) of work required.

#### **102.02 Contents of Bidding Documents**

On page 11, **Add** the following after the Item H. The Contractor is required to identify the Consultant in the Conceptual Documents which will be considered a part of the Proposal whether attached or not.

The prospective bidder will be required to pay the Department the sum stated for each set of Conceptual Documents.

#### **102.03 Issuance of Proposals**

On page 11, **Add** the following after Item B.4.:

5. Failure to identify a Consultant which is properly qualified and listed in the Department's pre-qualified list for the type of work specified.

#### **102.04 Interpretation of Quantities in Proposal**

On page 11, **Add** the following before the first paragraph: The lump sums bid for design and construction of the project, plus any unit bid prices (multiplied by the appropriate quantity) required in the Proposal shall be the sole basis for comparison of bids. These will also be used to determine the progress of the work and to provide guidance in the issuance of partial payments during design and construction.

#### **103.01 Consideration of Proposals**

On page 15, **Revise** the second sentence to: The proposed price is the summation of the products of the estimated quantities and all lump sums bid that are shown in the Proposal and the unit Bid prices.

#### **104.01 Intent of the Contract Documents**

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

##### **104.01 Intent of the Contract Documents.**

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

The DBT shall attend partnering, pre-design and pre-construction meetings to review project, location of data sources and identify contact persons, and review relevant ODOT procedures. At the meeting the DBT shall review and clarify with ODOT; project issues, data needs and availability, and the sequence of events and team meetings that are essential to the satisfactory completion of the proposed construction by the project completion date.

On page 16 **Add** 104.011 as follows:

##### **104.011 Design of the Project.**

The Contractor's Consultant will provide all necessary services to design all permanent and temporary portions of the project. All work shall conform to current Department, FHWA and AASHTO standards, practices, policies, guidelines and specifications.

The Department's standards, practices, policies, guidelines and specifications shall control in case of a conflict.

The standard of care for all such services performed or furnished pursuant to the Contract will be the care and skill ordinarily exercised by members of the engineering profession practicing under similar conditions at the same time and locality.

The Contractor shall require the Consultant to assign only qualified engineers and surveyors, professionally registered in the State of Ohio, in direct responsible charge of engineering and surveying endeavors. When services required are predominantly oriented toward other disciplines such as environmental, landscaping, transportation planning, or architectural applications, the Consultant shall assign other professionally competent personnel registered in Ohio or certified as required by law, to be in charge of the work.

Full size, ink on Mylar, 22" x 34" plans will be developed by the Consultant in accordance with the Location and Design Manual. In addition, electronic files in the format defined in the Conceptual Documents may also be required.

The Consultant's design shall be reviewed by the Department. The Consultant shall be available during construction to answer questions, issue clarifications, and correct errors and omissions. At the completion of the work, prior to final acceptance of the construction, the Consultant shall furnish the Department as-built construction plans as required in the Scope Of Services.

Design for relocation or accommodation of any utilities within the project shall be coordinated by the Contractor. The DBT shall determine and show on the plans the names of all existing utilities within project limits. The DBT shall identify and resolve utility conflicts and the plans and details shall reflect the resolutions and decisions accepted. The DBT shall call any utility meetings needed to ensure that the concerns are addressed on the plans involving utilities. The DBT shall notify the Project Engineer at least two working days in advance of any utility meeting. An ODOT representative shall be in attendance at all utility meetings. The Department will authorize project funds for utility relocations eligible for reimbursement and issue permits to the utilities relocating facilities that require relocation within the Right of Way. The DBT will be responsible for working with the individual utilities to ensure that all utility concerns are addressed and that any required utility relocation plans, estimates and support material are developed and copies are provided to the district utility office. The DBT will keep the district utility office aware of all utility coordination information. Also see additional requirements regarding Cooperation with Utilities in Section 105.07.

The Contractor's Consultant Shall:

A. Consult with Department to understand the requirements for the Project and review available data.

B. Advise the Department as to the necessity of providing or obtaining from others additional reports, data or services of the types provided in paragraph 104.012 and assist the Department in obtaining such reports, data, or services.

C. Develop maintenance of traffic plans in accordance with the current Standard Construction Drawings, L&D Manual, OMUTCD and the Scope Of Services.

D. Maintain and make available to ODOT, at ODOT's request, a Project Record which includes a history of significant events (changes, comments, etc.) which influenced the development of the project.

E. Perform any surveys (see ODOT Survey Manual) required for this project.

F. Perform hydraulic analysis as set forth in the Scope Of Services document. The results of the analyses must show no harmful interference to adjacent riparian vegetation (along

streams). Results must be certified by the Contractor's Consultant. The certification must state that the proposed structure will have an equal to or greater hydraulic capacity and that a deletion of existing auxiliary openings and overflow areas is not planned.

G. Perform any additional needed soils surveys, soils borings, and geotechnical investigations, with appropriate analysis to produce the proposed design.

H. Provide plans, specifications and supporting documents for review by ODOT at the several stages of plan development review required by the proposal.

I. The Contractor's Consultant has additional duties and requirements which are explained in "Specifications for Consulting Services".

On page 16, **Add** 104.012 as follows:

**104.012 Department's Responsibilities for Design Activities.**

The Department shall do the following in a timely manner to facilitate the activities of the Contractor's Consultant.

Furnish to the DBT , as required for performance of Services the following, all of which the Contractor may use and rely upon when performing services under this Agreement:

A. Environmental assessment and impact statements,

B. Engineering surveys to establish reference points for design and construction which in the Department's judgment are necessary to enable the Contractor to proceed with the Work.

C. Existing subsurface data used in preparation of the Conceptual Documents.

The Department will provide information, known to, or in the possession of the Department, relating to the presence of materials and substances at the site which could create a hazardous condition.

The Department shall not supervise, direct or have control or authority over, nor be responsible for, Contractors' means, methods, techniques, sequences or procedures of construction or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the furnishing or performance of the Work. The Department will not be responsible except that the Department may order immediate remediation of conditions which endanger the public welfare as required in 105.14/105.15/107.07/107./10/107.11/107.12. The Department will not be responsible for Contractor's failure to perform or furnish the Work in accordance with the Contract Documents.

**104.02.B Differing Site Conditions**

On page 16, **Revise** 104.02 B to the following:

B. Differing Site Conditions. During the progress of the Work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the Conceptual Documents, Contract Documents, ancillary documents or the Contractor's design investigations or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract Documents, are encountered at the site, notify the Engineer as specified in 104.02.G of the specific differing conditions before they are disturbed or the affected Work is performed.

Upon written notification, the Engineer will promptly investigate the conditions.

1. If the Engineer determines that the differing site conditions are not rare for this area and type of work, even though they may not have been visible or indicated by soil borings or

other investigations performed, or which reasonably should have been performed, the Engineer will require the Contractor to make appropriate changes to the design and construction which will assure the integrity and quality of the completed project. No adjustment of contract cost or time required for performance of added or changed work shall be permitted for this purpose.

2. If the Engineer determines that the differing site conditions are an anomaly for this area and type of work, that they were not visible or indicated by soils borings or other investigations performed or which reasonably should have been performed and that the conditions do materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an equitable adjustment will be made. Should the Engineer and the Contractor disagree, disputes will be resolved in accordance with the "Dispute Resolution and Administrative Claims Process."

#### **104.02.F Extra Work**

On page 18, **Revise** 104.02.F to the following:

F. Extra Work. Perform Extra Work as directed by the Engineer. The Department will pay for Extra Work as specified in 109.05. Time extensions, if warranted, will be determined according to 108.06. No adjustment of the contract cost or the time required for performance of added or changed work will be permitted unless the Contractor demonstrates to the satisfaction of the Engineer that:

1. The need for the Extra Work was not reasonably evident during the design by inspection or investigations which were performed, or reasonably should have been performed during the design process, and

2. The need for the Extra Work is rare for this area and type of project. If the Engineer determines that the need for the Extra Work was not reasonably evident, and the likelihood of needing the Extra Work was rare, the work will be paid for as provided under 109.04. The provisions of this section are subject to the limitations of 5525.14, ORC.

#### **104.05 Pay Adjustments**

On page 20, **Add** the following:

##### **104.05 Pay Adjustments**

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

For pay adjustments based on a unit bid price/cost or a contract unit price/bid price, the Office of Estimating Historical Bid Data adjusted for inflation for the calendar year immediately preceding the calendar year in which the project is let shall be used unless such price/cost data is specifically contained within the bid or Contract Documents. The applicable average awarded bid amount shall be used as the unit price/cost component when calculating the applicable pay adjustment. Moreover, the actual adjustment will be the difference between the average awarded bid amount and the computed adjustment to that amount for the applicable number of units as appropriate. Pay adjustments will be paid or deducted on the Contractor/DBT progress estimates through the change order process. The Office of Estimating Historical Bid Data is located at the following web address:

### **105.02 Plans and Working Drawings**

On page 20, in the first sentence **Revise** "show" to "shall show".

Also on page 22, in the third sentence **Revise** "..conformance with the Contract.." to "conformance with the Conceptual Documents and Contract..."

### **105.03 Conformity with Contract Documents**

On page 21, in the first sentence **Revise** "the Plans, and as specified" to "the Plans, Conceptual Documents, and as specified".

Also on page 24, in the second paragraph **Revise** "..Contract Documents.." to "..Contract and Conceptual Documents..."

### **105.07 Cooperation with Utilities**

On page 22, **Revise** the section as follows:

#### **105.07 Cooperation with Utilities.**

Unless otherwise provided for by the Contract Documents, the Department will direct the utility owners to relocate or adjust water lines, gas lines, wire lines, service connections, water and gas meter boxes, water and gas valve boxes, light standards, cableways, signals, and all other utility appurtenances within the limits of the proposed construction at no cost to the Contractor.

The design plans developed by the Contractor's Consultant will indicate various utility items and indicate a time frame or date when the Department expects the owners to complete utility relocation or adjustment. Provide utility owners adjusting facilities during construction with adequate notification of the scheduled Work to prevent conflict with the Contractor's schedule of operations.

The Contractor shall cooperate fully with each utility company and shall make every effort to avoid delays.

According to ORC 153.64 and at least 2 Workdays prior to commencing construction operations in an area that may affect underground utilities shown on the Plans, notify the Engineer, the registered utility protection service, and the owners that are not members of the registered utility protection service.

The owner of the underground utility shall, within 48 hours, excluding Saturdays, Sundays, and legal holidays, after notice is received, start staking, marking, or otherwise designating the location, course,  $\pm 2$  feet ( $\pm 0.6$  m), together with the approximate depth of the underground utilities in the construction area.

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

The acceptability of such loss of time will be evaluated as follows:

A. The Engineer shall be satisfied that the Contractor has made every effort to prosecute the design and construction work despite any delays encountered or revisions in the Contractor's scheduling of work.

B. If performance of the Contractor's work is delayed because the utility owners fail to relocate or adjust their facilities as previously agreed, the contract time will be adjusted in accordance with the provisions of 108.06.

#### **105.14 Maintenance During Construction**

On page 25, after the last paragraph in the section **Add** the following:

All cost of maintenance work during construction and before the project is accepted shall be included in the Lump Sum Bid Price for the various pay items and the Contractor will not be paid an additional amount for such work.

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

On page 38, **Add** the following:

(D) Design Build Professional Liability Insurance

The Contractor must secure and maintain professional liability insurance as specified below, for the minimum limits indicated. Policies written on a claims-made basis shall have a retroactive date which covers the period in which the design work began. The insurance policy shall be written by an insurance company authorized to transact business in the State of Ohio and licensed by the Department of Insurance as either admitted or non-admitted insurers and shall be rated A- or better by A.M. Best at the time the contract is executed by the Director.

The Contractor must immediately notify the Department in writing if it or any of its Consultants fails or refuses to renew its Professional Liability Insurance, Project Professional Liability Insurance Policy or Workers' Compensation Insurance. Furthermore, the Contractor must notify the Department in writing if it or any of its Consultant's policies are canceled, lapse, terminated or modified so that the insurance does not meet the requirements set forth in this proposal note.

The failure to comply with any of the provisions contained in this proposal note shall be considered a breach of contract.

(E) Professional Liability Insurance

1) For projects with a construction value of \$10,000,000 or less (as bid)

The Contractor providing in-house professional services shall carry Practice Professional Liability Insurance in the amount of \$1,000,000 per claim/annual aggregate to protect against claims arising from the performance of its professional services caused by the negligent acts, errors, or omissions for which the Contractor is legally liable. The coverage shall be maintained for a minimum of 2 years after substantial completion of the project as long as it is commercially available. A certificate of insurance evidencing such coverage must be submitted for the entity providing professional services prior to the execution of the Design Build Contract.

When the Contractor retains Consultants to provide professional services, the Contractor shall ensure that the Consultants maintain Practice Professional Liability Insurance of \$1,000,000 per claim/annual aggregate for a period of 2 years after substantial completion of the project, as long as it is commercially available. A certificate of insurance evidencing such coverage must be submitted for the entity providing professional services prior to the execution of the Design Build Contract.

2) For projects with a construction value of \$10,000,000 or more (as bid)



The Contractor who provides in-house design services shall purchase a Project Professional Liability Insurance Policy in addition to its Practice Professional Liability Insurance policy. A certificate of insurance evidencing such coverage must be submitted for the entity providing professional services prior to the execution of the Design Build Contract.

When the Contractor retains consultants to provide professional services, the prime design professional shall purchase a Project Professional Liability policy in addition to its Practice Professional Liability Insurance policy, which it shall maintain for a period of 2 years after substantial completion of the project. A certificate of insurance evidencing such coverage must be submitted for the entity providing professional services prior to the execution of the Design Build Contract. This insurance shall be primary (not excess) and contain the following minimum features:

Policy period

Effective Date: Date of Design

Expiration Date: Substantial Completion

Extended Discovery Period (or extended reporting period) min per table

Table	Construction Value Insurance	Discovery Period
Up to \$10M	\$1,000,000 per claim	N/A(Practice Policy)
\$10M-\$20M	\$1,000,000 per claim	2 years
\$20M-\$50M	\$2,000,000 per claim	2 years
over \$50M	\$5,000,000 per claim	3 years

Deductibles

All deductibles are the sole responsibility of the insured

Covered Entities

All entities providing design services (design professionals, consultants and subconsultants providing service including environmental and geotechnical services) must be covered regardless if they are retained directly by the Department or retained by the Contractor.

Endorsements

Indemnity for vicarious liability of owner (and Contractor if applicable)

Contractors Pollution Liability Coverage

Contractual Liability

The Department, its officers and employees assume no responsibility for the adequacy of limits and coverage in the event of any claim against the Contractor, its employees, subcontractors, design consultant, subconsultants or any agent of any of them and the obligations of the indemnity requirement above shall survive the exhaustion of limits of coverage and discontinuance of coverage beyond the term specified, to the fullest extent of the state's statute of response.

The project specific policy 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 policy shall include a thirty (30) days cancellation notice.

Prior to the payment of the first pay estimate, the Contractor shall provide the Department with one original and one copy of the required insurance policy

The cost of this policy minus deductible contributions shall be paid as a separate lump sum bid item. In order for payment to be made, the Contractor must submit an invoice from its insurance company prior to preparation of the pay estimate by the Engineer.

Payment will be made at the contract price bid for:

ITEM	UNIT	DESCRIPTION
100	Lump Sum	SPECIAL - PROFESSIONAL LIABILITY INSURANCE

#### **107.17 Furnishing Right-of-Way**

On page 40, after the first paragraph **Add**: Where proposed work is beyond existing right-of-way limits, the Contractor shall not commence any work outside of the right-of-way until notified by the Department that the needed additional right-of-way has been acquired and is otherwise available for construction work.

#### **108.02 Pre-design, Preconstruction Conference, Partnering, and Progress Schedule.**

On page 44, **Revise** the section title and add the following 2 paragraphs:

##### **108.02 Pre-design, Preconstruction Conference, Partnering, and Progress Schedule.**

The DBT shall meet with the Project Engineer and the Project Manager for a pre-design conference prior to commencing design work.

The Contractor shall furnish a Progress Schedule, as specified , and a list of all sub-consultants and other firms involved in the design process.

Meet with the Engineer for a preconstruction conference before beginning the Work. At or before the conference, submit the initial progress schedule to the DCE. Prepare the schedule according to 108.02.

At or before the conference, furnish a list of proposed subcontractors and major material suppliers not included in the list submitted before the execution of the Contract. If the Contractor fails to provide the required submissions at or before at the pre-design or the preconstruction conference, the Engineer may order the conference suspended until they are furnished. Do not begin the Work until the conference is reconvened and concluded or the Engineer gives specific written permission to proceed.

#### **108.03 Prosecution and Progress**

On page 46, after the second paragraph in the section **Add**:

The Contractor shall start the work in accordance with the approved Progress Schedule as specified .

Should design or construction progress differ significantly from the Progress Schedule presented at the preconstruction conference, the Engineer may request that the Contractor submit a revised progress schedule and anticipated completion dates of the major phases of work remaining and the anticipated completion date of the work. The Contractor shall submit the revised progress schedule within ten (10) calendar days after the request. Failure to provide an accurate, appropriate Progress Schedule may be grounds for the suspension of the work. At a mutually convenient location and time as determined by the Engineer, the contractor shall meet with the Engineer to discuss construction activities. Minutes of these meetings will be kept by the Engineer and a copy given to the Contractor.

On page 46, **Add** 108.031 as follows:

##### **108.031 Monthly Progress Report.**

Progress meetings will be held every four (4) weeks at the project office, or other location designated by the Project Engineer, and attended by ODOT and the Contractor decision-making personnel. The purpose of these meetings will be to discuss adherence to the

Progress Schedule and its periodic updates, critical operations and potential problems. The Contractor will confirm the number and duration of work shifts, number of work crews, and specific portions of the work to be performed during the following weeks. These meetings can only be waived by the Project Engineer.

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

On page 51, **Revise** the second sentence in the first paragraph to: The Department will compensate the Contractor for design work under the provisions of the "Specifications for Consulting Services" and for construction work according to 109.04 and 109.05 for termination of the Contract for the convenience of the Department.

#### **109.01 Measurement of Quantities**

On page 52, **Add** the following before the first paragraph: The pricing and payment format of this contract is intended to be Lump Sum. The Lump Sum item of payment shall mean complete payment for the work described in that item . To the greatest extent possible, the Contractor will be compensated for the percentage of the applicable fixed Lump Sum price. The percentage shall be that portion of work completed as compared to the total amount of work contracted.

#### **109.09 Estimates**

On page 74, **Revise** the first sentence to: The Contractor may submit monthly invoices for payment based upon lump sums bid. For each item, the Contractor shall estimate the current percentage completion of that item of work. The Project Engineer shall review each proposed current percentage completion and revise the percentage when appropriate. The agreed current percentage of completion multiplied by the lump sum price bid shall define the gross amount due the Contractor for that item of work.

**DESIGNER'S NOTE:** This note must be used on all Design Build projects using the 2008 C&MS.