

ARCELORMITTAL DOFASCO G.P.**HAMILTON, ONTARIO**SPECIFICATION NO. O-OA COVERING General Conditions - Instructions for Bidding

DIVISION:

DATE:

DEPARTMENT:

ENG. REF.:

UNIT:

PREPARED BY:

SUMMARY:

A specification covering standard Instructions for Bidding.

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ARTICLE I

DEFINITIONS

1.1 **Words Used in Bid Documents** - In and for the purposes of the Bid Documents:

"**Award**" shall mean the award of the Work to the successful Bidder and shall be deemed not to have occurred unless and until the following has occurred: (a) the execution and delivery, by both Dofasco and that Bidder, of the Contract; and (b) the successful Bidder has complied with Section 3.14 hereof; and "**Awarded**" has a similar meaning;

"**Bid**" shall mean the Bid Documents as the same are completed or supplied by a Bidder and submitted to Dofasco, and any mutually agreed revisions or amendments thereto;

"**Bid Closing Time**" shall mean the date and local time specified in the Instructions to Bidders;

"**Bidder**" shall mean an individual, a company or any other entity that submits a Bid to Dofasco;

"**Bid Documents**" shall mean, in the case of a particular Bid, the Invitation to Bid which initiated such Bid, the Instructions to Bidders, all of the documents (in hardcopy and/or softcopy format) which are identified in the Instructions to Bidders as being applicable thereto, the Bid Form and all other documents, drawings, samples, modifications and specifications relating thereto, as the same may be amended from time to time;

"**Bid Form**" shall mean the form created by Dofasco and identified as the Bid Form, which form is to be completed and submitted by the Bidder to Dofasco;

"**Contract**" shall mean the definitive written agreement between the successful Bidder and Dofasco, the execution and delivery of which signifies Award, and under which that Bidder will perform the Work; it includes all associated annexes, exhibits and supplementary agreements and documents as may be agreed to in writing by the successful Bidder and Dofasco;

"**Dofasco**" shall mean ArcelorMittal Dofasco G.P.;

"**General Conditions**" shall mean the Dofasco specifications indicated in the Contract Documents as being applicable to the Bid and the Work, and forming part of the Contract, as the same is in effect on the date of the Invitation to Bid which resulted in the Contract;

"**Instructions to Bidders**" shall mean a set of instructions prepared by Dofasco and delivered to the Bidders with the Invitation to Bid and to which this Specification O-OA is applicable, including all revisions thereto;

"**Invitation to Bid**" shall mean an invitation, in the form of a request for quotation or a request for proposal prepared by Dofasco, to submit a Bid to which this Specification O-OA is applicable;

"**Notice of Intention**" shall mean the form, accompanying the Invitation to Bid, that is to be completed by the Bidder and submitted to Dofasco prior to Bid submission, indicating the Bidder's intention to submit a Bid;

"**Purchasing Representative**" shall mean the Person(s) so designated in the Bid Documents and any successor to such Person(s), or other such Person(s) as Dofasco may designate from time to time to perform the duties of the Purchasing Representative under the Bid Documents;

“Rates Engine” shall mean the electronic commerce application through which Bidders submit proposed rates for Work to Dofasco and through which Dofasco accepts or rejects such proposed rates;

“Specification O-OA” shall mean this Specification O-OA, as the same as in effect on the date of the Invitation to Bid;

“Work” shall mean the work contemplated by the Bid Documents to be performed under the Contract; and

“writing” includes correspondence in hardcopy or printable media, which includes fax, scanned hard copy letters, telegram, electronic mail and electronic files.

ARTICLE II

CLARIFICATION OF BID

- 2.1 Site Visits** - The Bidder shall inform itself with respect to all conditions relating to the Bid, which might in any way affect the cost or performance of the Work. If a site visit is requested by a Bidder or required by Dofasco, the Bidder shall provide the name(s) of the Bidder's representatives (Dofasco recommends no more than two (2) representatives per Bidder) at least two (2) working days prior to the pre-bid meeting and site visit date as stated in the Bid Documents. If the Bidder sends a representative not previously nominated to attend the pre-bid meeting and site visit, then that representative may be denied access to the pre-bid meeting and site visit. Substitutions may be permitted in emergency situations. In all circumstances, Dofasco will have sole discretion as to who will attend the site visit and pre-bid meeting. The Bidder's representative(s) shall wear all appropriate site personal protective equipment, including hard hat, safety boots, safety glasses and long sleeves.
- 2.2 Request for Clarification** - If a Bidder finds discrepancies in the Bid Documents or if the Bidder considers that the Bid Documents do not fully cover the scope of Work against which the Bidder is to submit prices, or should the intent or meaning of the Bid Documents or any statement therein be unclear or ambiguous, the Bidder shall at once forward to the Purchasing Representative a written request for correction, clarification or interpretation in writing before submitting the Bid.
- 2.3 Bidder Inquiries and Clarification Questions** - Any inquiries and other correspondence with respect to the Bid Documents shall be submitted, in writing only, to the individual identified in the Instructions to Bidders no later than the Bid Questions deadline, as outlined in the Instructions to Bidders.
- (a) Dofasco will circulate to all Bidders to which the Bid Documents have been sent, a copy of all significant inquiries received and the replies to such inquiries (to the extent that such inquiries are applicable to all Bidders) by way of addenda to the Bid Documents. It is preferred that all inquiries be submitted via email to the individual identified in the Instructions to Bidders, though inquiries sent by facsimile transmission are acceptable. Oral inquiries will not be accepted. Non-compliance with this condition during the Bid period may (for that reason alone) result in disqualification of a Bidder's Bid.
 - (b) A Bidder may request that its request for interpretation be treated as confidential. If Dofasco agrees that the request for interpretation be treated as confidential, Dofasco's response will be directed only to the requesting Bidder. If Dofasco deems that the request is not to be treated as confidential, it shall advise the Bidder accordingly. The Bidder may elect to withdraw the request or agree to have the request and Dofasco's response to it made available to all Bidders.
 - (c) Any non-confidential interpretations of the Bid Documents by the Purchasing Representative will be made in writing, and will be transmitted to all Bidders who have submitted a Notice of Intention to Bid.
 - (d) No officer, agent or employee of Dofasco is authorized to alter orally any portion of the Bid Documents. Alterations will be issued to Bidders as written addenda by the Purchasing Representative. Any addenda, received from any Person(s) other than the Purchasing Representative shall be ignored and not acted or relied upon by the Bidder.

(e) Any use by a Bidder of, or reliance upon, information the Bidder may solicit or use in preparing its Bid which is obtained other than through the manner described herein is entirely at the risk of the Bidder. Dofasco may, in its sole discretion, during any evaluation of Bids, determine the degree of impact any such information may have had on a Bid, and may reject any such Bid for reason of such use or reliance alone.

- 2.4 Effect of Submission** - Upon submission of the Bid, the Bidder shall be deemed to have fully satisfied itself, as far as practicable, of the physical conditions of the Site (including subsurface features), the climatic conditions in the locality of the Site, the nature of the Work and material necessary for the execution of the Work, the means of access to the Site, the availability of labour, and the accommodation required; to have itself obtained all necessary information as to risks, contingencies, and other circumstances which could have an effect upon its Bid; and to have reviewed, understood and provided for compliance with all relevant commercial and technical conditions and specifications which are applicable to the Bid and any Contract which may result from the Bid.
- 2.5 Statement of Interpretation** - If, after complying with section 2.2, a Bidder continues to have any doubt as to the meaning of any portion of the Bid Documents, the Bidder shall, when submitting its Bid, include therein a statement of the interpretation on which the Bidder relies and on the basis of which its Bid had been prepared.
- 2.6 Bid Opening** - Representatives of any Bidder will not be allowed to witness the opening of any Bids.
- 2.7 Dofasco Bid Clarification** - Dofasco may request from any Bidder additional information required by Dofasco to clarify or verify any item in that Bidder's Bid. Bidders shall respond in writing to any such request within the time specified therein. Dofasco may also require any Bidder to attend a clarification meeting. Dofasco, following any such meeting, will prepare minutes recording information requested and answers given. All relevant information, correspondence and minutes of meeting relating to any part of the Bid Documents prior to the Award may, if Dofasco so indicates, become Contract Documents.
- 2.8 Bidder Presentations** - Dofasco reserves the right to require Bidder presentations as Dofasco deems appropriate. Dofasco will contact the Bidder to arrange any such presentations.

ARTICLE III

CONTENT OF BID

- 3.1 Canadian Currency** - The Bid will be made in Canadian dollars and shall not be subject to exchange rate adjustments; provided that if the Bid Documents allow or require pricing in an alternative currency, pricing shall also be shown on the basis requested.
- 3.2 Included Prices** - Items in the Bid against which no information or price is entered will be deemed to be included with information or prices of other items as shown in the Bid Documents and neither measurement nor payment will be made against any such unidentified or unpriced items.
- 3.3 Rates on File** - Unless a Bidder expressly provides for different rates in its Bid, the Bidder shall use in its Bid for Work which is to be performed on a "reimbursable cost" basis the most recent, applicable "reimbursable cost" rate approved by Dofasco in Dofasco's Rates Engine. The Bidder will indicate in its Bid which Rate Schedule Number from Dofasco's Rates Engine is applicable to this Bid, and this rate will be considered during the evaluation of the Bids. Any reduced mark-up for values of "reimbursable cost" work offered by a Bidder will also be considered during the evaluation. Prior to the commencement of the Work, if the successful Bidder does not have the appropriate approved Rates in Dofasco's Rates Engine, the Bidder will be required to submit Rates through Dofasco's Rates Engine.
- 3.4 Supplied by Bidder** - All equipment, material, labour, supervision, Subcontractors and other items required for completion of the Work (other than those listed by Dofasco in the Bid Documents as being supplied by Dofasco) are to be provided by the Bidder and included in its Bid, regardless of whether Dofasco has specifically addressed or notified the Bidder of those requirements in the Bid Documents. If the Bid Documents indicate that Dofasco is to supply any such item, the Bidder will account for and include, in the pricing in its Bid, pick up and transport to the site of the Dofasco-supplied materials and equipment. Dofasco-supplied items will be available from Dofasco's stores or from locations within a 10km radius of the Site.
- 3.5 "Not Included"** - Areas marked "not included" in the Bid Documents, including drawings are not to be included in the Bid.
- 3.6 Sourcing of Materials** - The Bidder is required to quote on the basis:
- (a) of maximum manufactured content from Canadian sources commensurate with lowest cost, and specified quality; and
 - (b) of using products of Dofasco and its subsidiaries, and products of any other entity in which Dofasco has a significant financial interest and which Dofasco identifies in the Bid Documents.

The Bidder shall list specifically those products that (although available from Dofasco or one of its subsidiaries or any such other entity) are known at the time of bidding to be supplied from another source. The Bidder shall also list specifically those items or services known at the time of bidding to be supplied from foreign sources and shall identify the country of supply.

In order to support energy conservation at Dofasco, Dofasco desires that the Bidder propose equipment or service in its bid that has the lowest possible impact on energy consumption. Bidders are to provide details of the energy consumption rates for all components of the bid,

including equipment or service, where there is a significant energy consumption impact. Dofasco may include energy consumption impact as a component of the bid evaluation for any equipment or service.

- 3.7 Alternate Bids** - Subject to section 4.5, the Bidder may submit alternate bids that do not necessarily comply with the Bid Documents, provided that such alternate bids offer some advantage in economy, performance or operating facility. The Bidder shall clearly describe any proposed variation from the Bid Documents, the reason for such variation, the effect on price and completion time, and any other information that will assist Dofasco in evaluating the variation. The Bidder may submit as many alternate bids as it wishes, each under separate cover.

Dofasco will, in the first instance, evaluate Bids submitted in accordance with the Bid Documents, prior to the decision to consider any alternates. Dofasco may chose not to consider proposed alternates.

- 3.8 “Approved Equal”** - If Dofasco refers in the Bid Documents to "Approved Equal", Bidders must quote in the Bid Form on the basis of supplying or using the specified item, but may provide an Alternative Bid substituting an item which the Bidder considers equivalent. No approval will be deemed to have been given to any substitution for the item specified, either prior to or after Award, unless such approval is given in writing by Dofasco prior to any substitution taking place. Should the Bidder not have this written approval, Dofasco may at its option replace the substituted item with the specified item and all costs associated with this correction (including labour, material and equipment) will be to the Bidder's account.

- 3.9 Assembly and Testing** - Bids should be prepared on the basis of Bidder performing maximum practical fabrication, pre-assembly testing and verification of testing prior to shipment to the Site.

- 3.10 Taxes** - Bids must be prepared showing all applicable Canadian federal and provincial consumption taxes and customs duties (if applicable) as extras to the Bid price. In the event that any Bidder, or any of Bidder's Subcontractors or Suppliers, chooses not to become a registrant under the federal Excise Tax Act, and as a result is unable to obtain an input tax credit for goods and services tax paid, Dofasco shall not compensate the Bidder or such Subcontractor or Supplier for the tax so paid.

3.11 Regulated Substances

- 3.11.1 Regulated Substances (Dofasco)** - The Bidder must include in its Bid the cost of handling all of those substances that are indicated as being present on Dofasco's form "Regulated Substances on a Project" ("regulated substances") issued in connection with the Work. These costs may include, but are not limited to, costs of specialized equipment, protective equipment, enclosures, ventilation and special transportation.

- 3.11.2 Regulated Substances (Bidder)** – The Bidder must include in its Bid a list of any regulated substances that it intends to bring to the Site in connection with the Work. The Bid must indicate any costs of handling regulated substances. The Bidder must supply Material Safety Data Sheets (MSDS) to Dofasco as part of the Bid, for all regulated substances. Dofasco supports the use of goods and services that have minimal adverse impact on the environment. Products that do not contain chemicals as identified on various government programs are favoured. These programs include, but are not limited to, ARET and NPRI. All purchased materials used in part manufacture shall satisfy current government and safety constraints on restricted, toxic and hazardous materials; as well as environmental, electrical and electromagnetic considerations applicable to all purchased materials.

- 3.12 Compliance with General Conditions** - In preparing its Bid, the Bidder should give effect to, allow for compliance with, and price its Bid in light of, all of the provisions of the latest revision of the General Conditions indicated in the Bid Documents as being applicable, and to any other or additional conditions contained in the Bid Documents. Dofasco believes that the General Conditions are fair and reasonable and, therefore, does not intend to negotiate major exceptions to the General Conditions.
- 3.13 Validity of Bid** -
- (a) Unless Dofasco specifies otherwise in the Bid Documents, all elements of a Bid shall be firm and valid for a period of sixty (60) days from the Bid Closing Time (the "Bid Validity Period") and the Bidder may not during the Bid Validity Period change its Bid without the consent of Dofasco in writing, which consent may be unreasonably withheld, conditioned or delayed.
- (b) The Bid Validity Period shall be extended by the Bidder at the request of Dofasco. Any such request for extension shall not be unreasonably rejected by the Bidder.
- 3.14 Compliance with Dofasco's Third Party Health, Safety and Environment Program** - Prior to commencing any Work at the Site, the successful Bidder and all of its Subcontractors must fully understand, and agree to comply with, Dofasco's Third Party Health, Safety and Environment Program, as it may be revised or amended from time to time (in this Section 3.14, the "Program"). It is the Bidder's responsibility to ensure that all its employees and Subcontractors, including any on-site service providers or outside carriers who perform Work under the Contract Documents, comply with the Program. It is the responsibility of the Bidder to contact the Purchasing Department to obtain a copy of the Program. All costs of Bidder associated with complying with the Program must be included by Bidder in the pricing in its Bid. Site-specific health and safety plans may apply in the area in which the Work is to be performed. The successful Bidder must make itself aware of any such Site-specific health and safety requirements prior to the commencement of the Work at the Site. The successful Bidder shall acknowledge receipt and compliance (by way of a Commitment Agreement and Acknowledgements) with the Program and any Site-specific health and safety requirements prior to entering the Site in connection with the Work.
- 3.15 Right to Audit** – Bidder acknowledges that any Contract will require that the successful Bidder shall, for a period of not less than three (3) years from the date the Work is performed, maintain books, records and accounts relating to any Work. Bidder shall permit Dofasco's employees and agents to audit its books, records and accounts at such location as Dofasco requests (and shall cause its Subcontractors and Suppliers to do the same) for the purpose of determining whether Bidder has complied with the Contract created by the Contract Documents including, without limitation, compliance with contract requirements, Dofasco's code of business conduct, change order pricing, prices on invoices generally and any claims rising under or in connection with any Contract. Bidder shall co-operate fully with any such audit and shall cause its employees, agents, Subcontractors and Suppliers to do the same.
- 3.16 Personal Information** - In the event that Bidder provides Dofasco with, or with access to, any personal information with respect to any individual, Bidder consents to the use of such information by Dofasco for the purposes of emergency, health and safety and/or Contract administration, including the audit contemplated by Section 3.15 and in any Contract.. Bidder represents and warrants to Dofasco that it has obtained, and agrees that it will obtain, all such consents as may be required under *Personal Information Protection and Electronic Documents Act* (Canada) and any other applicable privacy legislation to permit Dofasco to so use such information. Bidder shall indemnify Dofasco with respect to any losses, costs, claims or damages incurred or suffered by Dofasco as a result of the inaccuracy of such representation or the breach of such warranty and agreement.

- 3.17 **Bidder Responsibility for Errors and Omissions in Bid** - The Bidder is responsible for all errors or omissions in its Bid. The Bidder may correct any errors and omissions in their Bid by the Bid due date. After the Bid due date, Dofasco has no obligation to allow corrections but may elect to do so in its sole discretion.
- 3.18 **Bid Without Knowledge of Others** - Bidders shall submit Bids without any connection, comparison of figures or arrangement with or knowledge of any other Bidder submitting a Bid for the same Work, and shall be, in all respects, fair and without collusion or fraud.
- 3.19 **Cranes and Manlifts** – Unless otherwise specified in the Bid Documents, Bidder shall prepare its Bid on the basis that Dofasco will supply cranes and manlifts for the successful Bidder's use as required in connection with the Work. The estimated cranes and manlifts requirements itemized and detailed in the Bid Form may be considered in Dofasco's Bid evaluation. Dofasco may audit actual usage of cranes and manlifts by the successful Bidder and its Subcontractors and any such usage which exceeds the estimated cranes and manlifts requirements in the Bid, or the inefficient use of cranes and manlifts, may result in a backcharge from Dofasco to Bidder.
- 3.20 **Scaffolding** – Unless otherwise specified in the Bid Documents, Bidder shall prepare its Bid on the basis that Bidder is to provide any and all scaffolding requirements, including initial building, modifications and removal, relating to the Work. All such scaffolding work must be performed by the Bidder's own forces (after approval by Dofasco) or sub-contracted to a Person certified by Dofasco. Regardless of who performs any such scaffolding work, the cost shall be shown by Bidder as a separate line item in accordance with Section B of the Bid Documents.

ARTICLE IV

SUBMISSION OF BIDS

- 4.1 Intent of Bidder's Submission** - Each Bid, whether submitted in electronic or hard copy format, in response to the Invitation to Bid shall constitute an offer to supply in accordance with the terms and conditions of the Bid Documents, and shall remain valid, firm and subject to acceptance by Dofasco until Dofasco Awards the Work that is the subject of the Bid Documents, or up to the end of the "Bid Validity Period" as defined in section 3.13.
- 4.2 Reimbursement** - No payment shall be made by Dofasco for costs incurred in the preparation and submission of a Bid, or in the preparation of any subsequent clarification or in any negotiations, nor shall Dofasco be obligated to pay any sums whatsoever to any recipient of the Bid Documents for any matter whatsoever with regard to the subject matter of the Bid Documents.
- 4.3 English Language** - The Bid Documents and all communications, correspondence, documents, and other information relating to the Bid Documents or required for the performance of the Work shall be in the English language.
- 4.4 Bid Form** - If Dofasco specifies or includes the Bid Form in the Bid Documents, all blank spaces on the Bid Form shall be filled in by the Bidder to the extent that information requested is relevant given the nature of the Work contemplated by, and the instructions in, the Bid Documents. Any interlineations, alterations or erasures shall be formally explained and initialed by the Bidder. Each page of the Bid Form, including any appendices provided by Bidder, shall clearly state the Bidder's name.
- 4.5 Compliance with Bid Documents** - The Bidder shall prepare, complete and submit its Bid Form in accordance with the Bid Documents, in the proper form, prior to the stated Bid Closing Time, and on the basis that the Work will be performed in accordance with the Bid Documents. If the Bidder is incapable of bidding to the Bid Documents, the Bidder should declare accordingly through the Notice of Intention Form. Dofasco will not be obliged to consider any Bid which is incomplete, improperly executed, qualified or which does not comply with the requirements of or which contains provisions not required by the Bid Documents. Failure to provide the information requested, or failure to comply with any of the requirements of this request may result in the Bid being rejected.
- 4.6 Information from Bidder** - Any written material which is delivered by a Bidder to Dofasco
- (a) prior to Dofasco's Award of a Contract for such Bid, and
 - (b) which relates to its Bid,
- shall be directed for delivery only to the Purchasing Representative unless the Purchasing Representative gives written authorization for delivery to some other Person.
- 4.7 Return of Bids** - When submitting its Bid, each Bidder shall identify any Bid Documents that it considers proprietary. Dofasco shall not be required to return to any Bidder at any time the Bid Documents which comprise the Bid, regardless of whether a Contract is Awarded to such Bidder, except to the extent the Bidder has specifically identified any Bid Document as proprietary and requested its return in the event that its Bid is unsuccessful.

- 4.8 Announcements** - Bidder shall not make any media release or other public announcement pertaining to the Bid Documents or Award of any Contract or the Work without the prior written consent of Dofasco, which consent may be unreasonably withheld, conditioned or delayed in Dofasco's sole and absolute discretion.
- 4.9 Notice of Intention** - Bidders are requested to supply a Notice of Intention for all Bids or are requested to sign and return the Notice of Intention if included in the Invitation to Bid confirming its intention to respond, or not to respond, to the Invitation to Bid by the date set out in the Bid Documents. Bidder's who reply that they intend to respond to the Invitation to Bid, and then decide not to respond, shall notify Dofasco accordingly.
- 4.10 Method of Responses** - Bidder shall submit its Bid according to the following:
- (a) If so requested in the Instructions to Bidders, the original of the Bid shall be in printed hard copy and shall be clearly identified as the Bidder's Bid. The original of the Bid shall also include the full legal name and business address of the Bidder, and shall be signed by the Bidder or its duly authorized representative and shall be dated. The name of each person signing the Bid shall be typed or printed below the signature.
 - (b) A certified copy of a resolution of the Bidder (if a corporation), indicating the authority of the person or persons signing on behalf of the Bidder, shall be furnished with the Bid.
 - (c) If the Bidder is a partnership or joint venture, it shall submit with its Bid a power of attorney executed by all of the general partners or members, designating and appointing one of the general partners or members as a management sponsor, and authorizing the management sponsor to sign the Bid on behalf of the Bidder, to act for and bind the Bidder in all matters relating to the Bid and, in particular, to agree that each partner or member shall be jointly and severally liable for any and all of the duties and obligations of the Bidder assumed under the Bid and the Invitation to Bid if Awarded. The management sponsor shall sign the Bid on behalf of the partnership or joint venture in its legal name.
 - (d) Bidders should not submit Bids by facsimile transmission ("fax") except as a last resort to attempt to deliver a Bid by the Bid Closing Time. However, submission of a Bidder's Bid by fax does not relieve the Bidder from the responsibility of submitting hard copies and soft copies of Bidder's Bid as directed, in the Instructions to Bidders, promptly after delivery by fax and, in any event, not later than one working day after delivery by fax.
 - (e) If, prior to Bid Closing Time, Dofasco issues addenda to correct any error(s), or if Dofasco issues addenda in response to Bidder inquiries, then the Bidder shall list in its Bid all addenda and shall include with its Bid a copy of all addenda received.
 - (f) If the Bid is to be made by way of sealed tender, the Bidder shall deliver its Bid (with accompanying Alternative Bid, if any) sealed in the addressed envelope supplied by Dofasco or, in the event that the Bid and/or the Alternative Bid cannot be fitted into such envelope, sealed in an envelope to which the addressed envelope supplied by Dofasco is attached.
 - (g) If the original of a Bid or, a copy of a Bid, is to be sent to Dofasco electronically, the Bidder shall submit its Bid in a format that can be readily accessed by Dofasco's standard software platform. Electronic files may be submitted by: (i) electronic mail by way of the Internet; saving files to a transportable medium (e.g., a compact disc or digital video disc) or submitting files to a File Transfer Protocol (FTP) site indicated in the Instructions to Bidders. If the Bidder submits its Bid through electronic mail by way of the Internet, the Bidder does so at its own risk, and Dofasco will not be liable for any breach of confidentiality or security resulting from the use of public domains. Bidders must ensure that any files submitted

electronically to Dofasco do not contain viruses or other harmful or potentially harmful code or programs, and are not corrupt in any way that could be harmful to Dofasco.

- 4.11 Confidential Information** – Bidder shall treat Bids as confidential. All terms and conditions, and any commercial terms including but not limited to pricing, volumes, configurations, if finally agreed upon between Dofasco and the successful Bidder, shall be and remain confidential. All information obtained by the Bidder in connection with the Bid Documents is the property of Dofasco and must be treated by Bidder as confidential. Such information must not be used for any purpose other than preparing and submitted a Bid and performing the successful Bidder's obligations under any subsequent Contract (if Awarded). Bidders shall keep confidential and not disclose the Dofasco confidential information to any Person other than those of Bidder's directors, officers or employees who have a legitimate business need to know the Dofasco confidential information for the purpose of complying with the Bid Documents.

Any proprietary or confidential information submitted by the Bidder as part of its Bid shall be clearly identified as such. Dofasco shall use reasonable efforts to keep such information confidential.

- 4.12 Proprietary Information** - Bidders other than any Bidder to whom a Contract is Awarded in connection with the subject matter of the Invitation to Bid, and any Bidder who does not intend to submit a Bid, shall destroy all Dofasco documentation received with the Bid Documents immediately after receipt of notice from Dofasco (i) that the Bidder's Bid has not been selected, (ii) confirming signing of a Contract with another party, (iii) withdrawing the Invitation to Bid, or (iv) that Dofasco will not proceed with the Invitation to Bid.
- 4.13 Return of Bid Documents** - If requested by Dofasco, all Bid Documents, including any copies produced by the Bidder, are to be returned by all Bidders other than any Bidder to whom a Contract is Awarded in connection with the subject matter of the Invitation to Bid, and any Bidder who does not intend to submit a Bid, to the Purchasing Representative at the address set forth in the Bid Documents immediately after receipt of notice from Dofasco (i) that the Bidder's Bid has not been selected, (ii) confirming signing of a Contract with another party, (iii) withdrawing the Invitation to Bid, or (iv) that Dofasco will not proceed with the Invitation to Bid. All documents, drawings and information supplied with the Bid Documents (including any copies produced by the Bidder) are the sole property of Dofasco and are to be considered confidential Dofasco information.
- 4.14 Conflict of Interests** - All Bidders shall disclose any real, apparent or potential conflict of interest that may exist during the Bidder's Bid process, Bid evaluation, or any subsequent agreement. The Bidder shall accept any ruling by Dofasco on the conflict including any requirement to withdraw from the bidding or agreement.
- 4.15 Bid Information** – Dofasco believes that, to the best of its knowledge, the information provided by Dofasco in the Bid Documents is accurate. Such information is provided for purposes of the Bid only. The successful Bidder is responsible to confirm the accuracy of all such information in connection with its performance of any Work under any Contract Awarded to such Bidder.
- 4.16 Bidder Travel** - The Bidder is responsible for travel visas and travel arrangements for its personnel when traveling in relation with the Bid.
- 4.17 Incoterms** – Delivery terms for all material and equipment will be consistent with Incoterms 2000, as may be revised from time to time and the international rules of freight.

ARTICLE V

ACCEPTANCE OF BIDS

5.1 Rights of Bidder - A Bidder may withdraw its Bid by written notice given at any time prior to the time at which its Bid is deemed to be accepted by Dofasco under section 5.4.

5.2 Rights of Dofasco - Dofasco reserves the right, as Dofasco may determine in its sole and absolute discretion, to:

- (a) reject any or all Bids or any part thereof;
- (b) amend or modify the Bid Documents, or any part thereof, at any time;
- (c) accept a Bid, or any part thereof, which does not comply with the Bid Documents;
- (d) accept any Bid or any part thereof, including a Bid or any part thereof other than the lowest Bid in respect of the entire Bid or any part thereof;
- (e) accept any Bid or any part thereof, which is late;
- (f) seek clarifications of Bid or any part thereof, from one or more but not necessarily all Bidders;
- (g) negotiate with one or more Bidders before Award;
- (h) cancel or withdraw from this process without any liability to any Bidder;
- (i) modify any evaluation criteria listed in its Bid Documents, or not apply any such criteria;
- (j) determine a Bid to be non-compliant; and
- (k) determine a Bid to be non-responsive.

Dofasco's rights set out in this paragraph may be exercised in Dofasco's sole, absolute and unfettered discretion, and Dofasco will not be required to give reasons for any exercise of those rights. No Bidder who proposes to make a Bid or who makes a Bid will have any legal recourse against Dofasco if Dofasco exercises any of those rights.

If Bids responses are submitted through electronic mail, Dofasco's opening of any such electronic mail message does not constitute acceptance of the Bid, and Dofasco does not thereby waive any of the rights in this section 5.2 or elsewhere herein.

5.3 Acceptance of Bid and Invitation for Negotiations - Dofasco may notify one or more Bidders (the "selected Bidders") of Dofasco's intent to proceed for further Bidding, or with negotiations, as soon as practicable after receipt and evaluation of the Bids. Dofasco reserves the right, in its sole discretion, to select some, all or none of the Bids submitted for subsequent clarification, discussion, Bidding or negotiation. Dofasco may, in its sole discretion, terminate any such discussions, clarifications, Bidding or negotiations without prejudice or liability to any Bidder. If Dofasco chooses to negotiate with one or more Bidders, it may (but need not) do so separately with the selected Bidder(s) and under the following conditions:

- (a) All the requirements and conditions imposed by the Bid Documents are for the benefit of Dofasco. They shall not be construed as undertakings or obligations on the part of Dofasco.
- (b) Any selected Bidders will negotiate in good faith with Dofasco with respect to the details of the proposed Work, the pricing structure for the Work, and the specific terms and conditions of the Contract.
- (c) Dofasco may negotiate with the selected Bidder(s) until agreement on all commercial, technical and financial aspects for Dofasco's Work requirements are reached with a single Bidder (the "successful Bidder") or, if Dofasco determines, in its sole discretion, to divide the Work, with more than one Bidder (the "successful Bidders").
- (d) Before Award, Dofasco may, in its sole discretion, elect to change the type of Contract if Dofasco determines a different Contract type (e.g., "firm price" instead of "cost plus") to be more appropriate in the circumstances.
- (e) The successful Bidder(s) shall, if Dofasco so determines in its sole discretion, enter into Contract(s) with Dofasco for the Work.

Upon receipt of the final form of Contract from the Purchasing Representative, the successful Bidder shall execute and deliver to the Purchasing Representative two copies of the Contract. The Contract shall be executed in the same manner as provided in section 4.10 (a) (b) (c) with respect to the Bid. Evidence of the authority of the person signing on behalf of Bidder shall be furnished if requested by Dofasco. However, if a successful Bidder is a corporation, a partnership, or a joint venture, composed of one or more corporations such corporation or each such corporation, as the case may be, shall sign the Contract by a duly authorized officer.

- 5.4 **Pre-Award Meeting** - A successful Bidder may be required to attend a pre-Award meeting with Dofasco to initial all Bid Documents, which Bid Documents, as initialled, will express the essential terms of the potential Contract between the Bidder and Dofasco, and any Person signing on behalf of such Bidder may be required to provide proof of its authority to so sign.
- 5.5 **Time of Acceptance** - A Bid shall not be, and shall in no circumstances be deemed to be, accepted until Award occurs. Award is not effective unless the requirements of section 3.14 are fulfilled. If a Subcontractor is not able to be qualified under the requirements of Dofasco's Third Party Health, Safety and Environmental program, the successful Bidder must replace the Subcontractor with a Subcontractor that is qualified under said program for no increase in the Bid or resulting Contract price. All costs associated with delay time and schedule changes that are a result of this issue will be to the Contractor's account.
- 5.6 **Governing Law; Jurisdiction** - Any Contract shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable thereto, and the Bidder hereby submits to the non-exclusive jurisdiction of the courts of the Province of Ontario.
- 5.7 **Effect of Other Business at Dofasco** - No Bid, nor any Work associated with it will, shall be made contingent by Bidder on the Bidder being Awarded other Work at Dofasco.

ARTICLE VI

GENERAL

- 6.1 Assignment** - The Bidder shall not assign its Bid or any Contract constituted pursuant to section 5.6 or any of its rights or obligations hereunder without the prior written consent of Dofasco, which may be arbitrarily withheld.
- 6.2 Severability** - If any provision of the Bid Documents shall be or be held to be illegal, invalid or unenforceable, such provision shall be deemed to be severed from the Bid Documents and of no force or effect; provided that the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- 6.3 Notice** - Any notice or other communication required or permitted to be given pursuant to the Bid Documents shall be in writing and (subject to section 5.4 and section 5.6), if mailed by prepaid first class mail at any time other than within six working days prior to or at any time during a general discontinuance of postal service due to strike, lockout or otherwise, shall be deemed to have been given and received six working days after the postmarked date thereof or, if faxed, shall be deemed to have been given and received on the day of transmission or, if delivered by hand, shall be deemed to have been given and received at the time it is delivered. Notice of change of address shall be governed by this section 6.3. Notices given by mail or fax shall be addressed as follows:
- (a) in the case of Dofasco, to the Purchasing Representative at the location indicated as the mailing address in the Invitation to Bid;
 - (b) in the case of Bidder, to Bidder at Bidder's address shown in the Bid Form;
- and notices given by delivery shall be delivered, in the case of Dofasco, to the Purchasing Representative and, in the case of the Bidder, to the authorized representative identified on the Bid Form or such person as may from time to time be substituted therefore in writing.
- 6.4 Revisions** - Reference in the Bid Documents or in any purchase order issued in connection therewith to the latest revision of the Bid Documents shall be deemed to include all prior revisions of the Bid Documents and the original Bid Documents to the extent that the same are not superseded by or do not conflict with any later revisions.
- 6.5 Interpretation** - In the Bid Documents, the singular includes the plural, the plural includes the singular and any gender includes the other gender. Article and section headings are included for convenience of reference only, are not intended to be full and accurate descriptions of the content thereof, and are not otherwise to be considered part of this Specification O-OA.
- 6.6 Plant Operations** - The Work outlined in the Bid Documents may require activities to take place in or near existing facilities. It must be recognized by the Bidder that plant operations must continue during the Work. Close cooperation and coordination with Dofasco personnel will be required.