



**ALASKA RAILROAD CORPORATION**  
327 W. Ship Creek Ave.  
Anchorage, AK 99501

December 14, 2021

**INVITATION TO BID 21-40-209426**

**2022 MOW LEASED TRACK EQUIPMENT (SURFACING)**

**Response Requested:**

This form must be completed and returned to insure receipt of future addenda or additional information. Email this form to: [GoemerG@akrr.com](mailto:GoemerG@akrr.com). All addenda will be forwarded to the contact name and number listed below.

Firms that have not returned this cover sheet will not be informed of addendums and will only be alerted to addendums by checking with the ARRC procurement officer or by checking ARRC's internet site: [www.akrr.com](http://www.akrr.com), select Suppliers and then Solicitations. Bidders must acknowledge the receipt of all issued addendums in their proposal/bid submittal.

Company Name \_\_\_\_\_

Mailing Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Contact Name \_\_\_\_\_

Phone Number \_\_\_\_\_ Fax \_\_\_\_\_

Email Address \_\_\_\_\_

The Alaska Railroad Corporation web site [www.alaskarailroad.com](http://www.alaskarailroad.com)



THIS IS NOT AN ORDER

INVITATION NUMBER: 21-40-209426  
DATE OF INVITATION: December 14, 2021

SEALED BIDS WILL BE RECEIVED AT:

Alaska Railroad Corporation  
327 West Ship Creek,  
Anchorage, Alaska 99501  
Goemerg@akrr.com

UNTIL 3:00 P.M. LOCAL TIME ON **JANUARY 6, 2022** AT THAT  
TIME BIDS WILL BE PUBLICLY OPENED.

**2022 MOW LEASED TRACK EQUIPMENT (SURFACING)**

The Alaska Railroad Corporation (“ARRC”) is soliciting bids from interested parties to lease specific railroad track equipment as specified herein. Interested parties are invited to submit a bid to supply said items to ARRC. Bids must be submitted on the bid form contained herein and must be mailed or **E-MAILED** to the above address. The bid shall specify bid number 21-40-209426 clearly printed on the face of the envelope or subject line. It is the responsibility of the Offeror to verify bid is received if emailed. Bids must be complete and in U.S. dollars. See instructions and conditions enclosed herein.

ARRC reserves the right to reject any and all bids, or any part thereof, negotiate changes in bids, accept any bids or any part thereof, waive minor informalities or defects in any bids, and not to award the proposed contract if it is in the best interest of the ARRC.

ARRC shall not be held responsible for bidder’s lack of understanding of what is required by this bid. Should a bidder not understand any aspect of this bid, or require further explanation, or clarification regarding the intent or requirements of this bid, it shall be the responsibility of the bidder to seek guidance from the ARRC.

ARRC may award a contract resulting from this solicitation to the responsive offeror whose offer conforming to this solicitation will be the most advantageous to the ARRC. ARRC may reject any or all offers if such action is in the best interest of ARRC, and waives informalities and minor irregularities in offers received. Any resulting contract from this solicitation shall incorporate the Standard Instructions, and General Terms and Conditions incorporated in this solicitation.

This solicitation is not to be construed as a commitment of any kind nor does it commit the ARRC to pay for any costs incurred in the submission of an offer or for any other incurred cost prior to the execution of a formal contract

BIDDER/VENDOR TERMS AND CONDITIONS: PROSPECTIVE BIDDERS ARE CAUTIONED TO PAY PARTICULAR ATTENTION TO THIS CLAUSE. Bidder/contractor imposed terms and conditions which conflict with this Invitation to Bid terms and conditions are considered counter offers and, as such, will cause the Alaska Railroad Corporation to consider the bid non-responsive.

If a bidder attaches additional terms and conditions as part of the bid, such attachments must be accompanied by a disclaimer stating that in the event of conflict between the terms and conditions of this Invitation to Bid and the terms and conditions of the bidder/contractor, the terms and conditions of the Invitation to Bid will prevail.

**Important:** Work associated with this bid may be funded in part by funds from the Federal Transit Administration (“FTA”), an operating administration of the United States Department of Transportation; the Federal Railroad Administration (FRA); and the Alaska Railroad Corporation (ARRC). This solicitation package contains some provisions that are designated as applicable to FTA, FRA, and ARRC funded projects, mixed funding. See appendix H.

**ARRC Disadvantaged Business Enterprise (DBE) Program:** ARRC is an equal opportunity corporation that encourages the participation of DBEs as prime contractors and subcontractors on its contracts funded in whole or in part by the Federal Transit Administration (FTA) or the Federal Highway Administration (FHWA). The ARRC has a race neutral DBE Program and does not set DBE goals on individual solicitations. Nonetheless, the ARRC aspires to achieve an overall DBE participation of 3.0% in federal fiscal years 2019-2021 on contracts funded by agencies within the U.S. Department of Transportation. If this contract is funded in whole or in part by funds from the FTA or the FHWA, it is imperative that you consult the Federal Terms and Conditions portion of this solicitation.



The Alaska Railroad is a member of Green Star (<http://www.greenstarinc.org/>). ARRC earned an initial Green Star Award in 1994 and a Green Star Air Quality Award in 2007. The Alaska Railroad considers Green Star membership to be a positive business attribute, and regards a Green Star award as a tangible sign of an organization’s commitment to environmental stewardship and continual improvement within its operations.

Please direct all responses and/or questions concerning this invitation to bid to Greg Goemer, Alaska Railroad Corporation, Supply Management, 327 W. Ship Creek Avenue, Anchorage, AK 99501, telephone number 907-265-2593, email address [goemerg@akrr.com](mailto:goemerg@akrr.com)

Sincerely,

Greg Goemer  
Sr. Contract Administrator

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**SUBMITTALS:** Bids will not be considered if the following documents are not completely filled out and submitted at the time of bidding:

1. Supply Bid Form 395-0132
2. Cost Schedule
3. Bidder's Questionnaire
4. Required Contract Provisions for Federal-Aid Contracts (Federal Clauses)
  25. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING  
31 USC 1352; 2 CFR 200.450; 2 CFR 200 App. II(j); 49 CFR Part 20

## **APPENDIX A**

### **MINIMUM QUALIFICATIONS**

Any vendor who responds to this solicitation must meet the following minimum qualifications in order to be considered responsive:

1. Be in the business of leasing heavy equipment as part of its normal business operation.
2. Has the legal authority to represent and lease the vehicle(s) offered. Have the authority and capacity to provide full support for all product warranties, including technical "trouble shooting" support.
3. Be able to provide audited financial statements demonstrating the financial ability to meet the requirements of any order that may result from this solicitation.

The ARRC may conduct an inspection of the suppliers' facility to include its offices and inventory of the items being solicited prior to contract award. All offers submitted in response to this solicitation must be signed by an individual with the legal authority to submit the offer on behalf of the company. Offers from vendors/suppliers that do not meet these qualifications will not be considered for award.

## APPENDIX B

### SPECIFIC TERMS AND CONDITIONS

Any resulting contract from this Invitation For Bid shall incorporate the following terms and conditions contained in this bid package.

#### **Method of Bidding:**

Bids must be submitted in the spaces provided on the bid sheets of this invitation in accordance with the conditions of bid as stated herein. The bid will not be considered to be complete unless all spaces have been filled. Consideration for award will be provided to complete bids only. If a bidder wishes to supply additional information, it may include same along with the bid in the sealed bid envelope.

#### **ARRC Rights in Regard to Bid:**

The Alaska Railroad Corporation reserves the right to reject any or all bids, to waive any informality in bids, to accept in whole or in part such bid or bids as may be deemed in the best interest of the purchaser.

Bidder/Vendor Terms & Conditions: Prospective Bidders are Cautioned to Pay Particular Attention to this Clause:

Bidder/contractor imposed terms and conditions which conflict with this Invitation For Bid terms and conditions are considered counter offers and, as such, will cause the Alaska Railroad Corporation to consider the bid non-responsive.

If a bidder attaches additional terms and conditions as part of the bid, such attachments must be accompanied by a disclaimer stating that in the event of conflict between the terms and conditions of this Invitation For Bid and the terms and conditions of the bidder/contractor, the terms and conditions of the Invitation For Bid will prevail.

#### **ASSIGNMENT:**

The agreement to be established as a result of this solicitation shall not be assigned by the contractor in whole or in part without the express written consent of the Alaska Railroad Corporation, nor shall the contractor have the right to authorize or permit the use of the Alaska Railroad Corporation's equipment or service facilities by third parties without the express written consent of the Alaska Railroad Corporation.

#### **HOLD HARMLESS:**

The contractor shall indemnify the Alaska Railroad Corporation against liability and hold it harmless from loss in respect to any and all claims and demands whatsoever rising out of the performance of this agreement, save and except the contractor shall not be liable for acts of negligence of Alaska Railroad Corporation employees acting within the scope of their employment. The Alaska Railroad Corporation shall not be liable for any costs incurred by the bidder in bid preparation.

#### **WARRANTY:**

Contractor shall warrant all equipment offered to be free of defects in materials and workmanship. In the event of defects in materials and workmanship, Contractor's liability obligations shall be to repair or replace defective parts or to refund lease payments from the date the Contractor is notified of the defects.

The Contractor shall deliver the equipment to the Delivery Point in first class operating condition and equipped with all required devices so as to operate under safe, efficient, economical and continuous service. If the equipment is not delivered in accordance with the foregoing requirements, the Contractor shall promptly remedy the nonconforming conditions or remove the equipment from the Delivery Point within forty-eight (48) hours after notice to do so from ARRC, and ARRC shall not be liable for any rental, transportation or other charges or expenses.

TERM OF LEASE:

Lease period shall be for a term of three (3) years commencing on the date the equipment is delivered to ARRC in Anchorage, AK and a condition report completed (effective Date) and shall cease three years from said date at which time ARRC shall notify the Contractor that use of the equipment is terminated. Lease term may be extended for a total of two (2) additional one (1) year terms by the mutual agreement of the parties. The extensions will be done in one terms, one year increments and total lease agreement will not exceed five years.

LEASE PAYMENT:

Lease payment shall be billed under net 30 days term payments on the same day of each month during the term hereof as the effective date and shall be prorated for any period of time less than one (1) month.

TERMINATION:

The Alaska Railroad Corporation may terminate any lease resulting from this solicitation in whole or in part, by giving sixty (60) days prior written notice to Lessor. Upon termination, ARRC shall pay Lessor only for direct expenditures of work specifically identified in this lease (in no event shall ARRC be liable for incidental, consequential, or punitive damages, overhead or other direct or indirect costs, or loss of profits.). Payments made under this paragraph shall not exceed the Contract Price.

RISK OF LOSS:

ARRC shall be liable for loss or destruction of the rented equipment from the date of ARRC possession at the Delivery Point (effective date of rental term) until possession is relinquished to the Contractor's agent upon expiration/termination of the rental term. ARRC shall not be liable for loss or damage incurred during Mobilization or Demobilization. In no event shall ARRC be liable for loss of rentals or any other consequential damages.

CLAIMS:

After the Post-Rental Inspection and Condition Report has been completed and possession of the equipment is returned to the Contractor or the Contractor's authorized representative, the Contractor shall have thirty (30) calendar days to make written notice to ARRC for any claims for any such abnormal conditions other than fair wear and tear as may be detailed on the Post-Rental Inspection and Condition Report which were not noted on the Pre-Rental Inspection and Condition Report. In no event shall ARRC be liable for loss of rentals or any other consequential damages.

GOVERNING LAW:

This contract shall be governed by all applicable Federal, State and Municipal laws. All concerning actions shall be brought in the Superior Court of the State of Alaska.

SIGNATURE:

All offers shall be signed by an individual authorized to bind the respondent to its provisions, dated, have proper address, and provide contact telephone number. Prices will be firm for ninety (90) days from the closing date of this solicitation. Prices accepted for an award will be firm throughout the duration of the contract.

TERMS AND CONDITIONS:

Any resulting contract from this Invitation to Bid shall incorporate the attached general terms and conditions contained in this bid package.

METHOD OF BIDDING:

Bids must be submitted in the spaces provided on the bid sheets of this invitation in accordance with the conditions of bid as stated herein. The bid will not be considered to be complete unless all spaces have been filled in. Consideration for award will be provided to complete bids only. If a bidder wishes to supply additional information, it may include same along with the bid in the sealed bid envelope.

PRICES:

Prices will be firm for duration of contract after bid opening date.

ALASKA RAILROAD CORPORATION RIGHTS IN REGARD TO BID:

The Alaska Railroad Corporation reserves the right to reject any or all bids, to waive any informality in bids, to accept in whole or in part such bid or bids as may be deemed in the best interest of the ARRC.

AGGRIEVED BIDDER/OFFEROR: An aggrieved bidder/offeror may protest an ARRC procurement action by filing a written protest with the procurement officer in accordance with the procedures and time limits specified in ARRC Procurement Rules 1800.1-1800.11.

HOLD HARMLESS:

The contractor shall indemnify the Alaska Railroad Corporation against liability and hold it harmless from loss in respect to any and all claims and demands whatsoever rising out of the performance of this agreement, save and except the contractor shall not be liable for acts of negligence of Alaska Railroad Corporation employees acting within the scope of their employment. The Alaska Railroad Corporation shall not be liable for any costs incurred by the bidder in bid preparation.

F.O.B. POINT:

All prices quoted shall be F.O.B. Ex Works (Origin).

EQUIPMENT:

ARRC reserves the right to determine that all proposed equipment will serve the application intended.

## **APPENDIX C**

### **SPECIFICATIONS**

The Alaska Railroad Corporation (ARRC) is tendering bids for the lease of specific MOW track equipment. They are to be fully functioning model year 2019 or newer. Older units may be considered but must be completely factory rebuilt with low engine hours and be within the specifications listed below for pre-approval.

The equipment will be used seasonal during the months of May through October. During the winter months of November through April weather does not allow for cost effective track maintenance and the equipment will be stored. In an effort to simplify billing for ARRC internal projects and federally funded projects during the construction months the ARRC has issued a Cost Schedule that reflects the seasonality.

The operating lease will be in effect for six month seasonal use (on season) from May 1, 2022 through October 31, 2024. (Six month usage each year: 2022, 2023, and 2024). At the end of this lease, ARRC will have the option to: 1) return the equipment; or 2) extend the lease period for an additional term (May 1, 2025 to October 31, 2025. This one term lease extension may be made for a fifth and final year from May 1, 2026 to October 2026.

#### **Equipment Required**

Brand Name New Equipment Only, Substitutions Allowed only if ARRC has Pre-Approved the equal. Manufacturer's Warranty for Equipment must be a minimum of 1 full year on the machine and 2 years on the engine. Standard Ford Warranty will apply on pickup truck.

**3 Each: Harsco 6700SJ2 Tamper**

**3 Each: Kershaw 4600 Ballast Regulator**

**3 Each: Ford 350 One Ton Crew Cab Hi Rail Pickup Truck to include:**

- Insulated Rail Gear, hydraulic actuation, Front Rail Sweeps, FRA Annual Inspection. (In cab hi-rail controls)
- Full cab length grip strut running boards.
- Headache Rack
- Day tank/cross body tool box.
- Grab handle at each cab door.
- Strobe light (360 degree visibility), front and rear work lights, backup alarm, back up camera, in cab fire extinguisher.
- Block Heater, Trailer towing package.
- 8' bed, spay-on bedliner.
- Four wheel drive, V8 gas engine, 10,000 GVWR.
- Air conditioning, cruise control, power windows, power door locks, SYNC.
- Heavy Duty Seat Covers.

**APPENDIX D**

**COST SCHEDULE**

A bidder's failure to provide the information requested in this section will be cause for rejection of the bid on the basis of non-responsiveness. Costs shall be according to and equipment must comply with the specifications as listed in Appendix C and all of the requirements outlined in this bid.

Costs shall be bid **FOB ORGIN.**

**Evaluation Factors:**

Per Alaska Railroad Procurement Rules 1300.4-A the following factors may be used in determining the low bid but not limited to:

- (8) Transportation charges (shipping costs for the equipment to and from the vendor)
- (10) Other factors determined to be pertinent or peculiar to the procurement. (Condition of the equipment, mfg. year or hours of use)

**Cost Schedule - 6 Month Rental Use Season Total - Prices per Piece of Equipment**  
**6 Month Storage Rate per Piece of Equipment.**

The operating lease for each item of equipment will be evaluated for award based on a three year term lease (three years of seasonal use and two winters of storage) starting at the May 1, 2022 through October, 2024. ARRC may negotiate an option for a fourth and final fifth term upon completion of the original term. If years two and three are not the same price as year one please attach an additional sheet detailing this.

**1) 3 Each Harsco 6700SJ2 Tamper**

\$ \_\_\_\_\_ Operating lease per month while in use. (May 2022-October 2024)  
(Each unit)

\$ \_\_\_\_\_ Operating lease per month winter storage. (November 2022 – April 2024)  
(Each unit)

**2) 3 Each Kershaw 4600 Ballast Regulator**

\$ \_\_\_\_\_ Operating lease per month while in use. (May 2022-October 2024)  
(Each unit)

\$ \_\_\_\_\_ Operating lease per month winter storage. (November 2022 – April 2024)  
(Each unit)

**3) 3 Each Ford-350 One Ton Crew Cab Long Bed Hi Rail Pickup Truck**

\$ \_\_\_\_\_ Operating lease per month while in use. (May 2022-October 2024)  
(Each unit)

\$ \_\_\_\_\_ Operating lease per month winter storage. (November 2022 – April 2024)  
(Each unit)

**Delivery Date:**

Your bid should indicate the earliest firm delivery date after receipt of award. ARRC shall fully expect the successful contractor to completely satisfy contract performance requirements in accordance with firm delivery date offered in the Cost Schedule.

ARRC intends to have the equipment in AK for use starting May 1, 2022.

**Delivery date:** Please indicate the earliest possible delivery date after receipt of order:

\_\_\_\_\_ Days ARO

**FOB Origin Location:** \_\_\_\_\_

**Award Criteria:**

An award will be made to the low, responsive, responsible bidder that meets the requirements as set forth in the specifications and compliance thereof. The Alaska Railroad Corporation reserves the right to determine that all offered equipment will serve the application intended. The bid award is contingent on the availability of Alaska Railroad Corporation (ARRC) Funds.

Award will be made in the aggregate or by line item, whichever is deemed, by the Contract Administrator to be in the best interest of the ARRC. This may result in multiple awards.

\_\_\_\_\_  
COMPANY NAME

\_\_\_\_\_  
SIGNATURE BY AND FOR THE BIDDER

\_\_\_\_\_  
COMPANY ADDRESS

\_\_\_\_\_  
PRINTED NAME OF ABOVE BIDDER

\_\_\_\_\_

\_\_\_\_\_  
DATE OF BID

\_\_\_\_\_  
CONTACT PHONE NUMBER

\_\_\_\_\_  
CONTACT EMAIL

## APPENDIX E

### CONTRACTOR RESPONSIBILITY QUESTIONNAIRE

#### PART I - INSTRUCTIONS

1. All Bidders/Proposers submitting a Bid/Proposal for federally funded contracts are to complete and submit all Parts of this Questionnaire with their Bid or Proposal. Failure to complete and return this questionnaire, any false statements, or failure to answer question when required, may render the bid/proposal non-responsive. All responses must be typewritten or printed in ink. All information must be legible.
2. Please state "not applicable" in questions clearly not applicable to Bidder/Proposer in connection with this solicitation. Do not omit any question.
3. The completed Questionnaire must be sworn to by a partner (if partnership), a duly authorized officer or individual (if a corporation or LLC), or a principal (if a sole proprietorship).
4. The term "Proposer" includes the term "Bidder" and also refers to the firm awarded the Contract. The term "Proposal" includes the term "Bid".
5. ARRC reserves the right to inquire further with respect to Proposer's responses; and Proposer consents to such further inquiry and agrees to furnish all relevant documents and information as requested by ARRC. Any response to this document prior or subsequent to Proposer's Proposal which is or may be construed as unfavorable to Proposer will not necessarily automatically result in a negative finding on the question of Proposer's responsibility or a decision to terminate the contract if it is awarded to Proposer.

#### PART II - IDENTITY OF PROPOSER

1. Proposer's Full Legal Name: \_\_\_\_\_
2. The Proposer represents that it operates as the following form of legal entity: (Check whichever applies and fill in any appropriate blanks.)
  - an individual or sole proprietorship
  - a general partnership
  - a limited partnership
  - a joint venture consisting of: \_\_\_\_\_  
and \_\_\_\_\_  
(List all joint venturers on a separate sheet if this space is inadequate.)
  - a non-profit organization
  - a corporation organized or incorporated under the laws of the following state or country: \_\_\_\_\_ on the following date: \_\_\_\_\_
  - a limited liability company organized under the laws of the following state or country: \_\_\_\_\_ on the following date: \_\_\_\_\_
3. Proposer's federal taxpayer identification number: \_\_\_\_\_

4. Proposer's Alaska business license number: \_\_\_\_\_
5. Proposer's contractor's license number (for construction only): \_\_\_\_\_
6. Proposer's Certificate of Authority number: \_\_\_\_\_
7. Proposer's legal address: \_\_\_\_\_
- 

Telephone Number: (\_\_\_\_) \_\_\_\_\_  
Fax Number: (\_\_\_\_) \_\_\_\_\_

8. Proposer's local or authorized point of contract address:
- Name: \_\_\_\_\_ Title: \_\_\_\_\_
- Address: \_\_\_\_\_

- Telephone Number: (\_\_\_\_) \_\_\_\_\_ Fax Number: (\_\_\_\_) \_\_\_\_\_
9. How long has the Proposer been in business? \_\_\_\_\_

10. Has Proposer been in business under another name? If so, identify name and dates used.
- \_\_\_\_\_
- 

11. Does your firm consider itself to be an MBE, WBE or DBE?  
YES  NO  If answer is "YES," attach a copy of certification.

12. Number of employees: \_\_\_\_\_ including \_\_\_\_\_ employees in the State of Alaska.

### **PART III-CONTRACTING HISTORY**

1. Has the Proposer been awarded any contracts within the last five years by ARRC, the State of Alaska, or any other public entity for the same or reasonably similar goods or services sought by this solicitation? If none, answer "No". If yes, on a separate sheet of paper describe those contracts beginning with the most recent. State the name of the contracting entity; give a brief description of the contract and the contract number, the dollar amount at award and at completion, date completed; state the contract period, the status of the contract, and the name, address, and telephone number of a contact person at the agency. Indicate if award was made to Proposer as prime contractor or joint venture. Proposer need not provide more than three such descriptions.

YES  NO

2. Has the Proposer been awarded any private sector contracts within the last five years for the same or reasonably similar goods or services sought by this solicitation? If none, answer "No." If yes, on a separate sheet of paper provide the name and address of the contracting entity, a brief description of work, the dollar amount at award and at completion, date completed, status of the contract and name, address and telephone number of contact person as to each, beginning with the most recent. Indicate if Proposer acted as prime contractor or joint venture. Proposers need not provide more than three such descriptions.

YES  NO

**NOTE: ANY "YES" ANSWERS TO #3 BELOW MUST BE FULLY EXPLAINED ON A SEPARATE SHEET OF PAPER AND ATTACHED TO THIS QUESTIONNAIRE.**

3. In the past five years has the Proposer been the subject of any of the following actions?

A. Been suspended, debarred, disqualified, or otherwise declared ineligible to bid?

YES  NO

B. Failed to complete a contract for a public or private entity?

YES  NO

C. Been denied a low-bid contract in spite of being the low bidder?

YES  NO

D. Had a contract terminated for any reason, including default?

YES  NO

E. Had liquidated damages assessed against it during or after completion of a contract?

YES  NO

F. Been a defaulter, as principal, surety or otherwise?

YES  NO

G. Been denied an award of a public contract based upon a finding by a public agency that your company was not a responsible contractor?

YES  NO

H. A public entity requested or required enforcement of any of its rights under a surety agreement on the basis of your company's default or in lieu of declaring your company in default?

YES  NO

I. Been denied a performance or payment bond by a surety company?

YES  NO

J. Been required to pay back wages and/or penalties for failure to comply with state or federal prevailing wage or overtime laws?

YES  NO

4. Does Proposer currently possess the financial, organizational, technical, equipment, facilities, and other resources necessary to supply the goods or services sought by this solicitation? If no, on a separate sheet of paper describe how you intend to obtain the resources necessary to supply the goods or services sought by this solicitation.

YES  NO

5. Does Proposer have any present or anticipated commitments and/or contractual obligations that might impact its ability to meet the required delivery or performance requirements of this solicitation? If yes, on a separate sheet of paper describe any apparent conflicts as between the requirements/commitments for this solicitation with respect to the use of Proposer's resources, such as management, technical expertise, financing, facilities, equipment, etc.

YES  NO

#### PART IV-CIVIL ACTIONS

**If "Yes" to Parts IV or V, provide details on a separate sheet of paper including a brief summary of cause(s) of action; indicate if Proposer, its principals, officers or partners were plaintiffs or defendants; define charges explicitly, by what authority, court or jurisdiction, etc. In the case of tax liens, please indicate whether the liens were resolved with the tax authorities. Please submit proof of payment or agreements to pay the liens. Complete details are required!**

1. Violations Of Civil Law. In the past five years has Proposer, any of its principals, officers or partners been the subject of an investigation of any alleged violation of a civil antitrust law, or other federal, state or local civil law?

YES  NO

2. Lawsuits With Public Agencies. At the present time is, or during the past five years has Proposer, any of its principals, officers or partners been a plaintiff or defendant in any lawsuit or arbitration regarding services or goods provided to a public agency?

YES  NO

3. Bankruptcy. During the past five years, has the Proposer filed for bankruptcy or reorganization under the bankruptcy laws?

YES  NO

4. Judgments, Liens And Claims. During the past five years, has the Proposer been the subject of a judgment, lien or claim of \$25,000 or more by a subcontractor or supplier?

YES  NO

5. Tax Liens. During the past five years, has the Proposer been the subject of a tax lien by federal, state or any other tax authority?

YES  NO

## PART V-COMPLIANCE WITH LAWS AND OTHER REGULATIONS

1. Criminal: In the past five years has the Proposer, any of its principals, officers, or partners been convicted or currently charged with any of the following:

A. Fraud in connection with obtaining, attempting to obtain, or performing a public contract, agreement or transaction?

YES  NO

B. Federal or state antitrust statutes, including price fixing collusion and bid rigging?

YES  NO

C. Embezzlement, theft, forgery, bribery, making false statements, submitting false information, receiving stolen property, or making false claims to any public agency?

YES  NO

D. Misrepresenting minority or disadvantaged business entity status with regard to itself or one of its subcontractors?

YES  NO

E. Non-compliance with the prevailing wage requirements of the State of Alaska or similar laws of any other state?

YES  NO

F. Violation of any law, regulation or agreement relating to a conflict of interest with respect to a government funded procurement?

YES  NO

G. Falsification, concealment, withholding and/or destruction of records relating to a public agreement or transaction?

YES  NO

H. Violation of a statutory or regulatory provision or requirement applicable to a public or private agreement or transaction?

YES  NO

I. Do any principals, officers or partners in Proposer's company have any felony charges pending against them that were filed either before, during, or after their employment with the Proposer?

YES  NO

2. Regulatory Compliance. In the past five years, has Proposer or any of its principals, officers or partners:

A. Been cited for a violation of any labor law or regulation, including, but not limited to, child labor violations, failure to pay correct wages, failure to pay into a trust account, failure to remit or pay withheld taxes to tax authorities or unemployment insurance tax delinquencies?

YES  NO

B. Been cited and assessed penalties for an OSHA or Alaska/OSHA “serious violation”?

YES  NO

C. Been cited for a violation of federal, state or local environmental laws or regulations?

YES  NO

D. Failed to comply with Alaska corporate registration, federal, state or local licensing requirements?

YES  NO

E. Had its corporate status, business entity’s license or any professional certification, suspended, revoked, or had otherwise been prohibited from doing business in the State of Alaska?

YES  NO

#### **PART VI-FINANCIAL**

**ARRC reserves the right to ask for additional documentation if it is reasonably required to make a determination of integrity and responsibility relevant to the goods or services the Proposer will provide to ARRC if awarded a contract. All financial information if provided is considered confidential and not subject to public disclosure under Alaska law.**



**APPENDIX F  
ALASKA RAILROAD CORPORATION  
SUPPLY BID FORM**

NAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
\_\_\_\_\_

**To the CONTRACTING OFFICER, ALASKA RAILROAD CORPORATION:**

In compliance with your Invitation for Bids No.: \_\_\_\_\_, dated \_\_\_\_\_, the Undersigned proposes to furnish and deliver all the supplies, materials or equipment and perform all the work required in said Invitation according to the specifications and requirements contained therein and for the amount and prices named herein as indicated on the Cost Schedule, which is made a part of this Bid.

The Undersigned hereby agrees to execute the said contract and bonds, if any, within **Ten (10) Calendar Days**, or such further time as may be allowed in writing by the Contracting Officer, after receiving notification of the acceptance of this Bid, and it is hereby mutually understood and agreed that in case the Undersigned does not, the accompanying bid guarantee, if any, shall be forfeited to the Alaska Railroad Corporation as liquidated damages, and said Contracting Officer may proceed to award the contract to others.

The Undersigned agrees to commence performance within **Ten (10) Calendar Days** after the effective date of the Notice to Proceed and to complete performance by \_\_\_\_\_, unless extended in writing by the Contracting Officer.

The Undersigned acknowledges receipt of the following addenda to the requirements and/or specifications for this Invitation for Bids (give number and date of each).

Addendum Number/Dated	Addendum Number/Dated	Addendum Number/Dated
_____	_____	_____
_____	_____	_____

**NON-COLLUSION AFFIDAVIT**

The Undersigned declares, under penalty of perjury under the laws of the United States, that neither he/she nor the firm, association, or corporation of which he/she is a member, has, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this Bid.

\_\_\_\_\_

The Undersigned has read the foregoing proposal and hereby agrees to the conditions stated therein by affixing his/her signature below:

\_\_\_\_\_  
Name and Title of Person Signing

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Facsimile Number

**APPENDIX G  
GENERAL TERMS AND CONDITIONS  
(Supply Contracts)  
(Revised 4/17/08)**

The following terms and conditions supersede the terms and conditions on the reverse side of ARRC's purchase order to the extent that they are inconsistent therewith and shall be deemed to have the same force and effect as though expressly stated in any such purchase order into which this document is incorporated.

1. Definitions.

"ARRC" shall mean the Alaska Railroad Corporation.

"Vendor" shall mean the person or entity entering into the contract to provide the supplies specified therein for ARRC.

"Contract" shall mean these General Terms and Conditions, the contract form to which they are annexed, and all other terms, conditions, schedules, appendices or other documents attached to the contract form or incorporated by reference therein.

"Supplies" shall mean the equipment, goods, materials or other items to be provided by Vendor to ARRC under the contract.

2. Inspection and Reports. ARRC may inspect all of the Vendor's facilities and activities under this contract in accordance with the provisions of ARRC Procurement Rule 1600.9. The Vendor shall make progress and other reports in the manner and at the times ARRC reasonably requires.

3. Claims. Any claim by Vendor for additional compensation or equitable adjustment arising under this contract which is not disposed of by mutual agreement must be made by Vendor in accordance with the time limits and procedures specified in sections 1800.12 et seq. of ARRC's Procurement Rules, which by this reference are hereby incorporated herein.

4. Nondiscrimination.

4.1 The Vendor may not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical or mental handicap, sex, marital status, change in marital status, pregnancy or parenthood when the reasonable demands of the positions do not require distinction on the basis of age, physical handicap, sex, marital status, changes in marital status, pregnancy, or parenthood. To the extent required by law, the Vendor shall take affirmative action to insure that the applicants are considered for employment and that employees are treated during employment without unlawful regard to their race, color, religion, national origin, ancestry, physical or mental handicap, age, sex, marital status, changes in marital status, pregnancy or parenthood. This action must include, but need not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Vendor shall post in conspicuous places, available to employees and applicants for employment, notices setting out the provisions of this paragraph.

4.2 The Vendor shall cooperate fully with ARRC efforts which seek to deal with the problem of unlawful discrimination, and with all other ARRC efforts to guarantee fair employment practices under this contract, and promptly comply with all requests and directions from the State Commission for Human Rights or any of its officers or agents relating to prevention of discriminatory employment practices.

4.3 Full cooperation in Paragraph 4.2 includes, but is not limited to, being a witness in any proceeding involving questions of unlawful discrimination if that is requested by any official or agency of the State of Alaska; permitting employees of the Vendor to be witnesses or complainants in any proceeding involving questions of unlawful discrimination, if that is requested by any official or agency of the State of Alaska; participating in meetings; submitting periodic reports on the equal employment aspects of present and future employment; assisting inspection of the Vendor's facilities; and promptly complying with all State directives considered essential by any office or agency of the State of Alaska to insure compliance with all federal and state laws, regulations, and policies pertaining to the prevention of discriminatory employment practices.

4.4 Failure to perform under this section constitutes a material breach of the contract.

5. Cancellation/Termination.

5.1 ARRC may, for its sole convenience, cancel this contract in whole or in part, at any time by giving written notice of its intention to do so. In the event of such cancellation, Vendor shall be entitled to receive payment in accordance with the payment provisions of this contract for supplies delivered to ARRC and, as to work in progress prior to receipt of notice, ARRC shall pay Vendor only for direct expenditures on work specifically identified to this contract. Vendor shall not be paid for any work done after receipt of a notice of cancellation or for any costs incurred by Vendor's suppliers or subcontractors which Vendor could reasonably have avoided. However, in no event shall ARRC be liable for incidental, consequential, or punitive damages, overhead or other direct or indirect costs, or lost profits. Payments made under this contract shall not exceed the aggregate price specified in this contract.

5.2 In addition to ARRC's right to cancel this contract for its convenience, ARRC may, by written notice of default to Vendor, terminate the contract in whole or in part in the following circumstances:

(1) The Vendor refuses or fails to perform its obligations under the contract, or fails to make progress so as to significantly endanger timely completion or performance of the contract in accordance with its terms, and Vendor does not cure such default within a period of ten (10) days after receipt of written notice of default from ARRC or within such additional cure period as ARRC may authorize; or

(2) Reasonable grounds for insecurity arise with respect to Vendor's expected performance and Vendor fails to furnish adequate assurance of due performance (including assurance of performance in accordance with the time requirements of the contract) within ten (10) days after receipt of a written request by ARRC for adequate assurance; or

(3) Vendor becomes insolvent or makes an assignment for the benefit of creditors or commits an act of bankruptcy or files or has filed against it a petition in bankruptcy or reorganization proceedings.

5.3 Upon receipt of a notice of cancellation or termination, Vendor shall immediately discontinue all work and it shall immediately cause any of its suppliers or subcontractors to cease

such work unless the notice directs otherwise. In the event of termination for default, Vendor shall be liable for any damage to ARRC resulting from the Vendor's nonperformance. The rights and remedies of ARRC provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

6. No Assignment or Delegation. The Vendor may not assign, subcontract or delegate this contract, or any part of it, or any right to any of the money to be paid under it, except with the prior written consent of ARRC. No such approval shall relieve Vendor from any of its obligations or liabilities under this contract.

7. Independent Contractor. The Vendor's relationship to ARRC in performing this contract is that of an independent contractor and nothing herein shall be construed as creating an employer/employee relationship, partnership, joint venture or other business group or concerted action.

8. Payment of Taxes. As a condition of performance of this contract, the Vendor shall pay all federal, state, and local taxes incurred by the Vendor and shall require their payment by any subcontractor or any other persons in the performance of this contract. Satisfactory performance of this paragraph is a condition precedent to payment by ARRC under this contract.

9. Governing Law. This contract, and all questions concerning the capacity of the parties, execution, validity (or invalidity) and performance of this contract, shall be interpreted, construed and enforced in all respects in accordance with the laws of the State of Alaska.

10. Alaska Executive Branch Ethics Act Requirements. No officer or employee of the State of Alaska or of the ARRC and no director of the ARRC or legislator of the state shall be admitted to any share or part of this contract or to any benefit that may arise therefrom. Vendor shall exercise reasonable care and diligence to prevent any actions or conditions which could be a violation of Alaska Statute 39.52 et seq. Vendor shall not make or receive any payments, gifts, favors, entertainment, trips, secret commissions, or hidden gratuities for the purpose of securing preferential treatment or action from or to any party. This obligation will apply to the activities of Vendor's employees and agents in their relations with ARRC employees, their families, vendors, subcontractors, and third parties arising from this contract and in accomplishing work hereunder. Certain gratuities may be given or accepted if:

- (1) there is no violation of any law or generally accepted ethical standards;
- (2) the gratuity is given as a courtesy for a courtesy received and does not result in any preferential treatment or action;
- (3) the gratuity is of limited value (less than \$150) and could not be construed as a bribe, payoff or deal; and
- (4) public disclosure would not embarrass ARRC.

ARRC may cancel this contract without penalty or obligation in the event Vendor or its employees violate the provisions of this section.

11. Covenant Against Contingent Fees. Vendor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Vendor, to solicit or secure this contract, and that it has not paid or agreed to pay any person, company, individual, or firm any commission, gift, percentage, fee, contingent upon or resulting from the award or making

of this contract. For the breach or violation of this warranty, ARRC may terminate this contract without liability and, at its discretion, deduct from the contract price or otherwise recover the full amount of the commission, percentage, gift, or fee.

12. Warranty. Vendor warrants that the equipment, goods, materials or other supplies sold to ARRC under this contract: (a) shall be of good quality and free from all defects and deficiencies in workmanship, material and design; (b) shall be fit, suitable and operate successfully for their intended purpose; (c) shall be new; (d) shall be free from all liens, claims, demands, encumbrances and other defects in title; and (e) shall conform to the specifications, if any, stated in the contract. Vendor shall honor all guarantees and warranties offered by the manufacturer of the equipment, goods, materials or other supplies provided under this contract.

The rights and remedies provided for in this section are in addition to any other remedies provided by law.

13. Indemnification. The Vendor shall indemnify, save harmless and defend ARRC, its officers, agents and employees from all liability of any nature or kind, including costs and expenses, for all actions or claims resulting from injuries or damages sustained by any person or property arising directly or indirectly as a result of any error, omission, product defect, negligent or wrongful acts of the Vendor, its subcontractors or anyone directly or indirectly employed by them in the performance of this contract, provided that Vendor's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability based upon the sole negligence of ARRC.

14. ARRC's Rights Not Waived by Payment. No payment made by ARRC shall be considered as acceptance of satisfactory performance of Vendor's obligations under this contract. Nor shall any payment be construed as acceptance of substandard or defective work or as relieving Vendor from its full responsibility under the contract.

15. Nonwaiver. A party's failure or delay to insist upon strict performance of any of the provisions of this contract, to exercise any rights or remedies provided by this contract or by law, or to notify the other party of any breach of or default under this contract shall not release or relieve the breaching or defaulting party from any of its obligations or warranties under this contract and shall not be deemed a waiver of any right to insist upon strict performance of this contract or any of the rights or remedies as to any subject matter contained herein; nor shall any purported oral modification or rescission of this contract operate as a waiver of any of the provisions of this contract. The rights and remedies set forth in any provision of this Agreement are in addition to any other rights or remedies afforded the non-breaching or non-defaulting party by any other provisions of this contract, or by law.

16. Savings Clause. If any one or more of the provisions contained in the contract shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this contract, but this contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

17. Headings. The headings of sections and paragraphs of this contract are for convenience of reference only and are not intended to restrict, affect, or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

18. Forum Selection. The parties shall not commence or prosecute any suit, proceeding or claim to enforce the provisions of the contract, to recover damages for breach or default under the contract, or otherwise arising under or by reason of the contract, other than in the courts of

the State of Alaska for the Third Judicial District at Anchorage. The parties hereby irrevocably consent to the jurisdiction of said courts.

19. Conflict of Interest. Vendor shall act to prevent any actions or conditions which could result in a conflict with ARRC's best interests. This obligation shall apply to the activities of Vendor's employees and agents in their relationships with ARRC's employees, their families, vendors, subcontractors and third parties accomplishing work under this contract.

20. Publicity. Vendor shall not release any information for publication or advertising purposes relative to this contract or to the material, equipment and other supplies furnished under this contract without the prior written consent of the ARRC.

21. Audit. ARRC has the right to audit at reasonable times the accounts and books of the Vendor in accordance with the provisions of ARRC Procurement Rule 1600.10.

22. Internal Controls and Record Keeping. Vendor shall keep full and accurate records and accounts of all of its activities in connection with this contract, including, without limitation, reasonable substantiation of all expenses incurred and all property acquired hereunder.

23. Force Majeure. Neither ARRC nor Vendor shall be responsible for failure to perform the terms of this contract when performance is prevented by force majeure, provided that: (1) notice and reasonably detailed particulars are given to the other party and (2) the cause of such failure or omission is remedied so far as possible with reasonable dispatch. The term "force majeure" shall mean acts of God, earthquakes, fire, flood, war, civil disturbances, governmentally imposed rules, regulations or other causes whatsoever, whether similar or dissimilar to the causes herein enumerated, which is not within the reasonable control of either party and which through the exercise of due diligence, a party is unable to foresee or overcome. In no event shall force majeure include normal or reasonably foreseeable or reasonably avoidable operational delays.

24. Set Off. If ARRC has any claim against the Vendor related or unrelated to this contract, it may set off the amount of such claim against any amount due or becoming due under this contract.

25. Observance of Rules. The Vendor's personnel performing work hereunder on ARRC's premises shall observe all fire prevention, security, and safety rules in force at the site of the work.

26. No Third-Party Beneficiary Rights. No provision of this contract shall in any way inure to the benefit of any third parties (including the public at large) so as to constitute any such person a third-party beneficiary of the contract or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

27. Entire Agreement. This contract represents the entire and integrated agreement between ARRC and the Vendor and supersedes all prior negotiations, representations, or agreements, either written or oral. This contract may be amended only by a written instrument signed by both ARRC and the Vendor.

28. Invalid Provision. The invalidity or unenforceability of any provision of this contract shall not affect the other provisions hereof, and this contract shall be construed in all respects as if such invalid or enforceable provisions were omitted.

29. Packing, Marking and Shipping. All supplies shall be properly packaged to prevent damage or deterioration and to obtain the lowest transportation rates. ARRC will pay no charge

for preparation, crating, dunnage or other materials unless separately stated in this contract. Each packing slip, bill of lading, invoice, container, tag and correspondence shall bear the applicable contract number and the location to which the supplies are to be shipped. A waterproof Master Packing Slip shall accompany each shipment and shall be included in one of the packages marked "Packing Slip Inside" or in the case of a carload shipment, be conspicuously displayed on the inside of the freight car. The original Bill of Lading shall be mailed to the attention of ARRC Supply Management Department on date of shipment.

30. Improper Delivery. If for any reason the Contractor fails to make timely delivery, ARRC may, at its option, approve a revised delivery schedule, request shipment via air or expedited routing (at Contractor's expense) or terminate this contract without any liability. Contractor will not, however, be liable for damages resulting from delays in delivery due to causes beyond Contractor's reasonable control, provided Contractor promptly notifies ARRC in writing of any such delay or expected delay as soon as such delay or expected delay becomes or should have become apparent. The remedies provided in this paragraph shall be cumulative and in addition to any other or further remedies ARRC may have.

31. Shipping Release. The Contractor shall not ship any of the supplies covered by this contract, unless specific delivery dates or written instructions are furnished to Contractor by ARRC. ARRC shall have no responsibility for supplies for which delivery dates or other written instructions have not been provided. Shipments in excess of those authorized may be returned to Contractor and Contractor shall pay ARRC for all expenses incurred in connection with such shipments. ARRC may change or temporarily suspend shipping schedules specified in this contract or written instructions.

32. Inspection/Rejection. Notwithstanding prior shipment, all supplies are subject to inspection and acceptance by ARRC within a reasonable time after they arrive at destination. ARRC shall notify Contractor if any supplies are rejected for any reason or if there are shortages. At ARRC's election, rejected supplies may be held for Contractor's account or returned to Contractor at Contractor's risk and expense. No replacement or correction of defective or nonconforming supplies shall be made by Contractor without written authorization from ARRC. Contractor shall promptly ship any shortages after notification of the same by ARRC.

33. Compliance with Laws and Regulations. Contractor agrees that in the performance of this contract it will comply with the requirements of all applicable Federal, State and local statutes, regulations and orders and will indemnify and save ARRC harmless from any claim, loss or damage arising from Contractor's violation or alleged violation of them.

34. Reduction in Contractor's Cost. Any reduction in Contractor's costs resulting from a reduction in freight rates, custom duties, import taxes, excise taxes and/or sales taxes from those in force on the date of the contract is to be paid to ARRC by Contractor in reduction of the price of the ordered supplies.

35. Payments. Payments for supplies furnished under this contract will be due thirty (30) days after the later of (1) receipt of the supplies established in the contract, (2) receipt of proper billing for such supplies, and (3) receipt of all documents required by this contract. ARRC shall not be liable for interest charges on late payments.

**APPENDIX E**  
**REQUIRED CONTRACT PROVISIONS**  
**FOR**  
**FEDERAL-AID CONTRACTS**  
**[Revised June 9, 2017]**

The following contract provisions shall apply, where applicable, to all work performed on the contract by the contractor's own organization and by subcontractors. As provided in this Section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions and further require their inclusion in any lower tier subcontracts or purchase orders that may in turn be made. Incorporation by reference shall not be allowed. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all applicable Required Contract Provisions.

**1. CARGO PREFERENCE REQUIREMENTS - 46 USC 55305; 46 CFR Part 381** [Applicable to all Federal-aid contracts involving equipment, materials or commodities which may be transported by ocean vessel]

**Cargo Preference-Use of United States Flag Vessels** - The contractor agrees: **a. to use** privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; **b. to furnish** within twenty (20) working days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding subsection to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to ARRC (through the contractor in the case of a subcontractor's bill-of-lading.) **c. to include these** requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

**2. DEBARMENT, SUSPENSION, INELIGIBILITY & VOLUNTARY EXCLUSION - 2 CFR Part 180 & Part 1200; 2 CFR 200.213; Executive Orders 12549 & 12689** [Applicable to all Federal-aid contracts which exceed \$25,000]

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 CFR Part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement)," 2 CFR Part 180. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

**By signing this contract and/or submitting its bid or proposal, the Contractor, bidder or proposer certifies as follows:**

The certification in this clause is a material representation of fact relied upon by the ARRC. If it is later determined by the ARRC that the Contractor, bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the ARRC, the Federal Government may pursue available

remedies, including but not limited to suspension and/or debarment. The Contractor, bidder or proposer agrees to comply with the requirements of 2 CFR Part 180, subpart C, as supplemented by 2 CFR Part 1200, while its offer is valid and throughout the period of any contract that may arise from its offer. The contractor, bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**3. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS - 40 USC 3141-3148; 49 USC 5333(a); 29 CFR Part 5; 2 CFR Part 200, App. II (D) [Applicable to all Federal-aid construction contracts which exceed \$2,000]**

**(1) Minimum wages -** (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of

receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or

(C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a

determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or

(C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

**(2) Withholding** - ARRC shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, ARRC may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

**(3) Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to ARRC for transmission to the Federal grantor agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly

or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal grantor agency or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

**(4) Apprentices and trainees - (i) Apprentices -** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the

job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

**(5) Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

**(6) Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

**(7) Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**(8) Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**(9) Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**(10) Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC 1001.

**4. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - 40 USC 3701-3708.; 29 CFR Part 5; 29 CFR 1926; 2 CFR Part 200, App. II (E) [Applicable to all Federal-aid construction in excess of**

\$100,000 and all nonconstruction contracts which employ mechanics and laborers on a public work in excess of \$100,000]

**A. Overtime** (Applicable to construction and nonconstruction contracts)

**(1) Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**(2) Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

**(3) Withholding for unpaid wages and liquidated damages** - ARRC shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

**(4) Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

**(5) Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

**B. Contract Work Hours and Safety Standards Act** (Applicable to construction contracts only) (i) The Contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 USC § 333, and applicable DOL regulations, "Safety and Health Regulations for Construction" 29 CFR Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

(ii) **Subcontracts** - The Contractor also agrees to include the requirements of this section in each subcontract. The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

**5. FEDERAL WATER POLLUTION CONTROL ACT- 33 USC 1251-1387; 2 CFR Part 200, App. II (G)** [Applicable to all Federal-aid contracts which exceed \$150,000]

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. The Contractor agrees to report each violation to ARRC and understands and agrees that ARRC will, in turn, report each violation as required to assure notification to the Federal grantor agency and the appropriate EPA Regional Office. (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal funds.

**6. CLEAN AIR ACT - 42 USC 7401-7671q; 2 CFR Part 200, App. II (G)** [Applicable to all Federal-aid contracts which exceed \$150,000]

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC 7401 et seq. The Contractor agrees to report each violation to ARRC and understands and agrees that ARRC will, in turn, report each violation as required to assure notification to the Federal grantor agency and the appropriate EPA Regional Office. (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal funds.

**7. ACCESS TO RECORDS AND REPORTS – 49 USC 5325(g); 2 CFR 200.333; 49 CFR Part 633** [Applicable to all Federal-aid contracts]

Access to Records - The following access to records requirements apply to this Contract:

1. Contractor agrees to provide ARRC, the Federal grantor agency, the Comptroller General, or any of their duly authorized representatives access to the Contractor's books, documents, papers and records which are directly pertinent to this contract for the purpose of making audit, examination, excerpts and transcriptions.

2. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

3. Contractor agrees to comply with the record retention requirements in accordance with 2 CFR 200.333. Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain the same until ARRC, the Federal grantor agency, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

4. Contractor agrees to permit the Federal grantor agency and its contractors access to the sites of performance under this contract as reasonably may be required.

5. Contractor agrees to include these requirements in each subcontract financed in whole or in part with Federal funds.

**8. CHANGES TO FEDERAL REQUIREMENTS – [Applicable to all Federal-aid contracts]**

**Federal Changes** - Contractor shall at all times comply with all applicable Federal regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement between ARRC and the Federal grantor agency, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

**9. NO GOVERNMENT OBLIGATION TO THIRD PARTIES [Applicable to all Federal-aid contracts]**

(1) ARRC and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to ARRC, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**10. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS – 49 USC 5323j(1); 31 USC 3801-3812; 49 CFR Part 31; 18 USC 1001 [Applicable to all Federal-aid contracts]**

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC §3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the Federally assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance, the Government reserves the right to impose the penalties of 18 USC §1001 and 49 USC 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**11. SEISMIC SAFETY REQUIREMENTS - 42 USC 7701 et seq. & 49 CFR Part 41; Executive Order 12699 [Applicable only to Federal-aid contracts for the construction of new buildings or additions to existing buildings]**

**Seismic Safety** - The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations, 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract

including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

**12. ENERGY CONSERVATION REQUIREMENTS - 42 USC 6321 et seq. & 49 CFR Part 622, Subpart C** [Applicable to all Federal-aid contracts]

**Energy Conservation** - The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

**13. CIVIL RIGHTS AND EQUAL OPPORTUNITY REQUIREMENTS – 49 USC 5332; 29 USC 623, 42 USC 2000e, 42 USC 6102, 42 USC 12112, 42 USC 12132, 29 CFR Part 1630, & 41 CFR Parts 60 et seq.** [Applicable to all Federal-aid contracts]

**Civil Rights** - The following requirements apply to the underlying contract:

1. Nondiscrimination - In accordance with 49 USC 5332 and Title VI of the Civil Rights Act, as amended, 42 USC 2000e, section 303 of the Age Discrimination Act of 1975, as amended, 42 USC 6102, and section 202 of the Americans with Disabilities Act of 1990, 42 USC 12132, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements the Federal grantor agency may issue.

2. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with 49 USC 5332 and Title VII of the Civil Rights Act, as amended, and 42 USC §2000e, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. 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. In addition, the Contractor agrees to comply with any implementing requirements the Federal grantor agency may issue.

(b) Age - In accordance with the Age Discrimination in Employment Act, 29 USC 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 CFR Part 1625, the Age Discrimination Act of 1975, as amended, 42 USC 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 CFR Part 90, and 49 USC 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements Federal grantor agency may issue.

(c) Disabilities - In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 USC 794, the Americans with Disabilities Act of 1990, as amended, 42 USC 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 USC 4151 *et seq.*, and 49 USC 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements the Federal grantor agency may issue.

3. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance, modified only if necessary to identify the affected parties.

**14. VIOLATION AND BREACH OF CONTRACT - 2 CFR 200.326; 2 CFR Part 200, App. II(A)**  
[Applicable to all Federal-aid contracts in excess of \$150,000]

**Rights and Remedies of the ARRC**

Except as may be otherwise provided in the contract documents, in the event that ARRC deems the contractor guilty of a default or breach of any provision under the Contract, ARRC shall have any and all rights and remedies provided by applicable law, including, but not limited to the following:

1. The right to take over and complete the work or any part thereof as agent for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

**Rights and Remedies of Contractor**

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the ARRC, the Contractor expressly agrees that no default, act or omission of the ARRC shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the ARRC directs Contractor to do so) or to suspend or abandon performance. Contractor claims or disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in accordance with ARRC's Procurement Rules.

**Performance During Dispute** - Unless otherwise directed by ARRC, Contractor shall continue performance under this contract while matters in dispute are being resolved.

**Notification** - In addition to the notice requirements set out elsewhere in this Contract, if the contractor becomes aware of any act or occurrence which may form the basis of a claim by the contractor for additional compensation or an extension of time for performance, or if any dispute arises regarding a question of fact or interpretation of the contract, the contractor shall immediately inform the Project Manager. If the matter cannot be resolved by agreement within 7 days, the contractor shall, within the next 14 days, submit an Intent to Claim in writing to the Project Manager. The claim, if not resolved, shall be presented to the Project Manager, in writing, within 60 days following receipt of the Intent to Claim. Receipt of the claim will be acknowledged in writing by the Project Manager. The Contractor agrees that unless these written notices are provided, the contractor will have no entitlement to additional time or compensation for such act, event or condition.

**Presenting Claim** - A claim shall be submitted in accordance with ARRC Procurement Rule 1800.12 and shall specifically include the following:

1. The act, event or condition giving rise to the claim.
2. The contract provisions which apply to the claim and under which relief is provided.
3. The item or items of contract work affected and how they are affected.
4. The specific relief requested, including additional contract time if applicable, and the basis upon which it was calculated.

**Claim Validity, Additional Information, & Project Manager's Actions** - The claim, in order to be valid, must not only show that the contractor suffered damages or delay but that those conditions were actually a result of the act, event or condition complained of and that the contract provides entitlement to relief to the contractor for such act, event, or condition. The Project Manager reserves the right to make written request to the contractor at any time for additional information which the contractor may possess relative to the claim. The contractor agrees to provide the Project Manager such additional information within 30 days of receipt of such a request. Failure to furnish such additional information may be regarded as a waiver of the claim. The claim, if not resolved by agreement within 60 days of its receipt, will automatically be forwarded to the Manager of Purchasing & Materials for formal written decision.

**Decision on Claim** - The contractor will be furnished the Manager of Purchasing & Materials' decision within the next 90 days, unless additional information is requested by the ARRC. The Manager of Purchasing & Materials' decision is final and conclusive unless fraudulent as to the Claim.

**Notice of Appeal** - Within 14 days of receipt of the Manager of Purchasing & Materials' decision, the contractor may deliver a Notice of Appeal to ARRC in accordance with ARRC Procurement Rule 1800.13 and request a hearing. The Notice of Appeal shall include specific exceptions to the Manager of Purchasing & Materials' decision, including specific provisions of the contract, which the contractor intends to rely upon in the appeal. General assertions that the Manager of Purchasing & Materials' decision is contrary to law or to fact are not sufficient.

**Decision on Appeal** - The decision of the ARRC on appeal will be rendered within 90 days after the conclusion of a hearing conducted under ARRC Procurement Rule 1800.15 or the date of receipt of the Notice of Appeal, whichever is later. The time limits given above may be extended by mutual consent. The decision of ARRC on appeal shall be final and conclusive unless the Contractor appeals to the superior court in accordance with ARRC Procurement Rule 1800.18.

**15. NONSEGREGATED FACILITIES** [Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more]

1. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO Provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

2. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, or national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

3. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to the award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

**16. NATIONAL HISTORIC PRESERVATION ACT REQUIREMENTS - 16 USC 470 et seq.** [Applicable to all Federal-Aid contracts]

In the performance of this contract, neither Contractor nor its subcontractors shall take any action (which term includes but is not limited to the seeking of any required federal license or permit, and the extraction of material or natural resources from any source whatsoever) that may affect a district, site, building, structure or object that is included in or eligible for inclusion in the National Register of Historic Places without prior notice to ARRC and compliance with the requirements of the National Historic Preservation Act of 1966, 16 USC 470 et seq. Contractor is advised that both historic and cultural sites may be eligible for inclusion on the National Register.

**17. FLY AMERICA REQUIREMENT - 49 USC 40118; 41 CFR 301-10** [Applicable to all Federal-aid contracts which may involve the international air transportation of equipment, materials, commodities, products or personnel]

a) *Definitions.* As used in this clause--

“International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States

“United States” means the 50 States, the District of Columbia, and outlying areas.

“U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 USC 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

**Statement of Unavailability of U.S.-Flag Air Carriers**

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [*State reasons*]:

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The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

**18. RECYCLED PRODUCTS - 42 USC 6962; 40 CFR PART 247; 2 CFR 200.322** [Applicable to all Federal-aid contracts for items designated by the EPA, for the purchase of \$10,000 or more of one of these items during the fiscal year]

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 USC 6962, and U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 CFR Part 247. The Contractor agrees to include these requirements in each subcontract financed in whole or in part with Federal funds.

**19. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION TERMS - FTA Circular 4220.1F** [Applicable to all FTA funded contracts]

The provisions herein include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the contract provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1F are incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any ARRC requests which would cause ARRC to be in violation of the FTA terms and conditions.

**20. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM - 49 CFR Part 26. [Applicable to all FTA and FHWA funded contracts]**

**1. Assurance** - The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. Department of Transportation-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the ARRC deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible. 49 CFR 26.13(b).

**2. Contract Goal** – ARRC runs a completely race-neutral DBE program. Accordingly, this contract has no specific contract goal for the participation of Disadvantaged Business Enterprises (DBEs). ARRC does have an overall annual goal that it strives to meet, however. The ARRC therefore strongly encourages the contractor to use the services of small businesses, including DBEs, as subcontractors whenever possible. The ARRC requests that the contractor consider such measures as: (1) subcontracting to small businesses, including DBEs, portions of the work the contractor might otherwise do with its own forces; (2) reducing or waiving subcontractor bonding requirements for small businesses, including DBEs; (3) reviewing the list of businesses certified in the Small Business Administration's 8(a) Business Development Program for potential subcontractors [contact the SBA at (907) 271-4022]; and (4) reviewing the list of businesses certified as DBEs by the Alaska Unified Certification Program for potential subcontractors [<http://www.dot.state.ak.us/cvlrts/directory.shtml>].

**3. Prompt Payment** - The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the prime contractor receives from the ARRC. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed, even if the prime contractor's work has not been completed. Any retainage not returned to a subcontractor will be reported to the ARRC by the prime contractor. This clause applies to both DBE and non-DBE subcontractors.

**21. FHWA BUY AMERICA REQUIREMENTS - 23 CFR 635.410 [Applicable only to FHWA funded construction contracts in excess of \$150,000]**

Unless a waiver has been granted by the FHWA, all steel and iron materials which are incorporated into the work, and the action of applying a coating to a covered material (i.e., steel and iron), shall be manufactured in the United States except that minor amounts of steel and iron materials of foreign manufacture may be used, provided the aggregate cost of such materials does not exceed one tenth of one percent (0.1 percent) of the total contract amount, or \$2500, whichever is greater. Coating includes epoxy coating, galvanizing, painting, and any other coating that protects or enhances the value of a material subject to the requirements of this section. For the purposes of this section, the cost is the value of the products as they are delivered to the project. When steel and iron materials manufactured in the United States are shipped to a foreign country where non-steel or iron products are installed on or in them (i.e., electronic components in a steel cabinet), the steel and iron is considered to meet the requirements of this section. A certification of materials origin, attesting to compliance with this provision, shall be furnished to the Engineer prior to incorporating any steel or iron products into the project. Bidders may submit an alternate bid for the project based on the use of foreign iron or steel materials. In this event, the contract will be awarded to the bidder who submits the lowest total responsive bid based on furnishing domestic iron and steel materials unless such total bid exceeds the lowest total responsive bid based on furnishing foreign steel and iron materials by more than 25 percent.

**Certificate of Compliance with 23 CFR 635.410**

The bidder or offeror hereby certifies that it will comply with the requirements of 23 CFR 635.410.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Company Name: \_\_\_\_\_

Title: \_\_\_\_\_

**22. FTA BUY AMERICA REQUIREMENTS - 49 USC 5323(j); 49 CFR Part 661** [Applicable only to FTA funded projects that involve the purchase of more than \$150,000 of iron, steel, manufactured goods or rolling stock]

**Buy America** - The contractor agrees to comply with 49 USC 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7. Separate requirements for rolling stock are set out at 49 USC 5323(j)(2)(C) and 49 CFR 661.11.

A bidder or offeror must submit to the ARRC the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive.

**Certification requirement for procurement of steel, iron, or manufactured products:**

**Certificate of Compliance with 49 USC 5323(j)(1)**

The bidder or offeror hereby certifies that it will meet the requirements of 49 USC 5323(j)(1) and the applicable regulations in 49 CFR Part 661.6.

Date: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Company Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Certificate of Non-Compliance with 49 USC 5323(j)(1)**

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 USC 5323(j) and 49 CFR 661.6, but it may qualify for an exception pursuant to 49 USC 5323(j)(2)(A), 5323(j)(2), as amended, and the applicable regulations in 49 CFR 661.7.

Date: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Company Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Certification requirement for procurement of rolling stock and associated equipment:**

**Certificate of Compliance with 49 USC 5323(j)**

The bidder or offeror hereby certifies that it will comply with the requirements of 49 USC 5323(j) and the regulations at 49 CFR 661.11.

Date: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Company Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Certificate of Non-Compliance with 49 USC 5323(j)**

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 USC 5323(j) and 49 CFR 661.11, but may qualify for an exception pursuant to 49 USC 5323(j)(2)(C), and the applicable regulations at 49 CFR 661.7.

Date: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Company Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**23. FRA BUY AMERICA REQUIREMENTS-SUPPLIES - 41 USC 10a-d; 48 CFR Part 25 [Applicable only to FRA funded contracts for the purchase of goods, supplies or equipment in excess of \$150,000]**

(a) The FRA requires its grantees to comply with The Buy American Act (41 U.S.C. 10) which provides that preference be given to domestic end products.

*Components*, as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

*Domestic end product*, as used in this clause, means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in subparagraphs (b) (2) or (3) of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

*End products*, as used in this clause, means those articles, materials, and supplies to be acquired for public use under this contract.

(b) The Contractor shall deliver only domestic end products, except those-

(1) For use outside the United States;

(2) That government agencies have determined are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. A current list of such items is contained in 48 CFR 25.108.

(3) For which the agency determines that domestic preference would be inconsistent with the public interest; or

(4) For which the agency determines the cost to be unreasonable under 48 CFR 25.105. The offered price of a domestic end product shall be determined to be unreasonable when the lowest acceptable domestic offer exceeds the lowest acceptable foreign offer, inclusive of duty, by more than 6 percent, if the domestic offer is from a large business or more than 12 percent, if the domestic offer is from a small business concern.

A bidder must submit to ARRC the Buy America certification (below) with its bid response for FRA funded supply contracts. Bids that are not accompanied by a completed Buy America certification may be rejected as nonresponsive.

**Certificate of Compliance with 41 USC 10a-d - Supplies**

The bidder or offeror hereby certifies that the products it proposes to supply hereunder comply with the requirements of 49 USC 10a-d and the applicable regulations in 48 CFR Part 25.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Company Name: \_\_\_\_\_

Title: \_\_\_\_\_

**24. FRA BUY AMERICA REQUIREMENT-CONSTRUCTION - 41 USC 10a-d; 48 CFR Part 25**  
[Applicable only to FRA funded construction contracts in excess of \$150,000]

(a) The FRA requires its grantees to comply with The Buy American Act (41 U.S.C. 10) which provides that preference be given to domestic construction materials. As used in this clause-

*Components* means those articles, materials, and supplies incorporated directly into construction materials.

*Construction material* means an article, material, or supply brought to the construction site for incorporation into the building or work. Construction material also includes an item brought to the site pre-assembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site.

*Domestic construction material* means (1) an unmanufactured construction material mined or produced in the United States, or (2) a construction material manufactured in the U.S., if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of cost of all its components. Materials of foreign origin of the same class or kind as the materials listed in 48 CFR 25.108 shall be treated as domestic.

(b)(1) The Buy American Act (41 USC 10a-10d) requires that only domestic construction material be used in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) The requirement in paragraph (b)(1) of this clause does not apply to the excepted construction materials or components listed by the Government as follows: NONE

(3) Other foreign construction material may be used on this project if ARRC determines that-

(i) The cost would be unreasonable (the cost of a particular domestic construction material shall be determined to be unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent, unless the agency head determines a higher percentage to be appropriate);

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(4) The Contractor agrees that only domestic construction materials will be used by the Contractor, subcontractors, material men, and suppliers in the performance of this contract, except for foreign construction materials, if any, listed in paragraph (b)(2) or allowed under paragraph (b)(3) of this clause.

(c) *Request for determination.* (1) Contractors requesting to use foreign construction material under paragraph (b)(3) of this clause shall provide adequate information for ARRC evaluation of the request for a determination regarding the inapplicability of the Buy American Act in time to allow determination before submission of bids or offers. Each submission shall include a description of the foreign and domestic construction materials, including unit of measure, quantity, price, time of delivery or availability, location of the construction project, name and address of the proposed contractor, and a detailed justification of the reason for use of foreign materials cited in accordance with paragraph (b)(3) of this clause. A submission based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause. The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(2) If ARRC determines after contract award that an exception to the Buy American Act applies, the contract shall be modified to allow use of the foreign construction material, and adequate consideration shall be negotiated. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration shall not be less than the differential established in paragraph (b)(3)(i) of this clause.

(3) If ARRC does not determine that an exception to the Buy American Act applies, the use of that particular foreign construction material will be a failure to comply with the Act.

(d) For evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the following information and any applicable supporting data based on the survey of suppliers shall be included in the request:

**FOREIGN AND DOMESTIC CONSTRUCTION  
MATERIALS PRICE COMPARISON**

Construction material description	Unit of Measure	Quantity	Price (Dollars) <sup>1/</sup>
Item 1: Foreign construction material Domestic construction material			
Item 2: Foreign construction material Domestic construction material			

List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary. Include other applicable supporting information.

<sup>1/</sup>Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).

A bidder must submit to ARRC the Buy America certification (below) with its bid response for FRA funded construction. Bids that are not accompanied by a completed Buy America certification may be rejected as nonresponsive.

**Certificate of Compliance with 41 USC 10a-d - Construction**

The bidder or offeror hereby certifies that the construction materials it proposes to provide hereunder comply with the requirements of 49 USC 10a-d and the applicable regulations in 48 CFR Part 25.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Company Name: \_\_\_\_\_

Title: \_\_\_\_\_

**25. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING - 31 USC 1352; 2 CFR 200.450; 2 CFR 200 App. II(j); 49 CFR Part 20** [Applicable to all Federal-aid contracts and to all related subcontracts which exceed \$100,000]

A bidder must submit to ARRC the below certification with its bid response for any Federally funded contract that exceeds \$100,000. Bids that are not accompanied by a completed certification may be rejected as nonresponsive.

1. The undersigned Contractor certifies, to the best of his or her knowledge and belief, that:
  - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
2. The undersigned also agrees that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.
3. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 USC 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, \_\_\_\_\_ certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 USC 3801, *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official: \_\_\_\_\_

Name and Title of Contractor's Authorized Official: \_\_\_\_\_

Date: \_\_\_\_\_

**26. FTA PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS - 49 USC 5323; 49 CFR Part 663 [Applicable only to FTA funded contracts for the purchase of rolling stock in excess of \$150,000]**

**Pre-Award and Post-Delivery Audit Requirements** - The Contractor agrees to comply with 49 USC 5323(l) and FTA's implementing regulation at 49 CFR Part 663 and to submit the following certifications:

(1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

(2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.

(3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

**27. CERTIFICATION REGARDING COMPLIANCE WITH 49 CFR 26.49 - ESTABLISHMENT OF DBE GOAL [Applicable to all FTA funded contracts for Transit Vehicles]**

**Certificate of Compliance with 49 CFR 26.49**

The bidder or offeror hereby certifies that it has established a DBE goal and submitted it to the FTA for approval in accordance with the provisions of 49 CFR 26.49.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Company Name: \_\_\_\_\_

Title: \_\_\_\_\_

**28. SAFE OPERATION OF MOTOR VEHICLES - 23 USC Part 402; Executive Order No. 13043; Executive Order No. 13513; U.S. DOT Order No. 3902.10 [Applicable to all federally funded third party contracts]**

**Seat Belt Use** - The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or ARRC.

**Distractions Driving** - The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

**29. PATENT RIGHTS – 2 CFR Part 200, App. II(F); 37 CFR Part 401 [Applicable all federally funded contracts with a small business firm or nonprofit organization for the performance of experimental, developmental or research work]**

This Project is funded through a Federal award for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this contract. The Contractor shall grant the ARRC intellectual property access and licenses

deemed necessary for the work performed under this contract and in accordance with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the federal grantor agency. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this contract and shall, at a minimum, include the following restrictions: Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of ARRC and the federal grantor agency, until such time as they may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this agreement, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

1. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

(a) Any subject data developed under the contract, whether or not a copyright has been obtained; and

(b) Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the federal grantor agency.

2. Unless the federal grantor agency determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this contract agrees to permit the federal grantor agency to make available to the public, either its license in the copyright to any subject data developed in the course of the contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this contract, is not completed for any reason whatsoever, all data developed under the contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.

3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

4. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the contract work.

6. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

**30. TERMINATION – 2 CFR 200.339; 2 CFR Part 200 App. II(B)** [Applicable to all federally funded contracts in excess of \$10,000]

Except as may be otherwise provided in the contract documents, the following termination provisions apply to this contract:

1. ARRC may, for its sole convenience, terminate this contract in whole or in part, at any time by giving written notice of its intention to do so. In the event of such termination, Contractor shall be entitled to receive payment in accordance with the payment provisions of this contract for charges incurred prior to the effective date of termination. Contractor shall not be paid for any work done after receipt of a notice of cancellation or for any costs incurred by Contractor's suppliers or subcontractors which Contractor could reasonably have avoided. In no event shall ARRC be liable for unabsorbed overhead or anticipatory profit on unperformed work.

2. In addition to ARRC's right to terminate this contract for its convenience, ARRC may, by written notice of default to Contractor, terminate the contract in whole or in part in the following circumstances:

(a) The Contractor refuses or fails to perform its obligations under the contract, or fails to make progress so as to significantly endanger timely completion or performance of the contract in accordance with its terms, and Contractor does not cure such default within a period of ten (10) days after receipt of written notice of default from ARRC or within such additional cure period as ARRC may authorize; or

(b) Reasonable grounds for insecurity arise with respect to Contractor's expected performance and Contractor fails to furnish adequate assurance of due performance (including assurance of performance in accordance with the time requirements of the contract) within ten (10) days after receipt of a written request by ARRC for adequate assurance; or

(c) Contractor becomes insolvent or makes an assignment for the benefit of creditors or commits an act of bankruptcy or files or has filed against it a petition in bankruptcy or reorganization proceedings.

3. Upon receipt of a notice of cancellation or termination, Contractor shall immediately discontinue all performance and it shall immediately cause any of its suppliers or subcontractors to cease such work unless the notice directs otherwise and deliver immediately to ARRC all products, reports, plans, drawings, specifications, data, summaries or other materials and information, whether completed or in process, accumulated by Contractor in performance of the contract. The rights and remedies of ARRC provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.