



# OHIO DEPARTMENT OF TRANSPORTATION

CENTRAL OFFICE • 1980 WEST BROAD STREET • COLUMBUS, OH 43223  
JOHN R. KASICH, GOVERNOR • JERRY WRAY, DIRECTOR

5/11/2015

Project 153037      **Addendum No. 2**  
PID No. 98695  
CUY – SR 10 – 20.98  
New Construction  
Letting: July 2, 2015

Notice to all Bidders and Suppliers to please be advised of the attached Proposal Addendum.

The Department utilizes Bid Express (<http://www.bidx.com>) as the official medium for electronic bid submittal. All bidders must prepare bids and submit them online via Bid Express.

Addenda amendments must be acknowledged in the miscellaneous section of the Expedite (EBS) file and all amendments loaded in order for your bid to be considered for award of this project. Bid express will not accept bids that do not have amendments incorporated. Failure to incorporate changed quantities or items in your Expedite (EBS) submissions will result in the rejection of your bid.

**Proposal Addendum  
For  
CUY-10-20.98; PID 98695  
Project 153037**

**Completion Date:** Yes, revise the Completion Date to 9/30/17 in the Proposal to match the scope.

**Please be advised of the following:**

**1. DBE-MBE-EDGE.bin File (for use when selecting subs used to meet goal)**

In order to select prospective subs to meet the goal, a vendor file is required. If you don't already have a copy saved to your computer, follow the link below to retrieve it. It must be saved in the same location on your computer as your Expedite file used for bidding. The vendor listing will be blank if the .bin file is not saved in the same location.

<http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/Construction/dbe-mbe-edge.bin>

This file was originally named “dbe.bin” in the proposal. Please note it has been renamed to “dbe-mbe-edge.bin”

**2. Proposal Note No. 99 and Proposal Notes 46 & 98 in Addendum No. 1 have been revised as listed below:**

**PN 046 – 02/26/2015 SUBCONTRACT AGREEMENTS**

The DBT must furnish to the Department only subcontract agreements from the DBE/MBE/EDGE subcontractors they propose to utilize to fulfill the project goal within 10 days along with all required contract documents as noted in ORC 5525.01 and CMS 103.06.

The DBT will not be required to submit executed C-92s with their subcontract agreements for Disadvantaged Business Enterprises (DBE), Minority Business Enterprise (MBE), or Encouraging Diversity Growth & Equity (EDGE) subcontractors prior to the execution of the prime contract with ODOT. The DBT must, however, submit C-92s prior to the DBE/MBE/EDGE commencing work. At the time of submission of the C-92 the DBE/MBE/EDGE subcontractor must have sufficient dollar and work type qualifications to perform the work. The DBT will be held accountable to meet the project goal.

## **PN 098 – 02/26/2015 ON THE JOB TRAINING AND RESIDENT WORKFORCE**

### **On the Job Training ("OJT")**

#### **Project Hourly Requirement**

The DBT must provide On the Job training aimed at developing full journey persons in the type or job classification in which they work. ODOT is requiring a total of 10,000 hours of On the Job Training.

#### **OJT Plan**

The DBT shall be required to submit the following as a part of its OJT Plan:

1. An initial OJT plan that covers planned OJT training assignments for the first two years of the Project shall be submitted to the District EEO Contract Coordinator;
2. Quarterly reports detailing OJT utilization and planned assignments for the following year until Final Acceptance shall be submitted to the District EEO Contract Coordinator;
3. CR1 Reports:
  - a. To be completed on each trainee;
  - b. To be filled out at the start of training and finish of training or at the end of the year, whichever comes first;
  - c. To be submitted to the District EEO Contract Coordinator.

#### **Eligible OJT Employees**

1. All On-the-Job Training employees must reside in Cleveland Wards 4, 5 or 6;
2. No employee will be employed as a trainee in any classification in which he or she has successfully completed a training curriculum leading to journey person status or in which he or she has been employed as a journey person. Individuals currently in an apprenticeship program will qualify as a candidate for the OJT program as long as they reside within the study area. The DBT must satisfy this requirement by including appropriate questions in the employee's application or by other suitable means. Regardless of the method used, the DBT's records must document the findings in each case;
3. Training and upgrading of minorities and women toward journey person status is a primary objective of this Training Special Provision. Accordingly, the DBT must make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within the study area. This training commitment is not intended, and will not be used, to discriminate against any applicant for training, regardless of whether the applicant is a member of a minority group or not.

## **OJT Tracking**

Tracking will be conducted by ODOT on a quarterly basis in conjunction with the DBT's submission of the quarterly report to ensure compliance with the submitted OJT plan and utilization of eligible OJT employees. All OJT trainees must have the appropriate certification. Apprenticeship Certificates may be obtained from the State of Ohio, Bureau of Apprenticeship and Training. The union apprenticeship agreement is not acceptable verification of an apprentice's enrollment in a union sponsored training program. A copy of the Apprenticeship Certificate along with a statement indicating the number of months/years the employee has been in the apprenticeship program must be submitted to the EEO Coordinator in the district responsible for the Project within 90 days of the apprentice beginning work on the Project.

## **Resident Workforce**

In accordance with Chapter 188 of the Codified Ordinances of the City of Cleveland (found here

[http://www.amlegal.com/nxt/gateway.dll?f=jumplink\\$jumplink\\_x=Advanced\\$jumplink\\_vpc=first\\$jumplink\\_xsl=querylink.xsl\\$jumplink\\_sel=title;path;content-type;home-title;item-bookmark\\$jumplink\\_d=ohio\(cleveland\\_oh\)\\$jumplink\\_q=\[field folio-destination-name:'Chapter%20188'\]\\$jumplink\\_md=target-id=JD\\_Chapter188](http://www.amlegal.com/nxt/gateway.dll?f=jumplink$jumplink_x=Advanced$jumplink_vpc=first$jumplink_xsl=querylink.xsl$jumplink_sel=title;path;content-type;home-title;item-bookmark$jumplink_d=ohio(cleveland_oh)$jumplink_q=[field folio-destination-name:'Chapter%20188']$jumplink_md=target-id=JD_Chapter188) and incorporated by reference unless as specifically set forth herein) 20% of all construction worker hours performed on the contract shall be performed by Cleveland residents.

All requirements of Chapter 188 shall apply to this provision, except for the following exclusions/ deviations:

- Only the 20% resident requirement of Chapter 188 shall apply. Section 188.02(a)(3) regarding Low-Income Persons shall not apply;
- A DBT may not include in its Resident Construction Worker Hours any hours worked outside of this Project. The 20% requirement must be met on this Project;
- Section 188.02 (c) shall not apply;
- Section 188.05 Violation and Penalty shall not apply. Instead, if the DBT fails to provide required reports or fails to meet the 20% workforce requirement and/or receive an approved request for reduction, this may be considered a breach of contract. Remedies for this potential breach shall be governed by the ODOT Construction and Material Specifications applicable to this Project and relevant provisions of law.

All requirements of the Fannie M. Lewis Cleveland Resident Employment Law Notice to Bidders dated April 24, 2014 (<http://webapp.cleveland-oh.gov/aspnet/docs/get.aspx?id=301&file=OEO-NoticetoBidders01-10-11.pdf>) shall apply to this provision, except for the following exclusions/deviations:

Paragraphs 2 & 4-5 regarding Low Income Persons shall not apply;

- Paragraph 3 shall not apply. Instead, throughout the course of the contract, the prime contractor and all subcontractors shall submit certified payroll reports documenting all construction worker hours performed on the project through the ODOT's Civil Rights Labor Management System (CRL). CRL is an online compliance system that allows contractors to submit certified payroll reports electronically;
- Paragraph 8 shall not apply. Instead, the ODOT will provide assistance to the DBT in finding eligible Cleveland residents for compliance with this provision through a partnership with Ohio Means Jobs. Please contact the District 12 DBE Regional Coordinator, Deborah Green at (216) 584-2003 for further information;
- Paragraph 9 shall not apply;
- Paragraphs 10 and 11 regarding The Initial Workforce Table shall not apply. Instead, all tracking of the DBT's work hours will occur through the submission of the certified payrolls to CRL;
- Paragraph 1 under the Section titled "Required Documents and Reports" shall not apply. Instead, throughout the course of the contract, the DBT shall submit certified payroll reports documenting all construction worker hours performed on the project through CRL;
- The Section titled "Use of LCPtracker" shall not apply;
- The Section titled "Potential Penalties" shall not apply. Instead, if the DBT fails to provide required reports used for monitoring compliance with this provision this may be considered a breach of the contract. If the DBT fails to meet the 20% resident workforce requirement or fails to receive an approved request for reduction, this may be considered a breach of the contract;
- The Sections titled "Requesting a Reduction of the Resident and/or Low Income Worker Hour Requirements" and "Low Income Worker Verification" shall not apply. Instead, the form and process for requesting a reduction of the resident worker hour requirement will be made available on the ODOT's Office of Small and Disadvantaged Business Enterprise website. Please contact the Administrator of the Office of Small and Disadvantaged Business Enterprise at (614) 466-7699 for further information.

All notifications and communications required by Chapter 188 shall be provided to the Administrator of the Office of Small and Disadvantaged Business Enterprise, Ohio Department of Transportation, 1980 West Broad Street, Mail Stop 4190, Columbus, OH 43223. This shall include any request for a reduction/waiver of the 20% workforce requirement.

## **DBE, MBE and EDGE Vendors by Ethnicity**

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

- DBE Certification List ->
- [http://odotextrpt.dot.state.oh.us/ViewReport.aspx?reportPath=%2fprd%2fpreconstruction%2fpublic%2fprecon\\_naics\\_report](http://odotextrpt.dot.state.oh.us/ViewReport.aspx?reportPath=%2fprd%2fpreconstruction%2fpublic%2fprecon_naics_report)
- MBE/EDGE Listing by Ethnicity ->  
<http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/DBE/MBE-EDGE.xlsx>

### **PN 099 –02/26/2015–PROJECT REQUIREMENT FOR DISADVANTAGED AND MINORITY BUSINESSES (TO INCLUDE CERTIFIED DBE, EDGE AND MBE FIRMS)**

It is the goal of the Ohio Department of Transportation (ODOT) that Disadvantaged Business Enterprises (DBEs), Encouraging Diversity, Growth and Equity (EDGE) firms and Minority Business Enterprises (MBEs) have equal opportunity to compete for and perform subcontracts, for design and construction, which the Design-Build Team (DBT) enters into pursuant to this contract. The DBT must use its best efforts to solicit bids from and to utilize DBE, EDGE and MBE certified subcontractors, including design subconsultants, with meaningful minority groups and female representation among their employees.

Noncertified minority or disadvantaged contractors and consultants will be considered for participation toward the goal as long as they gain certification prior to starting the subcontract work.

The percentage indicated on the front cover of this bid is the percent of the contract amount which must be subcontracted to DBE, EDGE and MBE firms.

With no substantial change to the proposed construction phasing, Federal Highway Administration has agreed to de-federalize the Opportunity Corridor projects in Cleveland which affords the ODOT the opportunity to implement a small and disadvantaged business participants' goal strategy on this project.

This project will set a goal that will include all DBE, EDGE and MBE certified companies. The companies may participate in the project as a contractor, designer, supplier or other capacity to complete the design and construction of the project.

All participation by companies certified in these three programs will count 100% toward attaining the goal. The DBT must ensure that the DBE, EDGE or MBE subcontractor is performing a "commercially useful function". A DBE, EDGE or MBE subcontractor performs a commercially useful function when it is responsible for execution of the work and is carrying out its responsibilities by actually performing, managing and supervising the work involved.

To perform a commercially useful function, the DBE, EDGE or MBE subcontractor must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable) and paying for the material itself.

The goal will be as follows:

African American owned companies	8.5%
Hispanic owned companies	1.5%
Asian and Native American owned companies:	1.5%
All other certified companies	<u>8.5%</u>
<b>Overall Project Goal</b>	<b>20.0</b>
	<b>%</b>

The DBT must submit a list of proposed DBE, EDGE and MBE companies used to meet the goal with its bid. This list must also include each company's dollar amount contribution towards meeting the goal.

In order to be assured that the DBT complies with this contract requirement the DBT shall provide certified payrolls from its DBE, EDGE or MBE subcontractors where appropriate. When the DBT utilizes a service, for example trucking, to satisfy a part or its entire contractual goal, the DBT, when requested, must provide a copy of each canceled check issued to the DBE, EDGE or MBE service provider until the goal amount is reached. The ODOT shall total the amounts of the canceled checks and compare that total to the subcontract agreement by the parties and the C-92 issued to the DBT for the work to be performed by the DBE, EDGE or MBE subcontractor.

#### **WAIVER PROCESS FOR DBE, EDGE and MBE GOAL**

The DBT must document the progress and efforts being made in securing the services of DBE, EDGE or MBE subcontractors. In the event the DBT is unable to meet the DBE, EDGE or MBE Goal placed on this project, a request for a waiver of all or part of the goal may be made to the Office of Small & Disadvantaged Business Enterprise. The written request must indicate a good faith effort (GFE) was made to meet the goal and be sent to the Ohio Department of Transportation, Office of Small & Disadvantaged Business Enterprise, Division of Construction Management, 1980 West Broad Street, Mail Stop 4190, Columbus, Ohio 43223. There will be no extension of time granted for the project if the DBT wishes to avail himself of this process. If an item of work subcontracted to a DBE, EDGE or MBE firm is non-performed by the ODOT or the subject of an approved Value Engineering Change Proposal, the DBT may request a waiver for the portion of work excluded.

The ODOT shall consider the following information and documentation when a request for a DBE, EDGE or MBE goal waiver is received:

1. Dollar value and % of DBE, EDGE or MBE goal. Dollar value and % of waiver request.
2. Signed copy of each subcontract or purchase order agreement between the DBT and DBE, EDGE or MBE subcontractor utilized in meeting the contract goal. To include the ethnicity.

3. Copy of dated written communication, fax confirmation, personal contact, follow up and negotiation with the DBE, EDGE or MBE.
4. Copy of dated written communication and/or fax confirmation that bidder solicited and provided DBE, EDGE or MBE with adequate information about the plans, specifications and requirements of the contract in a timely manner to assist them in responding to a solicitation.
5. Copy of dated written communication and/or fax confirmation of each noncompetitive DBE, EDGE or MBE quote that includes the dollar value of each reference item and work type.
6. Copy of dated written communication and/or dated fax confirmation of DBE, EDGE or MBE that were not interested in providing a quote for the project.
7. All negotiating efforts and reason for rejecting bids.
8. All solicitations made by the DBT for subcontracting opportunities and DBE, EDGE or MBE quotes go through the Small Business Network.
9. Good Faith Efforts to meet the goal by looking beyond the items typically subcontracted on the project and documenting requests for bids from DBE, EDGE, or MBE firms to subcontract items of work normally self-performed as a way to meet the goal.

The ODOT will review the submitted documentation and issue a written decision within ten (10) business days. The DBT may request administrative reconsideration within fourteen (14) days of being informed that it did not perform a GFE. The DBT must make this request in writing to the following official:

Ohio Department of Transportation  
Attn: Office of Small & Disadvantaged Business Enterprise 1980 West Broad  
Street, Mail Stop 4190  
Columbus, Ohio 43223

The reconsideration official will not have played any role in the original determination that the DBT did not document sufficient GFE. As part of this reconsideration, the DBT will have the opportunity to provide written documentation or an argument concerning the issue of whether it met the goal or made adequate GFEs to do so. ODOT will send the DBT a written decision on reconsideration explaining the basis for finding that the DBT did or did not meet the goal or make adequate GFEs. The result of the reconsideration process is not administratively appealable to the U.S. Department of Transportation. However, it is appealable to the Court of Claims.

## **SANCTIONS**

The ODOT will issue sanctions if the DBT chooses not to request a waiver, the DBT fails to comply with the contract requirements and/or fails to demonstrate the necessary GFE.

The ODOT may impose any of the following sanctions:

1. letter of reprimand;



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

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

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

### **GOOD FAITH EFFORTS WHEN A DBE, EDGE or MBE IS REPLACED ON A CONTRACT**

The ODOT requires a DBT to make GFEs to replace a DBE, EDGE or MBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, EDGE or MBE, to the extent needed to meet the contract goal. The ODOT requires the DBT to notify the DBE, EDGE or MBE immediately of the DBE, EDGE or MBEs' inability or unwillingness to perform and provide reasonable documentation.

In this situation, the ODOT requires the DBT to obtain its prior approval of the substitute DBE, EDGE or MBE and to provide copies of subcontracts or documentation of GFEs.

If the DBT fails or refuses to comply in the time specified, the ODOT's Office of Small & Disadvantaged Business Enterprise will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the DBT still fails to comply, the contracting officer may issue a termination for default letter.

### **TERMINATING A DBE, EDGE or MBE SUBCONTRACTOR**

The DBT may not remove any DBE, EDGE or MBE subcontractor (or an approved substitute DBE, EDGE or MBE firm) that was submitted toward the goal without prior written consent from the ODOT. This includes, but is not limited to, instances in which a DBT seeks to perform work originally designated for a DBE, EDGE or MBE subcontractor with its own forces or those of an affiliate, a non-DBE, EDGE or MBE firm, or with another DBE, EDGE or MBE firm.

Before making a request to terminate and/or substitute a DBE, EDGE or MBE subcontractor, the DBT must give notice in writing of its intent to request to terminate and/or substitute and the reason for the request to the ODOT's Office of Small & Disadvantaged Business Enterprise Administrator with copies to the ODOT Project Manager and the DBE, EDGE or MBE subcontractor. This request must be submitted via the Request to Terminate/Substitute DBE, EDGE or MBE Form. The DBT must give the DBE, EDGE or MBE firm five (5) days to respond to the DBT with reasons why it objects to the proposed termination of its subcontract. If required in a particular case as a matter of public necessity (e.g. safety), the Office of Small & Disadvantaged Business Enterprise Administrator may allow for a response period less than five (5) days. After the response period expires, the ODOT will consider the information submitted and provide the DBT with a written determination.

The ODOT will consider the following circumstances as good cause to terminate a DBE, EDGE or MBE subcontractor:

1. The listed subcontractor fails or refuses to execute a written contract;
2. The listed subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the DBT;
3. The listed subcontractor fails or refuses to meet the DBT's reasonable, nondiscriminatory bond requirements;
4. The listed subcontractor becomes bankrupt, insolvent or exhibits credit unworthiness;
5. The listed subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to applicable laws;
6. The ODOT determines that the listed subcontractor is not a responsible Contractor;
7. The listed subcontractor voluntarily withdraws from the project and provides written notice of its withdrawal;
8. The listed subcontractor is ineligible to receive credit for the type of work required;
9. An owner dies or becomes disabled with the result that the listed subcontractor is unable to complete its work on the contract; and/or
10. Other documented good cause that compels the termination of the subcontractor.  
Provided that good cause does not exist if the DBT seeks to terminate a subcontractor it relied upon to obtain the contract so that the DBT can self- perform the work for which the subcontractor was engaged or so that the DBT can substitute another DBE, EDGE or MBE or non-DBE, EDGE or MBE subcontractor after contract award.

In the event that a substitute DBE, EDGE or MBE subcontractor cannot be found, the DBT will be asked to submit evidence that a GFE was made to substitute a DBE, EDGE or MBE subcontractor for the item(s) of work.

In the event that a substitute DBE, EDGE or MBE subcontractor is found, the DBT will be asked to furnish the ODOT with a copy of the new subcontract agreement for approval by the Office of Small & Disadvantaged Business Enterprise Administrator.