

Invitation No.: 801L-21
 Location: All Districts
 Commodity: Liquid Asphalt (MBE Bidders Only)
 Multiple Award
 Pricing: <http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/PurchDocs/801Lpricing.xls>

INVITATION TO BID (ITB)

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

Bid Submission Deadline (Bid Opening Date):
March 24, 2020 at 1:00 p.m. eastern time

Submitted by:

Company Name: _____

Federal Tax ID No.: _____

Physical/Mailing Address:	Remit to Payment Address:
Street Address:	
P.O. Box:	
City:	
St:	
Zip:	
Contact Person and Phone Number: (authorized to answer questions about your company's bid)	
E-Mail Address (required): (person who filled out bid)	
E-Mail Address (required): (for notification of future bid opportunities)	

Telephone Number	800 Number	Fax Number

Return Properly Marked, Complete Bid Packages To:

Ohio Department of Transportation
 Office of Contract Sales, Purchasing Services, 1st floor
 1980 West Broad St. Mail Stop 4110
 Columbus, OH 43223

BIDDERS MUST SUBMIT ANY QUESTIONS, CLARIFICATIONS, OR INQUIRIES REGARDING THIS INVITATION TO BID VIA THE FOLLOWING WEBSITE:

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

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APPENDICES

ITB 801L- Liquid Asphalt 3/5/20

MBE SET-ASIDE BIDDING OPPORTUNITY

REQUIREMENTS/SPECIFICATIONS

Section 1: Intent

The purpose of this Invitation to Bid is to establish a term contract for Liquid Asphalt, F.O.B. destination, plant pick-up, and material in place with qualified State of Ohio MBE-certified bidders. Materials must be provided from ODOT-Certified Producers. There is no guarantee of quantities of Liquid Asphalt to be purchased through this contract. Districts (and Political Subdivisions, when approved) will issue purchase orders as needs for materials arise.

Section 1a: Minority Business Enterprise (MBE) Set-Aside

This Invitation to Bid (ITB) is reserved exclusively for bidders certified by the State of Ohio as a Minority Business Enterprise (MBE). Only MBE's certified by the State of Ohio Equal Opportunity Coordinator in accordance with Section 123.151 (B)(2) of the Ohio Revised Code will be considered for award of this bidding opportunity.

Section 2: Multiple Award Contract

This is a multiple award contract. ODOT will accept all responsive bids submitted on or before the specified bid opening date and make an award to all responsible bidders pursuant to O.R.C. 5513.02.

Section 3: Contract Duration

This contract shall be effective from the **April 1, 2020** through **March 31, 2021**. Unit bid pricing submitted shall be effective for the entire duration of the contract.

Section 4: Delivery

Delivery of placed order shall be completed within **two (2) calendar days** upon written or verbal notification of a valid State of Ohio purchase order.

4.1: Delivery Hours

All deliveries shall be made between the hours of 8:00 a.m. and 3:30 p.m., Monday through Friday, unless special permission is granted by the Department to temporarily waive or adjust this requirement.

4.2 Safety Data Sheets

Material Safety Data Sheets (MSDS) must be included with each delivery of product.

Section 5: Construction and Materials Specifications Handbook

Specifications as shown herein are incorporated into the ITB and made a part thereof and are found in the Ohio Department of Transportation Construction and Materials Specifications (C & MS) 2019 edition and the current version of supplemental specification 800, which is in force at time of award.

To access the 2019 Materials Specifications Handbook can be found at:

<http://www.dot.state.oh.us/Divisions/ConstructionMgt/OnlineDocs/Pages/2019-Online-Spec-Book.aspx>

To obtain a copy of the 2019 C & MS specifications, contact:

Ohio Department of Transportation
Office of Contracts, Purchasing Services
1980 W. Broad Street, 1st floor
Columbus, Ohio 43223
Telephone (614) 466-3778 or (800)459-3778

To access Supplemental specification 800, click the link below:

<http://www.dot.state.oh.us/Divisions/ConstructionMgt/OnlineDocs/Pages/ProposalNotesSupplementalSpecificationsandSupplements.aspx>

Select 2019 Active Proposal Notes, Spec Book, Supplemental Specifications, and Supplements.

Select Supplemental Specs and scroll to 800.

Section 6: Material Specifications for Alternates

Bidders must specify the product name of any alternate materials being bid where noted in the Excel pricing page. Bidders should also include product literature in its submitted bid for any alternate products. The Department may, in its sole discretion, choose to reject any alternate product submitted.

Section 7: Specifications:

In checking outage data, the coefficient of expansion shall be considered as set forth under Section 109.01, (Acceptance, Measurements and Payments) of the 2019 Construction and Materials Specification Handbook.

For CERTIFIED Materials specified on the Department's "Certified List of Materials (1032)" Excel Pricing pages:

- Bidders must provide materials through this contract produced by the following ODOT-certified liquid asphalt suppliers/producers (link below):

<http://www.dot.state.oh.us/Divisions/ConstructionMgt/Materials/Asphalt%20Information/1032.pdf>

For ALTERNATE Materials being submitted on the Department's "Alternate Materials" Excel pricing pages:

- Bidders must provide the following information with the bid
 - Technical Data Sheet of the Alternate Material
 - Safety Data Sheet of the Alternate Material
 - This does not exclude vendor from meeting Section 4.2 requirement.
 - Description of the products intended use.
- Note that there is a comment field on the pricing sheet for Alternate Products Bid. Provide brief note about specific product if clarification is necessary.

Section 8: Unit Bid Pricing:

8.1: F.O.B. Delivered Place of Destination Unit Bid Pricing (See Excel Pricing Page, Tab labeled: "F.O.B Delivered Bid Pricing")

Vendors are required to place bituminous material in state storage facilities or distributors when delivered by transport to the specified delivery location.

Bidders should insert their lowest F.O.B. delivered Unit Bid Price per Gallon for material delivered to any location within the counties listed herein. Purchase orders, or individual orders placed against a purchase order, when issued will detail specific destinations.

Free time allocated for unloading transport at delivery destination is: 2 Hrs.

Demurrage: If bidders do provide an hourly rate for transport deliveries held over the 2 hours allocated for unloading transport deliveries, you will not be able to invoice ODOT for additional time that may be needed for unloading and it will be construed that no demurrage will be charged to the Department.

In the event of an equipment failure, accident, weather, or other unforeseen event, the vendor may be asked to return material to the plant. ODOT will be reimbursed for the cost of the material, price per gallon, for the gallons of material returned. The vendor will be compensated at the per gallon rate bid for the return of the material. Space has been provided on the Excel pricing page for bidders to provide a cost per gallon for unused material sent back to the plant.

Late Delivery/Arrivals: For delivery made to an ODOT project, if a predetermined schedule for tanker/transport arrivals has been established, the ODOT may apply a demurrage charge to each truck that exceeds the established time by more than 30 minutes. A demurrage charge of up to \$200 for each 30-minute increment past the established arrival time may be assessed.

**8.2 Plant Location Pick-Up by State Forces Unit Bid Pricing
(See Excel Pricing Page, Tab labeled: “Plant Pickup Bid Pricing”)**

Bidders should submit their lowest Unit Bid Price Per Gallon for materials bid picked up at the plant location by State forces. Bidders should select plant location where provided on Excel pricing page.

**8.3: F.O.B. Destination- Material-In-Place
(See Excel Pricing Page, Tab labeled: “Materials In-Place Pricing”)**

Bidders should submit their lowest delivered Unit Bid Price Per Gallon, In-Place for materials bid. Unit Bid Pricing submitted shall be inclusive of labor and equipment to apply material to any location within the counties listed herein. Purchase orders, or orders placed against a Purchase Order number, when issued will detail specific project location(s).

Bidders must provide the product name(s) to be installed where provided on the Excel pricing page.

- ODOT will provide traffic control and work area protection for the operation and will have the authority to make decisions involving safety of the public.
- ODOT will direct the time and place of the use of the vendor’s equipment. The vendor’s operators and other employees will be under the direction and supervision of ODOT.
- The vendor shall not park equipment on the right-of-way without approval of the project supervisor. All staging areas in the right-of-way will be approved by the project supervisor.
- Sampling and testing will be performed by District forces using proper procedures as given by the District Engineer in charge of Sampling and Testing.

Section 9: Load Limit Determinations and Liquidated Damages for Load Limit Violations

- 9.1** Any vehicle being used to haul materials under this contract shall be loaded so as not to exceed the maximum weight limitations contained in Ohio Revised Code (O.R.C.) Section 5577.04 and Specification 105.12 of 2019 C&MS manual.

9.2 Any vehicle determined to be overloaded shall result in the assessment of liquidated damages to the vendor. For the purpose of assessing liquidated damages under this contract, the following schedule of maximum gross vehicle weights will be used to determine the extent of "overload" to which damages will apply. This schedule will apply in all cases except where paragraphs (C) or (D) below apply;

<u>Vehicle Type</u>	<u>Gross Vehicle Weight</u>
---------------------	-----------------------------

A) Single Unit Trucks

- | | | |
|----|---------------------------|------------|
| 1) | 2-axle, with 1 rear axle | 32,000 lbs |
| 2) | 3-axle, with 2 rear axles | 47,000 lbs |
| 3) | 4-axle, with 3 rear axles | 60,000 lbs |

B) Tractor-trailer combinations 80,000 lbs

C) In the event that any vehicle can legally exceed the above maximums, then the liquidated damage clause will not be invoked, if and only if, a written determination of the maximum legal gross vehicle weight under O.R.C. 5577.04 for that vehicle has been issued by the ODOT Special Hauling Permit Section and is presented upon demand.

D) In the event that the gross vehicle weight of any vehicle exceeds the maximum legal gross vehicle weight under O.R.C. 5577.04 for that vehicle, then the liquidated damage clause will not be invoked, if and only if, a Special Hauling Permit stating the permitted gross vehicle weight for that vehicle has been issued by the ODOT Hauling Permit Section and is presented upon demand.

9.3 Schedule of Liquidated Damage for Vehicle Overloads

<u>Overload (lbs)</u>	<u>Liquidated Damages</u>
0 - 2,000	\$80.00
2,001 - 5,000	\$100.00 plus \$1.00 per 100 lbs. of overload
5,001 - 10,000	\$130.00 plus \$2.00 per 100 lbs. of overload
10,001+	\$160.00 plus \$3.00 per 100 lbs. of overload

9.4 Drivers of all vehicles being used to haul materials on this invitation shall be informed by the vendor that liquidated damages shall be charged for overloads.

9.5 These provisions are strictly for the convenience of administering this regulation and shall not be construed to replace or waive any provision of the Ohio Revised Code pertaining to vehicle weight limitation.

Section 10: Prevailing Wages

This contract is subject to Ohio Prevailing Wage Laws, Chapter 4115 of the Ohio Revised Code and the vendor shall comply with all provisions contained therein. By signing this bid, the bidder guarantees that the prevailing wage scale to be paid to all labor employed on this contract shall be in accordance with the published schedule of the prevailing hourly wage and fringe benefits ascertained and determined by Ohio Bureau of Employment Services for the county in which the work is being performed. The current prevailing wage schedule can be found at the following web site and is incorporated herein.

<http://198.234.41.198/w3/webwh.nsf?Opendatabase>

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The vendor shall compensate the employees on this contract at a pay rate not less than the hourly wage and fringe rate listed in the above link. Job classifications or labor rates may be modified by the Ohio Bureau of Employment Services when new prevailing rates are established. Overtime shall be paid at one and one-half times the basic hourly rate and the hourly fringe rate for any hours worked beyond forty hours during a pay week. The vendor shall pay all compensation by company check to the worker and fringe benefit program.

The vendor shall post or make available to the employees on the contract the prevailing wages applicable to this invitation or may be later modified. On the first pay date of contract work the vendor shall furnish each employee covered by prevailing wage a completed form whpw1512 in accordance with section 4115.05 Ohio Revised Code, showing the classification, hourly pay rate, fringes, and identifying the District Prevailing Wage Coordinator (DPWC), if such employees are not covered by a collective bargaining agreement or understanding between employers and bona fide organizations of labor. These forms shall be signed by the vendor and employee and kept in the vendor's payroll files.

The vendor shall submit to the DPWC or other designated Department representative, certified payrolls in accordance with sections 4115.07 and 4115.071 (C) of the Ohio Revised Code, three weeks after the start of work and every subsequent week until the completion of the contract. Upon completion of the contract and before the final payment, the vendor shall submit to the DPWC a final wage affidavit in accordance with section 4115.07 of the Ohio Revised Code stating that wages have been paid in conformance with the minimum rates set forth in the contract.

Payrolls records shall be maintained by the Contractor for two years after the completion of the contract and these records shall be open to inspection by the Ohio Department of Transportation and the Ohio Bureau of Employment Services, Wage and Hour Division.

Truck drivers who are employed to deliver materials to the project site are exempt from prevailing wage **except** when the work performed is on the "site of work". Site of Work includes the following:

- The physical place or places where the building or work called for in the contract will remain after the work is completed.
- Job headquarters, tool yards, batch plants, borrow pits, etc., *provided* they:
 1. Are located adjacent or virtually adjacent (**within a one mile radius**) to the site of the work described above.

****AND****

2. Are dedicated exclusively, or nearly so, to performance of the contract or project; 80% of the materials taken from the site must be used for the project.

Truck drivers who are Owner-operators are also exempt from prevailing wage. Owner-operators must have a purchase or bona fide lease agreement contract and demonstrate financial commitment, such as purchasing vehicle insurance, gasoline, etc. An Owner-operator includes a lessee of equipment, but there must exist a bona fide lease with evidence of independent contractor status. A lease calling for a share of revenues while being used, or short term in duration (3-5 years), will not qualify for Owner-operator status.

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

Terms and Conditions for Submitting Excel Pricing File in Bid Package

(Last Revised 02/2019)

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

<http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/PurchDocs/801Lpricing.xls>

2. SUBMISSION OF EXCEL PRICING FILE: Bidders should submit both a media device with the completed electronic Excel pricing file (.xls) and a hard copy print out of the completed Excel file in their submitted bid package. The media device should be marked with the bidder's name and the Invitation to Bid number.

"Media Device"- Compact Disc (CD), DVD (Digital Versatile Disc), or Flash Drive

Failure to submit this media device with a completed Excel price sheet from the Department's Microsoft Excel file and the hard copy print out of the completed Excel price sheet may result in a bid being deemed non-responsive by the Department.

3. DISCREPANCIES IN SUBMITTED INFORMATION: In the event there is a discrepancy between the information submitted on the media device and the hard copy Excel price sheet, the information submitted on the media device will take precedence.

4. NON-FUNCTIONAL MEDIA DEVICE: The Department shall not be held liable in the event a bidder's media device is not functional, is broken, or is unable to be accessed/downloaded by the Department for any reason. Bidders should take care to ensure all submitted media devices are properly protected during transport.

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

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

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

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

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

INSTRUCTIONS, TERMS AND CONDITIONS FOR BIDDING

(Last revised 02/2019)

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

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

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

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

2. **HOW BIDS MUST BE PACKAGED:** All submitted bids in response to this Invitation to Bid (ITB) must be submitted in a sealed envelope or box (envelope means any type of sealed, opaque container) marked with the ITB number, the title of the ITB, bid submission deadline (bid opening date), and bidder (company) name clearly marked on the outside of the envelope/box. If a bidder is using an "Express Mail" or similar type of service, the bid response must be contained in a sealed envelope within the "Express" mailer (the bid number must be listed on the exterior of the sealed envelope contained within the "Express" mailer). A bid that is not properly and clearly marked and is inadvertently opened, before the scheduled bid opening time, may be disqualified, at the Department's discretion, without additional consideration for award of the contract.

Below is an example to illustrate how the outer surface of the bid package should be labeled:

Invitation to Bid #: *(insert bid number)*
Commodity/Service: *(insert title of bid)*
Bid Submission Deadline: *(insert due date)*
Company Name: *(insert company name)*

3. **WHAT NEEDS INCLUDED IN BID PACKAGE:** Submitted bid packages should include, at a minimum, a completed Signature Page, a hard copy print out of this entire invitation to bid document, media device with a completed Excel pricing page, hard copy of the completed Excel pricing page, and all necessary supportive documentation, forms, and any other information required herein. The Department may deem a bid non-responsive for failure to submit any of the documents requested above.
4. **PREBID QUESTIONS, DISCREPANCIES, AND CLARIFICATIONS:** Any discrepancies, omissions, ambiguities, or conflicts in or among the bidding documents or doubts as to the meaning shall be brought to the Department's attention by the bidder no less than three (3) business days prior to the bid submission deadline. All questions, discrepancies, clarifications, etc. must be submitted electronically (hyperlink below). During the competitive bidding process, bidders (and their agents) are prohibited from contacting any ODOT office, including District offices, other than the Office of Contract Sales, Purchasing Services section to obtain responses to any questions. The Department may find a bidder non-responsive for failing to adhere to any of the above requirements.

Pre-bid questions/inquiries must be submitted electronically through the following website:
<http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/Pages/PurchasePBQ.aspx>

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

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

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

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

<http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/Lists/PurchaseUpcomingITBs/UpITBs.aspx>

In addition to posting on the above website, the Department also may email addenda information out to all known bidders for convenience purposes only. The Department shall not be held responsible for a bidder's failure to receive the email with the addenda information. It is the sole responsibility of all interested bidders to diligently visit the above-listed website to see if any addenda have been issued prior to submitting their bid to the Department. Those interested in obtaining addenda information via email for a particular invitation to bid must send the Department its request in writing to the following email address:

Contracts.Purchasing@dot.ohio.gov

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

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

7. **WHERE BIDS MUST BE DELIVERED TO:** The Department only accepts hand delivered and mailed bid packages. Bids submitted via email, telephone, electronic facsimile (fax), or any other mode of electronic transmission will not be considered a responsive bid submission. Bids must be in possession of the ODOT Office of Contract Sales, Purchasing Services section, on or prior to 2:00 p.m. eastern time, on the scheduled date of the bid submission deadline (public bid opening) as listed on the cover of this Invitation to Bid (ITB). Properly labeled bid packages must be either hand delivered by the bidder to the Office of Contract Sales, Purchasing Services section or mailed to the following EXACT address:

Invitation No. 801L-21

Ohio Department of Transportation,
Office of Contract Sales, Purchasing Services, 1st floor
1980 West Broad St. Mail Stop 4110
Columbus, OH 43223
(614) 644-7870 or (614) 752-9017
Main Office Line: 1-800-459-3778

OFFICE HOURS: 7:30-3:30, M-F (excluding State of Ohio recognized holidays)

For hand delivery of bids, the Office of Contract Sales, Purchasing Services section is located on the 1st floor of ODOT Central Office (same address as where bids will be received). Bidders will be required to sign-in at the front desk of the building and then must be escorted back to the Office of Contract Sales, Purchasing Services section in order to drop off their bid. It is the responsibility of the bidder to ensure enough time is allotted to allow for all sign in and security procedures prior to the 2:00 p.m. bid submission deadline. Delivery of bids to any other location (including the ODOT mailroom), does not constitute receipt by the Purchasing Services section. Bids delivered to the ODOT mail room by a courier service must be delivered so as to leave a reasonable amount of time for the transfer of the bid to the Purchasing Services section. The ODOT mail room delivers received mail to Purchasing Services at scheduled times during normal office hours.

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

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

9. **PUBLIC BID OPENING PROCEDURE:** All bids in possession of the Purchasing Services section shall be publicly opened, at ODOT Central Office, Office of Contract Sales, Purchasing Services section, 1st floor, starting at 1:01 p.m. on the scheduled date of public bid opening (bid submission deadline). All bids will be opened and read to any interested parties in attendance. At the conclusion of the public bid opening, bids may no longer be shared with interested parties until after a contract award has been made.
10. **BIDS FIRM:** Once publicly opened, all bids are firm and cannot be altered by the bidder. Once a Contract is awarded and executed, the Vendor shall deliver all products and/or services at the bid prices and terms contained in the Contract. All submitted bids shall remain valid for a period of sixty (60) calendar days after the date of the public bid opening. Beyond sixty (60) calendar days, bidders will have the option to either honor their submitted bid or make a written request to withdraw their bid from consideration. The Ohio Department of Transportation shall receive the benefit of any decrease in price during the sixty (60) day period.
11. **WITHDRAWAL OF BIDS:** A bidder may, by way of written notice to the Purchasing Services section, request to withdraw their bid response prior to the bid submission deadline. The request must be received by the Purchasing Services Section PRIOR to the start of the public bid opening (beginning at 1:01 p.m.) on the date of the bid submission deadline. Such written notice must set forth the specific reasons for the bid withdrawal.

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

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

12. **MODIFICATION OF SUBMITTED BIDS PRIOR TO PUBLIC BID OPENING:** A bidder may request to modify their bid response prior to the scheduled date and time set for the public bid opening (i.e. bid submission deadline). To modify a bid response, the bidder must provide an alternate, complete bid package containing all required forms and necessary documents. The alternate bid package must be marked somewhere on the outer packaging as "REVISED". Purchasing Services will not return the original bid package to the bidder. The original bid package will be kept in the contract file.

In order to protect the integrity of the bidding process, bids shall not be prepared on the premises of ODOT. Any bid which is prepared on the premises of ODOT may be immediately disqualified and receive no further consideration for award.

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

The following requirements also apply to unit bid prices:

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

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

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

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

e. **UNBALANCED BIDS:** The Department will not accept unit bid prices that are deemed to be either materially or mathematically unbalanced. The final determination of an unbalanced unit bid price shall be at the Department's sole discretion.

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

14. **PREFERENCE FOR OHIO/BORDER STATE PRODUCTS:** The bid award for this invitation to bid may be subject to the domestic preference provisions of the Buy America Act, 41 U.S.C.A., 10a-10d, as amended, and to the preference for Ohio products under O.R.C. Sections 125.09 and 125.11 and Ohio Administrative Code Rule 123:5-1-06. A bidder must complete the enclosed *Buy Ohio/Buy America Certification Statement* form to be eligible to receive any applicable bid preferences.
15. **RESPONSIVE BIDDER:** A bidder is responsive if its bid responds to the bid specifications in all material respects and contains no irregularities or deviations from the specifications that would affect the amount of the bid or otherwise give the bidder an unfair competitive advantage.
16. **MINOR INFORMALITIES OR IRREGULARITIES IN BIDS:** A minor informality or irregularity is one that is merely a matter of form and not of substance. It also pertains to some immaterial defect in a bid or variation of a bid from the exact requirements of the invitation that can be corrected or waived without being prejudicial to other bidders. The defect or variation is immaterial when the effect on price, quantity, quality, or delivery is negligible when contrasted with the total cost or scope of the supplies or services being acquired. The Department either shall give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive the deficiency, whichever is to the advantage of the Department.
17. **BIDDER RESPONSIBILITY:** The Department will only award this invitation to bid to what it deems to be a responsible bidder. The Department's determination of a bidder's responsibility includes, but is not limited to, the following factors:
 - a) experience of the bidder;
 - b) bidder's financial condition;
 - c) bidder's conduct and performance on previous contracts;
 - d) the bidder's facilities;
 - e) the bidder's management skills;
 - f) the bidder's employees;
 - g) past experience and/or quality of bidder's proposed subcontractors;
 - h) the bidder's ability to execute the contract;
 - i) review of Federal and Department debarment lists;
 - j) bidder has history of successful performance on contracts of similar size and scope; and
 - k) current or impending legal actions against a bidder.
18. **APPARENT CLERICAL MISTAKES:** Clerical mistakes apparent on the face of the bid may be corrected, at the Department's discretion, before contract award. The Department first shall obtain from the bidder a verification of the information intended and will attach written verification of the mistake by the bidder in the contract file and award documents. Example of apparent clerical mistakes are:
 - (1) Obvious misplacement of a decimal point or comma;
 - (2) Obvious incorrect discount factor; or
 - (3) Transcription error in Part Number.
19. **ADDITIONAL INFORMATION:** The Department reserves the right to request additional information to evaluate a bidder's responsiveness to the Invitation to Bid's requirements and/or to evaluate a bidder's overall responsibility. These requests may require the bidder's submission of confidential materials (e.g. financial statements). If a bidder does not provide all of the requested information within the prescribed timeframe, the Department may find the bid non-responsive and ineligible for award.

20. **PRODUCT SAMPLES:** The Department may require bidders, by Invitation to Bid or by request during bid evaluation, to provide sample supplies or equipment or examples of work, at the Bidder's expense. Samples must clearly identify the Bidder, the bid number, and the item the sample represents in the bid. The Department will return samples that are not destroyed by testing, at the Bidder's expense, upon the Bidder's timely request. The Department may keep the samples of the Bidder awarded the contract until the completion of the contract. Unsolicited samples submitted in response to this Invitation to Bid will not be evaluated and the Department may dispose of them in any way it chooses.
21. **SPECIFICATIONS:** The Department is authorized by Sections 5513 and/or 125.02(B) of the Ohio Revised Code to prepare specifications and establish contracts to obtain the supplies, equipment, and/or services referenced within this invitation to bid. The purpose of the provided specifications is to describe the supplies, equipment, and/or services to be purchased and will serve as a fair and equitable basis for comparison of submitted bids. The Department may use any form of specification it determines to be in the best interest of the Department and that best describes the supplies or services to be purchased. Specifications may be in the form of a design specification or a combination thereof. If the department determines that a design, performance or a combination specification is not in the best interest of the Department, it may use brand name or equal specifications.

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

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

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

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

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

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

25. **OVERLAPPING CONTRACT ITEMS:** The products and/or services included in this solicitation may be available from other State of Ohio contracts and/or other contracts made available for the Department's use. The existence of these contracts containing like or similar products and/or services could be either known or unknown to the Department at the time this Invitation to bid has been published. Unless otherwise stated in this contract, the Department may acquire these products and/or services from any available source. The Department will make purchases from sources that are deemed to be in the best interest of the Agency.
26. **REJECTION/PARTIAL AWARD OF BIDS:** The Department reserves the right to reject any or all bid responses, award partial contracts, or choose to rebid when:
- (1) Product, supplies and/or services are not in compliance with the requirements, specifications, and terms and conditions set forth in this Invitation to Bid; or
 - (2) Pricing offered is determined to be excessive in comparison with existing market conditions, or exceeds the available funds of the Department; or
 - (3) Only one bid is received, and the Department cannot determine the reasonableness of the bid prices submitted; or
 - (4) It is determined that the award of any or all items would not be in the best interest of the Department; or
 - (5) The Department, in its opinion, did not achieve the desired amount of competition amongst qualified bidders for the products, supplies, and/or services being offered in the bid solicitation; or
 - (6) Inadequate or ambiguous specifications were cited in the bidding documents; or
 - (7) The Department determines that specifications and/or requirements were missing from the bidding documents; or
 - (8) A bidder imposes additional terms and conditions against the Department.
27. **NOTICE TO BIDDERS OF REJECTED BIDS:** When the Department deems it necessary to reject a bid, the Department will notify each affected bidder and the reasons for such actions.
28. **BID PROTESTS:** Any apparent low bidder either deemed not responsible or whose bid has been deemed non-responsive shall be notified by the Department of that determination and the reasons for it. The notification will be provided by the Department in writing and sent by U.S. mail and at the email address provided on the front cover of the bidder's bid. The bidder will have five (5) calendar days after receipt (by mail or email confirmation) of this notification to file a written, valid protest of the Department's determination. A valid written protest must contain substantive information and evidence so as to refute the Department's asserted claims against either the bid's responsiveness or bidder's responsibility, whichever apply. The Department will only review and respond to valid written protests containing substantive information and evidence. After review of the valid written protest, the Department will either affirm or reverse its original determination.
- If a valid written protest is not received by the Department within five (5) calendar days of receipt, the Director of ODOT will move forward awarding the Contract and the affected bidder will have effectively waived its right to protest the Department's decision. For the purposes of this paragraph, "receipt" shall be defined as verification (via either certified mail return receipt or electronic read or delivery receipt) that the apparent low bidder has received the Department's written determination against the affected bidder. Upon the bidder's receipt, the five (5) calendar day response deadline shall commence.
29. **DELAYS IN CONTRACT AWARD:** Delays in the award of this Invitation to Bid beyond the anticipated Contract start date may result in a change in the contract period as indicated in the Special terms and conditions of this bid solicitation. In these instances, ODOT shall reserve the right to award a contract covering a period equal to or less than the initial contract term than originally specified in this bid solicitation.

30. **CONTRACT AWARD AND FORMATION:** Successful bidder(s) will receive via U.S. regular mail and/or email a Notice of Contract Award letter as well as a photocopy version of the Signature Page executed by both Parties. These documents shall serve to form the Contract between the Parties. The Signature Page must be executed by both the bidder and the Director of ODOT for the Contract to be deemed valid and enforceable. The Department will maintain in the Contract file the Signature Page document containing each parties' original signature(s).

Upon award of an Invitation to Bid, the bid invitation number (e.g. Invitation No. 999-16) will subsequently become the number assigned to the resulting Contract (e.g. ODOT Contract number 999-16) and will be referenced by the Department in all matters and documents related to said Contract.

Upon award of an invitation to bid, successful bidders will thereafter be referenced as "Vendor" or "Contractor" by the Department in all matters and documents related to the resulting Contract.

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

<http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/Lists/PurchaseCurrentContracts/CurrentKs.aspx>

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

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

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

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

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

GENERAL DEFINITIONS

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

1. AGENCY: Ohio Department of Transportation.
2. AUTHORIZED DISTRIBUTOR: The bidder/vendor who maintains written legal agreements with manufacturers/producers to act as their agent and provide supplies, materials, equipment or services listed in the bid/contract. The authorized distributor must maintain active and sufficient facilities necessary to perform the awarded contract, own title to the goods inventoried within these facilities and maintain a true stock of these goods on a continuing basis and in sufficient quantity to provide uninterrupted service to ordering agencies.
3. BIDDER: The company and/or authorized representative of the company who has signed and is submitting a bid response and who will be responsible to ensure proper performance of the contract awarded pursuant to the bid.
4. DEPARTMENT: Ohio Department of Transportation
5. EQUIPMENT: Items, implements and machinery with a predetermined and considerable usage life.
6. F.O.B. PLACE OF DESTINATION: meaning the Vendor pays, and includes the cost of such in their bid, and bears the risk for the transportation/delivery of goods delivered to the specified locations provided by the Purchaser.
7. INVITATION TO BID/CONTRACT: All documents, whether attached or incorporated by reference, utilized for soliciting bids. Upon completion of the evaluation and award of the bidder's response, the Invitation to Bid then becomes the contract between ODOT and the successful bidder, both governed by the laws of the State of Ohio.
8. INVOICE: An itemized listing showing delivery of the commodity or performance of the service described in the order, and the date of the purchase or rendering of the service, or an itemization of the things done, material supplied, or labor furnished, and the sum due pursuant to the contract or obligation.
9. LOWEST RESPONSIVE\RESPONSIBLE BIDDER: A bidder who offers the lowest cost for the goods or services listed in the bid; and whose proposal responds to bid specifications in all material respects and contains no irregularities or deviations from the specifications which would affect the amount of the bid or otherwise give him a competitive advantage; and whose experience, financial condition, conduct and performance on previous contracts, facilities, management skills evidences their ability to execute the contract properly.
10. MINORITY BUSINESS ENTERPRISE (MBE): means an individual, partnership, corporation or joint venture of any kind that is owned and controlled by U. S. Citizens and residents of Ohio, who are and have held themselves out as members of the following socially and economically disadvantaged groups: Blacks, American Indians, Hispanics and Asians. Only businesses certified by the State of Ohio Equal Opportunity Division in accordance with Section 123.151 of the Ohio Revised Code shall be recognized as being MBE certified within the purpose of this invitation.
11. MATERIALS: Items or substance of an expendable or non-expendable nature from which something can be made, improved or repaired.

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13. PURCHASE: To buy, purchase, installment purchase, rent, lease, lease purchase or otherwise acquire equipment, materials, supplies or services. "Purchase" also includes all functions that pertain to obtaining of equipment, materials, supplies or services, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.
14. SERVICES: The furnishing of labor, time or effort by a person, not involving the delivery of a specific end product other than a report which, if provided, is merely incidental to the required performance. "Services" does not include services furnished pursuant to employment agreements or collective bargaining agreements.
15. SPECIFICATION: Any description of the physical or functional characteristics or of the nature of supplies, equipment, service, or insurance. It may include a description of any requirements for inspecting, testing, or preparing supplies, equipment, services, or insurance.
16. SUPPLIES: Provisions and items normally considered expendable or consumable.14. UNBALANCED: Any unit price contained in the bid schedule which is obviously unbalanced either above or below reasonable cost analysis and or unreasonably disproportionate to current market prices as determined by the Director of ODOT, or if such unbalanced prices are contrary to the interest of the department.
17. VENDOR: The bidder who, upon awarding of a contract, then becomes a Vendor who is considered to be a primary source for providing the goods and/or services included in the awarded contract and the party to whom payment will be made upon delivery of the goods and/or completion of the contract.
18. SUBVENDOR/SUBCONTRACTOR: An individual, firm or corporation to whom the Vendor sublets part of the contract to be performed.

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

STANDARD CONTRACT TERMS AND CONDITIONS

(Last Revised 02/2019)

1. **HEADINGS:** The headings used in this Contract are for convenience only and shall not be used to affect the interpretation of any of the Contract terms and conditions.
2. **ENTIRE CONTRACT:** This Contract consists of the complete Invitation to Bid, including the Instructions, Terms and Conditions for Bidding, these Standard Contract Terms and Conditions, the Special Contract Terms and Conditions, ODOT Cooperative Purchasing Program Requirements, mutually executed Signature Page, Specifications and Requirements, awarded unit bid pricing, and any written addenda to the Invitation to Bid; the completed competitive sealed bid, including proper modifications, clarifications and samples; and applicable, valid State of Ohio purchase orders or other ordering documents ("Contract").
3. **APPROPRIATION OF FUNDS.** Pursuant to the Constitution of the State of Ohio, Article II Section 22, ODOT's funds are contingent upon the availability of lawful appropriations by the Ohio General Assembly. If the Ohio General Assembly fails at any time to continue funding for the payments or obligations due hereunder, the Work under this Contract that is affected by the lack of funding will terminate and ODOT will have no further obligation to make any payments and will be released from its obligations on the date funding expires.

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

4. **OBM CERTIFICATION:** None of the rights, duties, or obligations in this Contract will be binding on the Department, and the Vendor will not begin its performance, until all of the following conditions have been met:
 1. All statutory provisions under the O.R.C., including Section 126.07, have been met; and
 2. All necessary funds are made available by the Ohio Office of Budget and Management; or
 3. If ODOT is relying on Federal or third-party funds for this Contract the ODOT gives the Vendor written notice that such funds have been made available.
5. **CONTRACT MODIFICATIONS:** Amendments or modifications to this Contract must be executed in writing between the parties and signed by the Director of ODOT. Amendments or modifications to this Contract made between the Vendor and other Department personnel shall be void and unenforceable.
6. **CONTRACT CONSTRUCTION:** Any general rule of construction to the contrary notwithstanding this Contract shall be liberally construed in favor of the effect the purpose of this Contract and the policy and purposes of the Department. If any provisions in this Contract are found to be ambiguous, an interpretation consistent with the purpose of this Contract that would render the provision valid shall be favored over any interpretation that would render it invalid.
7. **GOVERNING LAW / SEVERABILITY:** This Contract shall be governed by the laws of the State of Ohio, and the venue for any disputes will be exclusively with the appropriate court in Franklin County, Ohio. If any provision of the Contract or the application of any provision is held by that court to be contrary to law, the remaining provisions of the Contract will remain in full force and effect.
8. **ASSIGNMENT / DELEGATION:** The Vendor will not assign any of its rights nor delegate any of its duties under this Contract without the written consent of the Director of ODOT. Any assignment or delegation not consented to may be deemed void by the Department.

9. **PLACEMENT OF ORDERS/METHODS OF PAYMENT:** The Department shall use either State of Ohio Purchase Order or State of Ohio Payment Card (i.e. credit card) to authorize performance under this Contract and to issue payments for supplies, products, and/or services acquired. Vendors are required to accept both forms of payment. For Department purchases over \$2,500.00, an official State of Ohio purchase order must be generated and obtain approvals from the Office of Budget and Management, the Department of Administrative Services, and the Director of Transportation prior to its effectiveness. An approved State of Ohio purchase order will be sent to the Vendor and the Vendor will provide the goods and/or services listed on the ordering documents and in accordance with the Contract's terms and conditions. Any order placed not using an approved ODOT purchase order or against a State payment card, shall not be considered a valid order and may result in denial of payment and/or return of goods at the Vendor's expense.
10. **ACCEPTANCE OF ORDERS:** The Vendor must accept orders placed by the Department pursuant to this Contract up through the last day of the Contract's effectiveness, inclusive of any contract extensions exercised or agreed-upon between the Parties.
11. **BLANKET PURCHASE ORDERS:** The Department utilizes blanket purchase orders to pre-authorize funding for use on Contracts containing bid items that, due to the urgent nature of maintaining the Department's highways and facilities, are critical to the Department executing its mission and objectives. The generation of blanket purchase orders are not used by the Department to place a specific order, rather as a means to make funding more readily available for use when Contract items are needed. The Vendor shall keep all blanket purchase orders on file and make them readily available for use by Department personnel to place orders against. When placing orders against a blanket purchase order, the Department will telephone or email orders referencing the blanket purchase order and its associated ODOT purchase order number. All of the Contract's terms and conditions shall apply to the Department's orders referencing a blanket purchase order.

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

12. **DELIVERY INSPECTION AND ACCEPTANCE:** Upon pick-up or delivery of any supplies, products, and/or services, ODOT retains the right to inspect the product/service prior to final acceptance and/or payment for the product/service. ODOT shall have sufficient and reasonable time to fully inspect supplies and/or services for compliance. The purpose of the inspection process is to ensure that the product/service is in compliance with the specifications set forth in the awarded contract. In the event that the product/service does not meet the specifications, ODOT shall notify the Vendor for removal/replacement of the product and/or service at the Vendor's expense. ODOT shall retain all rights and remedies as described herein. Wherein products ordered by ODOT are delivered to a facility, which is not owned by ODOT and where ODOT has contracted with this facility to take delivery of products ordered by ODOT, acceptance will occur when the products have been inspected and accepted by ODOT within a reasonable amount of time after delivery to the facility. ODOT shall not be responsible for any storage costs incurred prior to the inspection and acceptance.
13. **RETURN GOODS POLICY:** The Department will apply the following Return Goods Policy on all purchases made under the Contract:
 - (A) Return goods, when due to Vendor debar (i.e. over-shipment, defective merchandise, unapproved substitution, etc.) shall be returned to the Vendor, at the Vendor's expense. The Vendor shall make arrangements to remove the return goods from the Department's premises within five (5) calendar days after notification. The Vendor shall not apply any restocking or other charges to the Department. At the option of the Department, replacement items may be accepted and will be shipped within five (5) calendar days of notification. Failure of the Vendor to arrange for return of the items within the specified time will result in the items being deemed as abandoned property and the Department will dispose of accordingly.

(B) For orders of custom manufactured items, the Vendor will provide a production sample of the item to the Department for acceptance. The production sample will be identical to the item to be provided. The Department will provide written acceptance of the item prior to the Vendor continuing with production. Once delivery and acceptance has been completed and the Department determines for any reason that any remaining quantities will not be used, the agency may request the return of the custom manufactured items. Acceptance of the return of custom manufactured items will be at the option of the Vendor. If the Vendor agrees to the return of these items, the Department will be responsible for all costs associated with packaging, shipment and transportation, to include the original shipment to the Department and subsequent return of goods to the location designated by the Vendor. The Vendor may assess restocking fees that are equivalent to restocking fees that are normally assessed to other customers or as published by the Vendor. Failure of the Vendor to provide a production sample and obtain written approval from the Department will result in the Vendor bearing all responsibility and costs associated with the return of these goods.

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

14. **PRODUCT RECALLS:** In the event product delivered has been recalled, seized, or embargoed and/or has been determined to be misbranded, adulterated, or found to be unfit for human consumption by the packer, processor, manufacturer or by any Department or Federal regulatory agency, the Vendor shall be responsible to notify the ODOT Office of Contract Sales, Purchasing Services section and all other ordering agencies/entities within two business days after notice has been given. Vendor shall, at the option of the Department, either reimburse the purchase price or provide an equivalent replacement product at no additional cost. Vendor shall be responsible for removal and/or replacement of the affected product within a reasonable time as determined by the ordering agency. At the option of the ordering agency, Vendor may be required to reimburse storage and/or handling fees to be calculated from time of delivery and acceptance to actual removal. Vendor will bear all costs associated with the removal and proper disposal of the affected product. Failure to reimburse the purchase price or provide equivalent replacement product will be considered a default.
15. **PRODUCT SUBSTITUTION:** In the event a specified product listed in the Contract becomes unavailable or cannot be supplied by the Vendor for any reason (except as provided for in the Force Majeure clause), a product deemed in writing by the Department to be equal to or better than the specified product must be substituted by the Vendor at no additional cost or expense to the Department. Unless otherwise specified, any substitution of product prior to the Department's written approval may be cause for termination of Contract.

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

16. **INVOICE REQUIREMENTS:** The Vendor must submit an original, proper invoice to the office designated on the purchase order as the "bill to" address. To be a proper invoice, the invoice must include the following information: 1. The ODOT purchase order number authorizing the delivery of products or services. 2. A description of what the Vendor delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the products and services. 3. The Contract number pursuant to the deliverable.

17. **DEFECTIVE INVOICES:** In the event the Department is in receipt of defective or improper invoices, the Department shall postpone payment pursuant to Section 126.30 of the Ohio Revised Code. Invoices shall be returned to the Vendor noting areas for correction. If such notification of defect is sent, the required payment date shall be thirty (30) calendar days after receipt of the corrected invoice.
18. **PAYMENT DUE DATE:** Payments under this Contract will be due on the 30th calendar day after the date of actual receipt of a proper invoice in the office designated to receive the invoice, or the date the service is delivered and accepted in accordance with the terms of this Contract. The date of the warrant issued in payment will be considered the date payment is made. Interest on late payments will be paid in accordance with O.R.C. Section 126.30.
19. **INSURANCE POLICIES:** By way of provision in this Contract to maintain specific minimum levels of insurance coverage(s) (e.g. Commercial General liability, Auto liability, Public liability, Property Damage, etc.), the Vendor shall provide to Department upon request evidence of such insurance required to be carried by these provisions, including any endorsement affecting the additional insured status, is in full force and effect and that premiums therefore have been paid. Such evidence shall be furnished by the Vendor within two (2) business days and on the insurance industry's standard ACORD Form (Certificate of Insurance) or a certified copy of the original policy. The Certificate of Insurance or certified copy of the policy must contain an endorsement naming the State of Ohio, Department of Transportation, its officers, agents, employees, and servants as additionally insured, but only with respect to Work performed for the Department under this Contract, at no cost to Department. Vendor shall notify the Department within ten (10) calendar days of receipt of a notice of cancellation, expiration, or any reduction in coverage, or if the insurer commences proceedings or has proceedings commenced against it, indicating the insurer is insolvent. Vendor shall provide to the Department evidence of a replacement policy at least five (5) calendar days prior to the effective date of such cancellation, expiration, or reduction in coverage.

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

20. **TAXATION:** ODOT is exempt from federal excise taxes and all Department and local taxes, unless otherwise provided herein. ODOT does not agree to pay any taxes on commodities, goods, or services acquired from any Vendor.
21. **CONTRACT TERMINATION:** If a Vendor fails to perform any one of its obligations under this Contract, it will be in breach of contract and the Department may terminate this Contract in accordance with this section. Notices of contract termination shall be made in writing. The termination will be effective on the date delineated by the Department.

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

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

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

d. **Termination for Endangered Performance.** The Department may terminate this Contract by written notice to the Vendor if the Department determines that the performance of the Contract is endangered through no fault of the Department.

e. **Termination for Financial Instability.** The Department may terminate this Contract by written notice to the Vendor if a petition in bankruptcy or a Federal or State tax lien has been filed by or against the Vendor.

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

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

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

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

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

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

22. **NOTICE OF BREACH:** Each party of this Contract has an obligation to provide written notice when it is determined by one party that the other party is in default of this Contract. A notice of ODOT's default of this Contract must be sent to the Procurement Manager of the ODOT Office of Contract Sales.
23. **CONTRACT SUSPENSION:** A Vendor who fails to perform any one of its obligations under this Contract will be in breach. In these instances, ODOT may choose to suspend the Vendor from the contract rather than terminate the Contract.

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

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

24. **CANCELLATION FOR CONVENIENCE:** The Department reserves the right to cancel and terminate this Contract, in whole or in part, without penalty, upon thirty (30) days written notice to an awarded vendor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period and upon a minimum of sixty (60) days written notice to the other party. Cancellations exercised in accordance with this section shall not relieve the Vendor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
25. **CONTRACT DAMAGES:** The Department may assess, at a minimum but not limited to, the following damages against a Vendor:
 - A. **ACTUAL DAMAGES:** Vendor is liable to the State of Ohio for all actual and direct damages caused by Vendor's breach. The Department may substitute supplies or services, from a third party, for those that were to be provided by Vendor. In accordance with Ohio Revised Code §5513.05(c), the Department may recover the costs associated with acquiring substitute supplies or services, less any expenses or costs saved by Vendor's breach, from Vendor.
 - B. **LIQUIDATED DAMAGES:** If actual and direct damages are uncertain or difficult to determine, the Department may recover liquidated damages in the amount of 1% of the value of the order, deliverable or milestone that is the subject of the breach for every day that the breach is not cured by the Vendor. If Delay of the cure is caused by ODOT, the delivery date shall be extended accordingly to offset such delays. Approval to extend any scheduled delivery date(s) shall be at the sole discretion of ODOT.
 - C. **DEDUCTION OF DAMAGES FROM CONTRACT PRICE:** The Department may deduct all or any part of the damages resulting from Vendor's breach from any part of the price still due on the contract, upon prior written notice issued to the Vendor by the Department.
 - D. **INCIDENTAL/CONSEQUENTIAL DAMAGES:** Pursuant to Section 5513.05 of the Ohio Revised Code, the Department may recover from a Vendor who fails to promptly provide conforming articles, any incidental or consequential damages as defined in Section 1302.89 of the Ohio Revised Code, incurred by the Department in promptly obtaining the conforming articles.
26. **CONTRACT TERM EXTENSIONS:** ODOT reserves the right to unilaterally extend this Contract up to one (1) calendar month beyond the original contract expiration date at the original unit bid prices awarded. Contract extensions beyond one (1) calendar month shall be executed by means of written, mutual agreement with the Contract Vendor.
27. **FIRM, FIXED PRICE CONTRACT:** Unless otherwise specified in the bidding documents, this Contract is a Firm, Fixed-Price Contract. The Vendor will be required to provide to the Department with the materials, supplies, equipment and/or services at the awarded bid price(s) for the entire duration of the contract, and any extensions thereto.
28. **FORCE MAJEURE:** If the Department or Vendor is unable to perform any part of its obligations under this Contract by reason of force majeure, the party will be excused from its obligations, to the extent that its performance is prevented by force majeure, for the duration of the event. The party must remedy with all reasonable dispatch the cause preventing it from carrying out its obligations under this Contract. The term "force majeure" means without limitation: acts of God; such as epidemics; lightning; earthquakes; fires; storms; hurricanes; tornadoes; floods; washouts; droughts; any other severe weather; explosions; restraint of government and people; war; labor strikes; and other like events.
29. **EQUAL EMPLOYMENT OPPORTUNITY:** The Vendor will comply with all Department and federal laws regarding equal employment opportunity, including O.R.C. Section 125.111 and all related Executive Orders.

30. **ANTITRUST ASSIGNMENT TO THE DEPARTMENT:** Vendor assigns to the State of Ohio, through the Department of Transportation, all of its rights to any claims and causes of action the Vendor now has or may acquire under Department or federal antitrust laws if the claims or causes of action relate to the supplies or services provided under this Contract. Additionally, the State of Ohio will not pay excess charges resulting from antitrust violations by Vendor's suppliers and subcontractors.

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

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

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

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

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

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

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

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

37. **SUBCONTRACTING.** The Department recognizes that it may be necessary for the Vendor to use subcontractors to perform portions of the work under the Contract. In those circumstances, the Vendor shall submit a list identifying its subcontractors or joint venture partners performing portions of the work under the Contract. If any changes occur during the term of the Contract, the Vendor shall supplement its list of subcontractors or joint venture business partners. In addition, all subcontractors or joint venture business partners agree to be bound by all of the Terms and Conditions and specifications of the Contract. The Department reserves the right to reject any subcontractor submitted by the Vendor. All subcontracts will be at the sole expense of the Vendor and the Vendor will be solely responsible for payment of its subcontractors. The Vendor assumes responsibility for all sub-contracting and third party manufacturer work performed under the Contract. In addition, Vendor will cause all subcontractors to be bound by all of the Terms and Conditions and specifications of the Contract. The Vendor will be the sole point of contact with regard to all contractual matters.
38. **SURVIVORSHIP:** All sections herein relating to payment, confidentiality, license and ownership, indemnification, publicity, construction warranties, limitations of warranties and limitations on damages shall survive the termination of this Contract.
39. **GENERAL REPRESENTATIONS AND WARRANTIES:** The Vendor warrants that the recommendations, guidance, and performance of the Vendor under this Contract will:
1. Be in accordance with the sound professional standards and the requirements of this Contract and without any material defect.
 2. No services, products or supplies will infringe on the intellectual property rights of any third party.
 3. All warranties are in accordance with Vendor's standard business practices attached.
 4. That the products or supplies hereunder are merchantable and fit for the particular purpose described in this contract. Additionally, with respect to the Vendor's activities under this Contract, the Vendor warrants that:
 5. The Vendor has the right to enter into this Contract.
 6. The Vendor has not entered into any other contracts or employment relationships that restrict the Vendor's ability to perform under this Contract.
 7. The Vendor will observe and abide by all applicable laws and regulations, including those of the Department regarding conduct on any premises under the Department's control.
 8. The Vendor has good and marketable title to any products or supplies delivered under this Contract and which title passes to the Department.
 9. The Vendor has the right and ability to grant the license granted in products or supplies in which title does not pass to the Department. If any services of the Vendor or any products or supplies fails to comply with these warranties, and the Vendor is so notified in writing, the Vendor will correct such failure with all due speed or will refund the amount of the compensation paid for the services, products or supplies. The Vendor will also indemnify the Department for any direct damages and claims by third parties based on breach of these warranties.
40. **VENDOR'S WARRANTY AGAINST AN UNRESOLVED FINDING FOR RECOVERY:** Vendor warrants that it is not subject to an unresolved finding for recovery under O.R.C. Section 9.24. If the warranty was false on the date the parties signed this Contract, the Contract is void ab initio.
41. **LIMITATION OF LIABILITY:** Notwithstanding any limitation provisions contained in the documents and materials incorporated by reference into this contract, the Vendor agrees that the Vendor shall be liable for all direct damages due to the fault or negligence of the Vendor.

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

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

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

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

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

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

45. **NON-DISCRIMINATION/COMPLIANCE WITH APPLICABLE LAWS:**

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

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

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

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

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

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

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

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

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

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

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

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

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

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-Aid programs and projects)
- Federal-Aid Highway Act of 1973 (23 U.S.C. § 324 et seq.) (prohibits discrimination on the basis of sex)
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), as amended (prohibits discrimination on the basis of disability) and 49 CFR Part 27
- The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.) (prohibits discrimination on the basis of age)
- Airport and Airway Improvement Act of 1982 (49 U.S.C. § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex)
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of Federal-Aid recipients, sub-recipients, and contractors, whether such programs or activities are Federally funded or not)
- Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§ 12131-12189), as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38 (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities)
- The Federal Aviation Administration's Non-Discrimination Statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex)

Invitation No. 801L-21

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations)
- Executive Order 13166, Improving Access to Services for People with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100)
- Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended (prohibits discrimination in the sale, rental, and financing of dwellings on the basis of race, color, religion, sex, national origin, disability, or familial status (presence of child under the age of 18 and pregnant women)
- Title IX of the Education Amendments Act of 1972, as amended (20 U.S.C. 1681 et seq.) (prohibits discrimination on the basis of sex in education programs or activities)
- Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA 38 U.S.C. 4301-4335) (prohibits discrimination on the basis of present, past or future military service)
- Genetic Information Nondiscrimination Act (GINA) (29 CFR Part 1635, 42 U.S.C. 2000ff)

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

ODOT COOPERATIVE PURCHASING PROGRAM REQUIREMENTS

(Last Revised 6/2016)

In accordance with Ohio Revised Code Section 5513.01 (B), the Department may permit and approve any Political Subdivision, State university or college, Ohio Turnpike and Infrastructure Commission, or State agency (collectively the "Ordering Agencies") to participate in this Contract. The Office of Contract Sales, Purchasing Services section shall notify the Vendor, in writing, of the name of the Ordering Agency that has been authorized by the Department to participate in this Contract. Once approved, the responsibilities and obligations of the Ohio Department of Transportation shall cease at this point. Both the Ordering Agency and the Vendor will be bound by the Contract's terms and conditions. The Vendor shall deal directly with the Ordering Agency that has been authorized to participate in this contract. All orders placed by the Ordering Agency shall be filled in accordance with the terms and conditions of this particular contract. All invoices for such purchases shall be sent directly by the Vendor to the Ordering Agency's provided billing address.

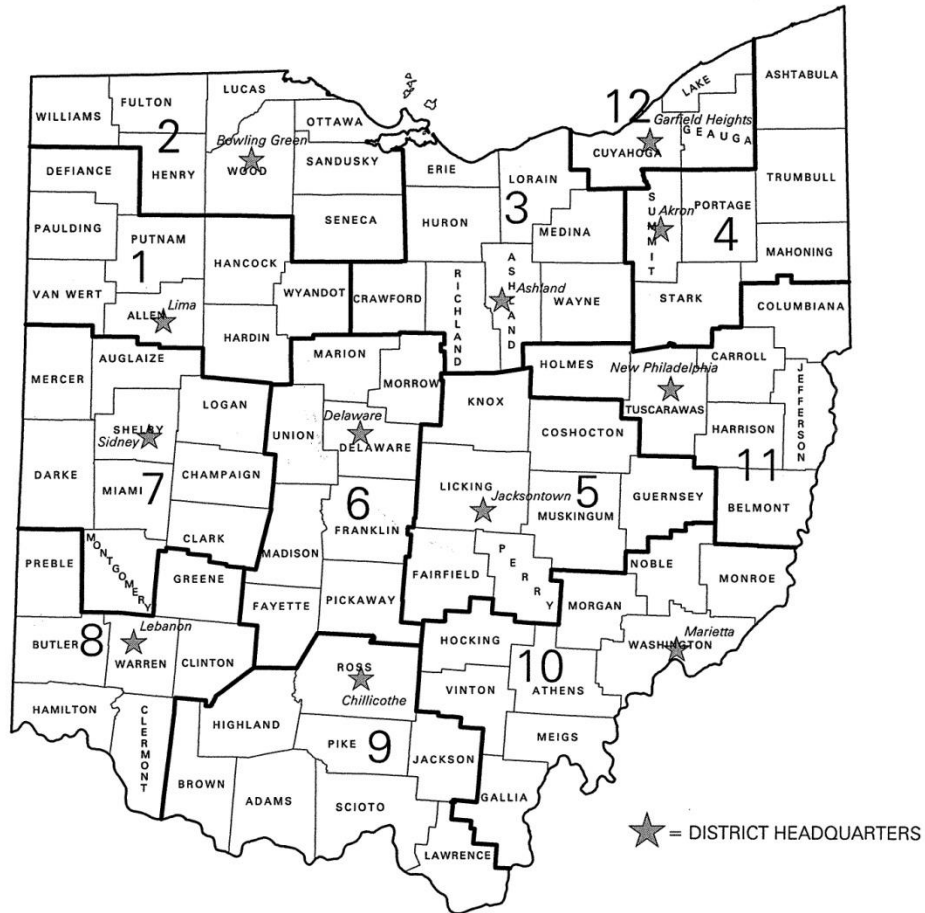
The Vendor agrees indemnify the State of Ohio, Department of Transportation for any and all claims, damages, lawsuits, costs, judgments, expenses, and any other liabilities resulting from bodily injury to any person (including injury resulting in death) or damage to property that may arise out of or are related to an Ordering Agency's participation in the ODOT Cooperative Purchasing Program and its performance under this Contract.

Political Subdivisions are defined in Ohio Revised Code Section 5513.01(C)(1) as "any county, township, municipal corporation, conservancy district, township park district, park district created under Chapter 1545. of the Revised Code, port authority, regional transit authority, regional airport authority, regional water and sewer district, county transit board, school district as defined in section 5513.04 of the Revised Code, regional planning commission formed under section 713.21 of the Revised Code, regional council of government formed under section 167.01 of the Revised Code, or other association of local governments established pursuant to an agreement under sections 307.14 to 307.19 of the Revised Code."

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DISTRICT MAP

OHIO DEPARTMENT OF TRANSPORTATION DISTRICT INFORMATION



District	District Deputy Director, District Address	Main Telephone No.
1	1885 N. McCullough, Lima, Ohio 45801	419-222-9055
2	317 East Poe Road, Bowling Green, Ohio 43402	419-353-8131
3	906 North Clark St., Ashland, Ohio 44805	419-281-0513
4	2088 S. Arlinton Rd., Akron, Ohio 44306	330-786-3100
5	9600 Jacksontown Road, P.O. Box 306, Jacksontown, Ohio 43030	740-323-4400
6	400 East Williams St., Delaware, Ohio 43015	740-363-1251
7	1001 St. Mary's Ave, Sidney, Ohio 45365	937-492-1141
8	505 South State Rt. 741, Lebanon, Ohio 45036	513-932-3030
9	650 Eastern Ave., P.O. Box 467, Chillicothe, Ohio 45601	740-773-2691
10	338 Muskingum Drive, Marietta, Ohio 45750	740-373-0212
11	2201 Reiser Ave SE, New Philadelphia, Ohio 44663	330-339-6633
12	5500 Transportation Boulevard, Garfield Heights, Ohio 44125-5396, Mail: Box 258003, Garfield Heights, Ohio 44125-8003	216-581-2100

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

SIGNATURE PAGE

Invitation to Bid #801L-21

Commodity/Service: Liquid Asphalt (MBE Bidders Only)

This Signature Page must be completed and submitted with a Bidder's sealed bid package to serve as acknowledgement to the Department that the Bidder understands and will comply with all terms, conditions, and requirements in submitting a bid (offer) for the above-referenced Invitation to Bid.

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

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

(Please execute below using blue ink)

Company (Bidder) Name: _____

Original Signature: _____

Print Name of Officer: _____

Title of Signing Officer: _____

Date: _____

FOR USE BY THE OHIO DEPARTMENT OF TRANSPORTATION ONLY:

Pursuant to Section 30 of the Instructions, Terms and Conditions for Bidding, a signature below by the Director of ODOT shall serve as the Department's formal acceptance of the bidder's offer and will effectively form ODOT Contract 801L-21 between the State of Ohio, Department of Transportation and the above successful bidder (company):

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

Date