

Contract No. _____

SAMPLE
GOODS CONTRACT

Between

and the

NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT

TABLE OF CONTENTS

<u>Section</u>	<u>Title</u>	<u>Page</u>
1.	<u>Scope of Work</u>	1
2.	<u>Compensation</u>	2
3.	<u>Options</u>	2
4.	<u>Entire Contract</u>	2
5.	<u>Assignment</u>	2
6.	<u>The Project Engineer or Contract Officer</u>	2
7.	<u>Definitions</u>	2
	<u>Change Order</u>	2
	<u>Contract</u>	3
	<u>Contract Officer</u>	3
	<u>Contract Price</u>	3
	<u>Contractor</u>	3
	<u>District</u>	3
	<u>Effective Date</u>	3
	<u>FRA</u>	3
	<u>FTA</u>	3
	<u>General Conditions</u>	3
	<u>Goods</u>	3
	<u>Grant</u>	3
	<u>Plans and Specifications</u>	3
	<u>Project Engineer</u>	3
8.	<u>The Goods, Generally</u>	3
9.	<u>Acceptance/Delivery Terms</u>	5
10.	<u>Training</u>	6
11.	<u>Inspection During Manufacture of Goods</u>	7
12.	<u>Quality Assurance</u>	7
13.	<u>Certification</u>	8
14.	<u>Warranty</u>	8
15.	<u>Changes</u>	8
16.	<u>Delays</u>	9
17.	<u>Claims</u>	11
18.	<u>Liquidated Damages</u>	12
19.	<u>Indemnification</u>	12
20.	<u>Debarred Contractors</u>	12
21.	<u>Ineligible Contractors and Subcontractors</u>	13
22.	<u>Employment of Competent Workers</u>	13
23.	<u>Program Fraud and False or Fraudulent Statements or Related Acts</u>	13
24.	<u>Notice of Federal Requirements</u>	14
25.	<u>Loss of Federal or State Funding</u>	15
26.	<u>Restrictions on Lobbying</u>	15
27.	<u>Conflict of Interest</u>	16
28.	<u>Insurance</u>	16

	a. <u>Worker’s Compensation/Employers’ Liability Insurance</u>	16
	b. <u>Comprehensive General Liability Insurance</u>	17
	c. <u>Automobile Liability</u>	17
	d. <u>Railroad Protective Liability Insurance</u>	17
29.	<u>Bonding Requirements</u>	18
30.	<u>Liens</u>	18
31.	<u>Risk of Loss</u>	18
32.	<u>Termination for Convenience</u>	19
33.	<u>Termination for Default</u>	19
34.	<u>Severability</u>	20
35.	<u>Interpretation</u>	20
36.	<u>Notices</u>	21
37.	<u>Disadvantaged Business Enterprise</u>	21
38.	<u>Civil Rights Obligations</u>	21
39.	<u>Labor Provisions</u>	23
40.	<u>Disputes</u>	24
41.	<u>Notice to the District of Labor Disputes</u>	24
42.	<u>Attorney’s Fees / Indiana Law and Courts</u>	25
43.	<u>Limitations</u>	25
44.	<u>Patent, Copyright and Other Rights</u>	25
45.	<u>Contractor Representations</u>	27
46.	<u>Third Party Benefits</u>	28
47.	<u>Taxes, Duties, Etc.</u>	29
48.	<u>Audit, Inspection, and Retention of Records</u>	29
49.	<u>Pre-Award and Post-Delivery Audit Requirements</u>	30
50.	<u>Counterparts</u>	30
51.	<u>Energy Conservation</u>	30
52.	<u>Environmental Requirements</u>	30
53.	<u>Cargo Preference</u>	32
54.	<u>Employment Eligibility Verification</u>	32
55.	<u>Certification Regarding Investment Activities in Iran</u>	33
56.	<u>Buy America</u>	33
57.	<u>Fly America</u>	33
58.	<u>Software Compliance</u>	33
59.	<u>Prompt Payment</u>	33
60.	<u>Final Payment and Release</u>	34
61.	<u>Authority</u>	34
62.	<u>Binding Nature of Contract</u>	34
63.	<u>Effective Date</u>	34

**SAMPLE
GOODS CONTRACT
FOR
OVERHAUL HVAC SYSTEMS**

THIS CONTRACT, entered into this ____ day of _____ 2017, by and between _____ (hereinafter referred to as “Contractor”), and the Northern Indiana Commuter Transportation District (hereinafter referred to as the “District”).

WITNESSETH:

1. **Scope of Work:** Contractor shall, as an independent contractor and not as an agent for the District, provide the District with refurbished HVAC systems as more fully described in Exhibit 1, Technical Specifications. Said Goods shall be manufactured in accordance with the terms of this Contract, including any exhibits hereto, as same are further modified by written agreement between the District’s President and Contractor.

This Contract and the Goods include the following exhibits, which are attached hereto and incorporated herein by reference:

Exhibit

1. Technical Specifications, Plans & Drawings
2. Certificates
 - A -- Eligible Bidder Certificate
 - B -- Lower Tier Certificate
 - C -- DBE Certificates and Affidavits
 1. DBE Affidavit (Non-DBE Prime Bidder)
 2. DBE Affidavit (DBE Prime Bidder)
 3. DBE Utilization Plan
 4. Letter of Intent from DBE to Perform
 5. DBE Unavailability Certificate
 6. Nondiscrimination Certificate
 - D -- Restrictions on Lobbying Certificate
 - E -- Drug Free Workplace Certificate
 - F -- Buy America Certificate
 - G -- Certificate of Qualification
 - H -- E-Verify Affidavit
 - I -- Certificate regarding Investment Activities in Iran
 - J -- Form 95
3. NICTD Bid Summary Sheet

If there is a conflict between the documents set forth in this Section and those incorporated within this Contract, the order of precedence is as follows:

- First: This base contract document between the District and Contractor;
- Second: The exhibits attached to the base contract document;

2. **Compensation:** The compensation for the Goods is _____ Dollars (\$_____.⁰⁰). The Contractor may submit an invoice for the Goods upon delivery and acceptance.

3. **Options:** The contractor is to submit option pricing as listed on bid summary sheet for use if needed.

4. **Entire Contract:** This Contract, together with any other documents expressly incorporated into same, contain the entire agreement between the parties hereto and there are no prior or contemporaneous oral or written understandings or agreements binding the District or Contractor affecting the subject matter of this Contract other than those expressly referred to herein. No agreement, other understanding or acknowledgment, invoice, or other form used by any party, in any way purporting to modify or alter the provisions of the Contract, will be binding upon the other party unless made in writing and signed by both parties, provided that a termination or declaration of abandonment shall be effective when signed by the party initiating same.

5. **Assignment:** Contractor shall not assign, transfer, convey, sublet or otherwise dispose of the Contract or its right, title or interest therein, or its power to execute such Contract to any other person, firm or corporation without the previous consent, in writing, of the District. Approval by the District is not required for the assignment of monies due or to become due under the Contract. Notice of any such assignment or transfer shall be furnished promptly to the District.

6. **The Project Engineer or Contract Officer:** The District's President, at his option, may designate in writing any person to act as the Project Engineer or Contract Officer or one person to act as Project Engineer and one person to act as Contract Officer, and delegate authority on behalf of the District to determine the quality, acceptability and fitness of the Goods and to interpret or provide the District's interpretation of the Specifications, including those associated with any change orders. Upon request, the Project Engineer or Contract Officer will confirm in writing any oral order, direction, requirement or determination. In the manufacture or delivery of the Goods, Contractor shall conform to all orders, directions and requirements of the Project Engineer or Contract Officer, provided they are in compliance with the Specifications. The Goods shall at all stages be subject to his or their inspection.

7. **Definitions:** As used in this Contract, the following terms when capitalized as in this Section and this Contract, including the documents appended hereto, shall have the following meanings:

Change Order -- A goods change to this Contract as prepared in accordance with the terms of this Contract.

Contract -- This Contract, including exhibits attached hereto.

Contract Officer -- The District's President or his written designee.

Contract Price -- The cost to provide the Goods, as has been agreed to by both parties, as same is defined within this Contract.

Contractor -- _____.

District -- The Northern Indiana Commuter Transportation District, an Indiana political subdivision.

Effective Date -- The date that this Contract and the obligations of the parties herein shall become effective.

FRA -- The Federal Railroad Administration, and any division, subdivision, agency, administration or unit of the United States Department of Transportation.

FTA -- The Federal Transit Administration, and any division, subdivision, agency, administration or unit of the United States Department of Transportation.

General Conditions -- The terms and conditions set forth in this Contract, which set forth each party's responsibility to the other, and to the associated funding and regulatory agencies.

Goods -- The permits, labor, goods, tools, equipment, insurance, transportation, facilities, and other goods, labor and services, excepting those items supplied by the District, necessary for the construction and satisfactory delivery of the Goods as specified within this Contract.

Grant -- The FTA or state grant(s) which provide(s) a portion of the funding for the Goods.

Plans and Specifications -- The technical conditions and requirements defined herein for goods being supplied under the Contract.

Project Engineer -- The District's President or his written designee.

8. **The Goods, Generally:**

a. Goods should be of the highest quality and workmanship shall in every respect be in accordance with the best modern practice, and whenever the Specifications or directions of the District admit of a doubt as to what is permissible or fail to note the quality of any workmanship, goods or equipment, the interpretation which calls for the best quality of workmanship, goods or equipment is to be followed. Materials installed as part of the Goods shall be new materials except as may be otherwise specifically required or approved in advance.

b. The Contractor shall, without charge, replace any material or correct any workmanship found by the District not to conform to the Specifications, unless the District consents to accept such material or workmanship with an appropriate adjustment in Contract Price.

c. Any approval given by the District pursuant to any provision of the Contract of any materials, workmanship, equipment, methods or procedure shall not release Contractor from its full responsibility for the accurate and complete performance of the Goods in accordance with the Specifications or from any duty, obligation or liability imposed upon it by this Contract or from responsibility for injuries to persons or damage to property.

d. No variation in any required material or procedure from the Specifications contained within this Contract shall be made by Contractor unless approved in writing by the District. Should the District approve said variation, the District shall treat such adjustment in accordance with Sections 15 (Changes) and 17 (Claims) of this Contract.

e. Specific materials or products may have been items to describe the effect or standard of quality desired. Generally, where the words "or equal" appear, a product or another manufacturer will be acceptable, if approved in writing by the Project Engineer. Any request for approval of a material or item of equipment as equal to that specified shall be accompanied by data adequate to establish such equality and by a citation of several situations wherein the substituted material has been successfully used.

f. Where a brand name is used in the Specification, the Contractor may propose the use of an alternate or substitute. Any item submitted as a proposed alternate or substitute must comply in all respects with the Specifications set forth in this Contract. The Contractor may not incorporate such alternate or substitute into the Goods unless:

(1) The Contractor furnishes the Project Engineer with written substantiation as to how the alternate or substitute meets or exceeds the Specifications set forth in the Contract; and

(2) The Project Engineer provides the Contractor with written concurrence. The Project Engineer's decision as to quality or relative merit shall be final.

g. If, in the manufacture of the Goods, Contractor discovers any errors or omissions in the Specifications, or if, without regard to proof of such discovery, such errors or omissions are patent or easily discoverable by a reasonable person, then, in either such event, it shall immediately notify the District, and the District shall promptly verify the same. If Contractor proceeds with any part of the Goods affected thereby without the written approval of the District, it does so at its own risk and the work so done shall not be considered as work done under and in performance of the Contract unless and until approved and accepted.

h. Where materials are required by the Specifications to conform to certain standards, specifications or requirements of named organizations or governmental entities, Contractor shall furnish the District, upon request, the manufacturer's written certification that such materials or equipment exceed or conform to such standards, specifications or requirements. Such certification shall not be binding or conclusive on the District and may be rejected at any time if incorrect, improper or otherwise unsatisfactory. Failure of the District to request any certification shall not release Contractor from its full responsibility for the accurate and complete delivery of the Goods in accordance with the Specifications.

i. The Goods shall be manufactured in exact accordance with the Specifications. No departure from plan or purpose shall be made at any time without the express written permission of the District's Project Engineer or Contract Officer, provided, however, that if any regulatory body duly constituted and appointed in compliance with the laws of the state in which this Contract shall be exercised, and having jurisdiction in the premises, has by ruling or other general order determined and fixed the manner and means of construction, maintenance, repair, alteration, renewal, relocation, or removal, then that ruling or general order shall prevail. In the absence of enumerated specifications or requirements, the Contractor shall manufacture the Goods in a manner consistent with industry or professional standards.

j. Contractor shall, without additional cost to the District, obtain any necessary licenses and permits. Contractor shall comply with all provisions of Federal, State, Municipal, local and departmental laws, ordinances, rules, regulations, and orders which would affect the Goods if it were being made for a private corporation, unless different requirements are specifically set forth in the Specifications.

k. All design layouts, assembly drawings, and sub-assembly drawings shall be carefully reviewed by Contractor to assure that they are consistent with the safety of passengers and employees of the District.

9. **Acceptance/Delivery Terms :**

a. Time is of the essence in the performance of this Contract. Contractor shall give the District's Project Engineer ten (10) working days notice prior to shipment of the Goods. The District shall have the option, but not the duty, to inspect the Goods prior to shipment. Items identified as deficient shall be resolved prior to shipment unless the District agrees to the contrary.

b. The Goods shall be delivered at Contractor's risk and expense FOB, Michigan City, Indiana, except as otherwise agreed by the District's Project Engineer. The Contractor shall complete, and deliver and cause the initial 2-car set to be received by Owner no later than 12 weeks after said cars are received by Contractor. Delivery shall be in a condition ready for acceptance testing. Each subsequent 2-car set shall be delivered and received by Owner in a condition ready for acceptance testing no later than 8 weeks from the date the car set is received by the Contractor. Failure to comply with delivery as described shall constitute a default and may result in termination of this contract for default pursuant to Section 33 herein.

c. Upon arrival of the Goods at Michigan City, Indiana, the Contractor shall cause at its expense the placement of the Goods in service ready condition for acceptance. Warranty shall not begin on such excepted items until all defects are corrected and the District issues a revised conditional acceptance certificate or issues a final acceptance certificate. Conditional acceptance by the District will serve to pass title and risk of loss to the District. To the extent that Goods are rejected, Contractor shall have fifteen (15) working days to obtain conformance of the rejected goods. Should the Contractor not conform with the specifications and subsequent acceptance of same within twenty-five (25) working days from date of receipt, the Contractor shall be deemed in default of the delivery acceptance terms.

d. The Contractor must include copies of the acceptances or conditional acceptances obtained in "c" above with its requests for payment. The address for submittal of invoices is:

Northern Indiana Commuter Transportation District
Attention: Chief Financial Officer
503 N. Carroll Avenue
Michigan City, IN 46360

Upon receipt of a properly prepared invoice, the District shall pay the Contractor for the approved portion of the Goods within thirty (30) days after receipt of said invoice for same, unless there is a bona-fide dispute concerning the Goods provided. In the case of a dispute, the matter shall be addressed as provided for in Section 40 (Disputes) of this Contract.

e. Notwithstanding the foregoing, the District shall have the right to withhold any payment(s) or portion thereof as necessary to properly protect the District, should the District determine that any goods or services provided are defective in any material respect or are not timely provided. Amounts so withheld shall not exceed one and one-half times the amount estimated by the Contract Officer or Project Engineer to be required to cure the defect.

10. **Training**: Not Applicable to this Agreement.

11. **Inspection During Manufacture of Goods:**

a. All labor, materials, equipment, and processes of design and manufacture relating to the Contract shall be at all times and places subject to the inspection of such representatives as the District or FTA may designate. Said inspections shall be performed in a manner protective of the Contractor's and its subcontractors' trade secrets or other proprietary information. Inspections shall include the right to inspect or test any material which is to be incorporated in the Goods or shipment of such material. The District and FTA shall also have the right, at their option, to assign an inspector or inspectors to the Goods on a full or part time basis. The inspector(s) shall have authority to inspect all Goods done and all materials furnished, take measurements, and determine whether or not the Goods have been done in accordance with the Specifications. Such inspections shall be performed during Contractor's normal business hours and shall not unreasonably interfere with Contractor's business operations. Any inspection by any such inspector or inspectors shall not, however, relieve Contractor from any obligation to manufacture the Goods in strict accordance with the requirements of the Specifications.

b. Any inspection by such inspector or inspectors shall not, however, relieve Contractor from any obligations to manufacture and deliver the Goods in strict accordance with the requirements of the Specifications. In case of disagreement relating to the manufacture and delivery of the Goods during manufacture or delivery, an inspector shall have authority to suspend same with respect to the item in question, but not for more than twelve (12) hours unless the suspension has been affirmed by the Project Engineer or Contract Officer. The inspector shall not be authorized to revoke, alter, enlarge, relax, or release any requirements of the Specifications, or to issue any instructions contrary thereto.

12. **Quality Assurance:**

a. The Contractor shall be competent to proceed and furnish an acceptable end item within the pre-described time set by the District. The contractor must be in the industry for a minimum of two (2) years and have built this type of equipment for other operating entities.

The Contractor shall have a Quality Assurance Plan in place to the satisfaction of the District. The Quality Assurance Plan shall include a checklist and include specific acceptable tolerances of key elements described in the technical specifications. This Quality Assurance Plan shall be submitted to the District within 30 days of receiving the Notice to Proceed and approved by the District before the first car set is received by the contractor.

b. The Contractor shall confirm that the delivered products conform within narrow limits to the performance requirements of the Technical Specifications, Plans & Drawings.

- c. The Contractor shall accommodate any request from the District to visit the Contractor's fabrication facility at any time during the fabrication period to observe and monitor contract work in order to assure the quality of the delivered product.
- d. The District, at its option, may elect to source inspect the Goods, or any major subassembly thereof during fabrication, at the Contractor's manufacturing facility.
- e. The Goods shall be inspected for compliance with the requirements of this specification at the District's facilities. The Contractor shall provide technical support, material and testing equipment (within reason) to assist in the inspection process, as required.

13. **Certification:** Contractor agrees that its representations contained at Exhibit 2 are material terms of this Contract. Any misrepresentation contained therein shall be grounds for termination pursuant to the "Termination" clauses set forth at Sections 32 (Termination For Convenience) and 33 (Termination for Default) of this Contract.

14. **Warranty:**

- a. The Contractor shall warranty the Goods against any defects or any failures caused by inadequate design, substandard workmanship or defective material for a period of one (1) year from date of acceptance or date placed in service - whichever is later, as described in Section 9 (Acceptance/Delivery Terms) above. Any part or parts thereof that prove inadequate, insufficient or defective either in design, material or workmanship during the warranty period shall be replaced by the Contractor without expense to the District at the District's shops. Should use of the District's labor be required for any reason, the Contractor shall reimburse the District for costs of labor, fringe benefits and overhead. The Contractor shall warranty specialties not of its own specification or design to the same extent that its contractor of such specialties warrants such items to the Contractor, but not less than for a period of one (1) year.
- b. The above shall apply to any modifications made by or with the Contractor's approval to the unit or its equipment whether they are due to defective design, material or workmanship.
- c. This warranty shall not eliminate or be in lieu of any implied warranty for fitness of use and merchantability.

15. **Changes:**

- a. The District may, from time to time, request changes in the design of the Goods to be performed under this Contract. Such changes which are mutually agreed and approved by the parties shall be incorporated as written amendments to this Contract.

Changes in the Goods necessitated by laws or regulations enacted or promulgated after the date of this Contract award shall constitute contract changes and shall be governed by the terms of this Section.

b. Either party may submit proposed changes for consideration by the other party. Changes which are mutually agreed as to scope and price shall be set forth as a written change order and incorporated into this Contract. Changes in the Goods necessitated by laws or regulations enacted or promulgated after the date of the Contract award shall also constitute Contract changes. In the event that the parties are unable to agree on the effect of such changes, the matter shall be resolved in accordance with Section 40 (Disputes).

c. The Project Engineer or Contract Officer may at any time, by a written order, propose changes within the general scope of this Contract, in any one or more of the following:

- (1) drawings, designs, or specifications;
- (2) method of shipment or packing;
- (3) place of delivery; and
- (4) increase or decrease in the scope, duration, or quantity of requested goods.

Such proposals shall reflect the District's expected adjustment to the cost or delivery schedule of the Contract arising from the proposed change.

d. The parties shall meet to discuss the proposed change to determine the feasibility of the proposal and the increase or decrease in the cost of, or the time required for, the manufacture or delivery of any part of the Goods under this Contract, whether changed or not changed by any such order. If necessary, an equitable adjustment shall be made in the Contract Price or delivery schedule, or both, and the Contract shall be modified in writing accordingly. In the event that the parties cannot agree on the feasibility or other adjustments to the Contract, the parties will resolve the matter in accordance with the terms at Section 40 (Disputes).

e. Where a reduction of Goods is effected by a reduction in quantity of any item of the Goods as to which a unit price appears in the Contract, the per-unit price shall determine the amount by which the compensation of Contractor will be reduced.

16. **Delays:**

a. As between Contractor and the District, Contractor assumes the risk of all suspensions of or delays in the manufacture or delivery of the Goods, regardless of the length thereof, arising from all causes whatsoever, whether or not relating to the Contract.

Contractor shall bear the burden of all costs, expenses and liabilities which it may incur in connection with such suspensions or delays, and all such suspensions, delays, costs, expenses and liabilities, of any nature whatsoever, whether or not provided for in the Contract, shall conclusively be deemed to have been within the contemplation of the parties.

b. The Contractor shall commence work at that point in time which is expected to assure timely delivery of the Goods in accordance with the District's Notice to Proceed. However, the delivery date shall be extended on a "day for day" basis where the delay is solely attributable to the actions of the District or as otherwise permitted in accordance with the provisions set forth in this Contract.

c. The delivery date or dates stipulated in this Contract also may be extended by the District in its sole discretion if there is a delay in meeting such delivery date by a cause which is beyond Contractor's reasonable control and arises without its fault.

d. Even though a cause of delay meets each of these conditions, an extension may be granted in the sole discretion of the District, only to the extent that (1) the delivery of the item involved is actually and necessarily delayed, and (2) the effect of such cause cannot be anticipated and avoided or mitigated by the exercise of all reasonable precautions, efforts and measures (including planning, scheduling and rescheduling) whether before or after the occurrence of the cause of delay. Any reference in this paragraph to Contract shall be deemed to include suppliers, and permitted subcontractors, whether or not in privity of contract with Contractor, all of whom shall be considered as agents of Contractor for the purposes of this paragraph. Notwithstanding the foregoing, delays caused by labor difficulties, including strikes, and by damage to plant, equipment or materials shall be deemed to have met all of the qualifying conditions set forth in this paragraph.

e. The period of any extension of time shall be only that which is necessary to make up the time actually lost. The District may defer all or part of its decision on an extension and any extension may be rescinded or shortened if it subsequently is found that the delay can or could have been overcome or reduced by the exercise of reasonable precautions, efforts and measures.

f. As a condition precedent for requesting an extension of time from the District, Contractor shall give written notice to the District within fifteen (15) days after the time when Contractor knows or should know of any cause which might under reasonably foreseeable circumstances result in delay for which it may claim an extension of time (including those causes for which the District itself may be responsible or of which the District has knowledge), specifically stating in such notice that an extension is or may be claimed identifying such cause and describing, as fully as practicable at the time, the nature and expected duration of the delay and its effect on the delivery of those items of the Equipment identified in the notice. The giving of written notice as above required shall be of the essence of Contractor's obligations hereunder, and failure of Contractor to give written notice as above required shall be conclusive waiver of an extension of time for the cause of delay in question.

g. Since the possible necessity for an extension of time may materially alter the scheduling, plans and other action of the District, and since, with sufficient notice the District might, if it should so elect, attempt to mitigate the effect of a delay for which an extension of time might be claimed, and since mere oral notice may cause disputes as to the existence or substance thereof, the giving of written notice as above required shall be of the essence of Contractor's obligations hereunder and failure of Contractor to give written notice as above required shall be conclusive waiver of an extension of time for the cause of delay in question.

h. It shall in all cases be presumed that no extension or further extension of time is due unless Contractor shall affirmatively demonstrate the extent thereof to the reasonable satisfaction of the District. To this end, Contractor shall maintain adequate records supporting any claim for an extension of time, and in the absence of such records, this presumption shall be deemed conclusive.

17. **Claims**: The following procedure shall govern the processing of any claim of the Contractor resulting from changes in the Contract:

a. The claim and any documentation for the claim shall be submitted in writing to the Project Engineer or Contract Officer within thirty (30) days from the date of receipt by the Contractor of the notification of change.

b. Within sixty (60) days from the receipt of the claim the District shall respond in one of the following ways:

(1) Approve the claim.

(2) Deny the claim. If denied, the matter becomes a disputed issue of fact which may, at the Contractor's election, be resolved in accordance with Section 40 (Disputes).

(3) Request necessary information from the Contractor to enable the District to resolve the claim in which case the District shall render its decision on the claim within sixty (60) days of its receipt of the requested information.

c. Final determination of claims or disputes shall not operate to commit the FTA, the District or any funding agency that will provide funds in support of such disputes or claims unless the FTA, the District or other funding agencies approves and agrees to support such determination. Judicial review of any determination shall always be available to any party in accordance with the laws of the State of Indiana.

18. **Liquidated Damages:**

Not applicable to this agreement.

19. **Indemnification.**

a. Notwithstanding any other terms and conditions stated herein, including any obligations regarding insurance coverage, the Contractor shall defend, indemnify, keep, save and hold harmless the District, its agents, officials and employees, against all claims, suits or judgments, costs or expenses, including its reasonable attorney's fees and all out-of-pocket expenses, that may be based on the resultant error, omission, or other negligent or wrongful act, including willful or intentional tortious conduct, of the Contractor or of any person employed or engaged by the Contractor to perform the services provided under this Contract. The aforementioned indemnification provision shall survive the termination of this Contract insofar as it relates to any claim or incident which occurred during the period of this Contract but is raised after expiration of the Contract.

b. Contractor shall be solely responsible for all physical injuries (including death) to persons (including, but not limited to, employees of the Contractor and its subcontractors and directors, officers, agents, and employees of the District) or damage to property (including, but not limited to, property of the District or Contractor or its subcontractors) arising out of the Contractor's performance of the services provided pursuant to this Contract, and shall assume the defense of the District, except for such injury, death, or property damage which is related to the negligent, wrongful or intentional acts or omissions of the District or any of its Directors, Officers, Agents, other contractors or their subcontractors or employees. In such a case when an injury, death or property damage occurs which is related to the negligence or omission of the District or any of its Directors, Officers, Agents, other contractors or their subcontractors or employees, Contractor's indemnification shall be only for the percent of responsibility it has to the occurrence against which the indemnification applies as either to by the parties or determined by the ultimate trier of fact which shall be a judge or jury, as the same applies to any specific case. The responsibility of the Contractor pursuant to this section shall include, but is not limited to, liability for the payment of workmen's compensation under workmen's compensation laws and of judgments under the Federal Employer's Liability Act, and Contractor specifically covenants to make all such payments and pay all such judgments, irrespective of whether the injuries involved arose from the negligence of the injured employee of the Contractor or its subcontractor.

20. **Debarred Contractors:** The Contractor agrees, that as a condition to current eligibility and present responsibility for this Contract, as well as continuing eligibility and present responsibility, that it is not now listed and will remain unlisted in any federal or state contractor debarment or suspension list. In the event that Contractor is placed on such a list during the pendency of this Contract, Contractor agrees to provide the District with timely notice of said listing. Contractors must also list their subcontractors when the value of their subcontractor's work exceeds Twenty-Five Thousand Dollars (\$25,000.00).

21. **Ineligible Contractors and Subcontractors:**

a. Any firm, person, or other entity appearing upon the list of ineligible Contractors for Federally financed and assisted construction of the Comptroller General of the United States shall not be eligible to act as a Subcontractor for the Contractor, pursuant to this Contract or any other agreement associated with this project.

b. In the event Contractor is placed on the Comptroller General's list of ineligible Contractors for Federally financed or assisted construction prior to or during performance of this Contract, this Contract may be canceled, terminated or suspended by the District.

22. **Employment of Competent Workers:** Contractor shall employ only competent and efficient laborers and first-class mechanics or artisans for every kind of work licensed as and when necessary, and whenever any person is unfit to perform a task, or produce the Goods contrary to direction, or conducts himself or herself improperly, Contractor must remove the person immediately and not employ the person to produce the Goods. The Contractor's personnel shall not be employees of or have any other contractual relationships with the District. In its sole discretion and without right of administrative review, the District shall have the right to bar any of Contractor's employees who conduct themselves in an unsafe or otherwise improper manner while on District property. The provisions of this Section shall extend to Subcontractors.

23. **Program Fraud and False or Fraudulent Statements or Related Acts:**

a. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §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 FTA assisted project for which this procurement 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.

b. 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 originally awarded by FTA under the authority of 49 U.S.C. §5307, the Government reserves the right to impose the penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

24. **Notice of Federal Requirements:**

a. **Federal Laws and Regulations.** The Contractor understands that Federal laws, regulations, policies, and related administrative practices applicable to this Contract on the date this Contract was executed may be modified from time to time. The Contractor agrees that the most recent of such Federal requirements will govern the administration of this Contract at any particular time, except if there is sufficient evidence in this Contract of a contrary intent. Such contrary intent might be evidenced by express language in other portions of this Contract, or a letter signed by the Federal Transit Administrator the language of which modifies or otherwise conditions the text of a particular provision of this Contract or its funding source terms and conditions. Likewise, new Federal laws, regulations, policies and administrative practices may be established after the date this Contract has been executed and may apply to this Contract. To achieve compliance with changing Federal requirements, the Contractor agrees to include in all subcontracts specific notice that Federal requirements may change and the changed requirements will apply to the project as required. All limits or standards set forth in this Contract to be observed in the performance of this Contract are minimum requirements.

b. **State or Territorial Law and Local Law.** Except to the extent that a Federal statute or regulation preempts State or territorial law, nothing in this Contract shall require the Contractor to observe or enforce compliance with any provision thereof, perform any other act, or do any other thing in contravention of any applicable State or territorial law; however, if any of the provisions of this Contract violate any applicable State or territorial law, or if compliance with the provisions of this Contract would require the Contractor to violate any applicable State or territorial law, the Contractor agrees to notify the District immediately in writing in order that the District and the Contractor may make appropriate arrangements to proceed with this Contract as soon as possible.

c. **Incorporation of Terms.** The provisions of this Contract include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, are hereby 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 Contract consistent with regulatory deferral to state law. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any District requests, which would cause the District to be in violation of the FTA terms and conditions.

25. **Loss of Federal or State Funding:**

a. In the event that this Contract involves multiple-year funding, the Contractor understands that this Contract is subject to continued funding from the State of Indiana, Indiana Department of Transportation, the United States Department of Transportation, and the Federal Transit Administration. The Contractor also understands that the loss of continued funding from any of these sources shall limit the District's financial obligation to pay for those goods delivered as of the date that funding is lost. In the event that the District determines, at its sole discretion, that sufficient funds are not available from these sources to pay any remaining unpaid part or parts of this Contract, the District may terminate any obligations to purchase said undelivered Goods, and the District's termination shall be treated as a termination for convenience as set forth in Section 32 (Termination For Convenience) of this Contract. At such time as the District should notify the Contractor of its intent to terminate the Contract for lack of funds, the District at that time shall also relieve the Contractor of any further obligations under this Contract. The foregoing rights are recognized as separate and distinct from the parties' rights to termination set forth elsewhere within the Contract and General Conditions.

b. The District 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 the District, Contractor, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the underlying Contract.

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

26. **Restrictions on Lobbying:** The Contractor, its subcontractors, and other lower tier entities who receive or expect to receive One Hundred Thousand Dollars (\$100,000.00) or more in compensation from the Contractor or the District, who apply or bid for an award of One Hundred Thousand Dollars (\$100,000.00) or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." The Contractor, its subcontractors, and other lower tier entities, if any, certify that they will not and have not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. The Contractor, its subcontractors, and other lower tier entities, if applicable, shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from and through each contracting tier up to the District.

27. **Conflict of Interest.** In the event that potential contractor believes that it or any of its potential subcontractors may have an organizational conflict of interest (defined as a situation in which the potential contractor may be perceived to enjoy an unfair competitive advantage or which may impair its objectivity in performing the contract work), the Contractor shall notify the District in writing, identifying the nature and circumstances of the perceived conflict and proposing appropriate measures to eliminate or mitigate the situation. The District will review the circumstances and the proposed mitigation and notify the potential contractor, determining that:

- a. no mitigation is required;
- b. the measures proposed by the potential contractor are acceptable;
- c. additional or alternate mitigation measures are recommended; or
- d. the conflict cannot be mitigated.

The failure of a potential contractor to identify such perceived conflicts may result in the potential contractor being disqualified from consideration, or any contract award being rescinded or terminated for default. Should a successful contractor identify, after award of a contract, a conflict which it could not have reasonably anticipated prior to the award, it shall promptly notify the District, which shall consider steps to mitigate or eliminate the conflict. Should no such mitigation steps be feasible, the District may terminate the contract in accordance with the contractual provisions regarding termination for convenience.

28. **Insurance:** Prior to and during all times when the Contractor and its subcontractors, if any, are present on non-public District property under the terms of this Contract, the Contractor and its subcontractors shall purchase and maintain the following insurance coverage from any responsible carrier(s) rated "A" or better by Best's Review. Unless otherwise agreed to the contrary, the total cost of the premiums for such insurance coverage shall be at the sole expense of the Contractor, and/or its subcontractor(s):

- a. **Worker's Compensation/Employers' Liability Insurance:** The Contractor and its subcontractors shall furnish evidence, with respect to the operations they perform, of Worker's Compensation Insurance complying with the statutes of the state wherein the Work is conducted covering their respective employees. The Consultant and its subcontractors shall also furnish evidence of Employer's Liability and Occupational Disease Insurance with limits of One Million Dollars (\$1,000,000.00) each accident, One Million Dollars (\$1,000,000.00) policy limit, and One Million Dollars (\$1,000,000.00) each employee. The coverage documents shall name the following entities as additional insureds: Northern Indiana Commuter Transportation District, Chicago SouthShore and South Bend Railroad, Regional Transportation Authority, Northeast Illinois Regional Commuter Railroad Corporation, and the Commuter Rail Division of the Regional Transportation Authority d/b/a/ "Metra." This insurance shall be non-contributory and endorsed with a waiver of subrogation in favor of the above named additional insureds.

b. Comprehensive General Liability Insurance: The Contractor shall furnish evidence, with respect to the operations it performs and any operations performed by its Subcontractors, of comprehensive general liability insurance covering bodily injury, death, and property damage, including loss of use, with a limit of not less than Two Million Dollars (\$2,000,000.00) each occurrence combined single limit, bodily injury and/or property damage combined, including contractual liability coverage. Any exclusion that might exist in the insurance policy relating to Work within fifty (50) feet of a railroad track shall be deleted in regard to this Contract using Endorsement CG2417. The insurance policy shall list the Northern Indiana Commuter Transportation District, Chicago South Shore and South Bend Railroad Company, Regional Transportation Authority, Northeast Illinois Regional Commuter Railroad Corporation, and the Commuter Rail Division of the Regional Transportation Authority d/b/a “Metra,” as additional insureds. This insurance shall be primary, non-contributory, and shall be endorsed with a waiver of subrogation in favor of all additional insureds.

c. Automobile Liability: The Contractor and its Subcontractors shall furnish evidence that, with respect to the operations they perform, they carry coverage issued to and covering the liability of the Contractor and its Subcontractors arising out of the use of all owned, non-owned, hired, rented or leased vehicles which bear or are required to bear license plates according to the laws of the State of Indiana and which are not covered under the comprehensive general liability insurance of the Contractor, or its subcontractors. Coverage under this policy shall have limits of liability of not less than One Million Dollars (\$1,000,000.00) per occurrence, combined single limit, for bodily injury and property damage liability. The policy shall delete exclusion of work or coverage within fifty (50) feet of railroad right-of-way by inclusion of endorsement CA2070. The policy shall name the Northern Indiana Commuter Transportation District, Chicago SouthShore and South Bend Railroad, Regional Transportation Authority, Northeast Illinois Regional Commuter Railroad Corporation, and the Commuter Rail Division of the Regional Transportation Authority d/b/a “Metra,” as additional insureds. This insurance shall be primary, non-contributory, and shall be endorsed with a waiver of subrogation in favor of the above named additional insureds.

d. Railroad Protective Liability Insurance: To be provided by the District where applicable.

The Contractor shall furnish either certificates of insurance bearing the required endorsements or copies of policies bearing the required endorsements for all of the other required coverages. If any of the work is subcontracted, the Contractor shall furnish either certificates of insurance bearing the required endorsements or copies of policies bearing the required endorsements for the coverages required to be maintained by Subcontractors. If proof of coverage is supplied by certificates, the certificates must be endorsed to read that the insurance coverage certified by said form will not be suspended, voided, cancelled, or reduced in coverage or limits without thirty (30) days advance written notice to the District. The policies, copies of policies, and certificates of coverage must be of such form and content as to be acceptable to the District before the Contractor or Subcontractor, if any, will be permitted to enter the right-of-way. Submit all policies, copies of policies, and certificates of insurance by mail or facsimile to:

Northern Indiana Commuter Transportation District
Attn: Purchasing Manager
601 North Roeske Avenue
Michigan City, IN 46360
Facsimile Number: (219) 872-5841

Failure to carry or keep such insurance in force until all Goods are satisfactorily delivered or to reinstate same when entry on District property is required shall constitute a violation of this Contract and subject Contractor to immediate termination of the rights granted under this Contract.

The insurance must be in a form acceptable to the District within five (5) days from the date that the Contractor and the District sign a Contract concerning the Goods to be covered by insurance. Notice to Proceed will not be issued until all required insurance and bond documents have been received by the District.

29. **Bonding Requirements:**

- a. A performance bond is not required.
- b. A payment bond is not required.

30. **Liens:** The Contractor shall not create or suffer to exist any lien or encumbrance on the Goods or any other property owned or controlled by the District. Any Contract entered into by Contractor providing for Goods to be manufactured on or delivered to District property shall provide that no lien may be placed upon such property. The District may require waivers of lien prior to making payment under this Contract.

31. **Risk of Loss:** Contractor assumes the risk of loss or damage to the Goods occurring prior to delivery to Michigan City, Indiana, unless such other terms are agreed in writing by the parties. The Contractor shall immediately repair or replace the goods upon notification from the District.

32. **Termination for Convenience:** The District may, at its sole discretion, terminate this Agreement, in whole or in part, at any time by giving written notice to the Contractor. The Contractor shall be paid only its costs, including any agreed upon close-out costs, and a reasonable profit on goods provided up to the time of termination with respect to the manufacturing of the materials. The final determination concerning what constitutes proper close-out costs and a reasonable profit shall be determined by the District by utilizing FAR Part 49.113, in its sole discretion, which determination shall be final and conclusive upon the parties to this Agreement. The Contractor shall promptly submit its proposed termination claim to the District. If the Contractor has any property in its possession paid for by or belonging to the District, the Contractor will account for the same, and dispose of it in the manner the District directs. Termination settlements are to be found in FAR Part 52.

33. **Termination for Default:**

a. If Contractor does not perform in accordance with all terms of this Contract, or any part thereof, including in accordance with any schedule or any extension thereof or, in the absence of such a schedule in a timely manner; or if the Contractor shall become insolvent, bankrupt or make an assignment for the benefit of creditors, or if its property or affairs shall be put in the hands of a receiver; or if the Contractor fails to comply with any other provision of the Contract, or so fails to make progress as to endanger performance of the Contract in accordance with its terms, and in either of these two latter circumstances does not cure such failure within a period of ten (10) calendar days after receipt of notice from the District specifying such failure, the District shall have the following rights and remedies in addition to any others provided by law:

(1) If the Contractor refuses or fails to procure the goods or any separable part, with the diligence that will insure its delivery within the time specified in this Contract or any extension or fails to complete the goods within this time, or if the Contractor fails to comply with any other provisions of this Contract, the District may terminate this Contract for default. The District shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default.

In this event, the District may take over the procurement of the goods and complete it by contract. The Contractor and its sureties shall be liable for any damage to the District resulting from the Contractor's refusal or failure to complete the manufacturing of the Goods within specified time, whether or not the Contractor's right to proceed with the production of the Goods is terminated. These costs include any increased expenses incurred by the District over the contract amount in order to have the Work completed.

In the event of Default the Contractor will return all progress, partial, or advance payments to the District.

Additionally, the Contractor shall pay to the District any and all attorney's fees incurred by the District pertaining to Contractor's default, whether or not litigations ensues, and all costs of the District's paid staff incurred in order to remedy the default and/or complete the Work contracted for.

(2) The right to declare the Contractor in default and to terminate the Contract as to any part of the Work not yet accepted herein; in any event reserving to the District its rights to actual damages, liquidated or otherwise arising out of any such takeover or default.

b. If, after notice of termination of the Contract, it is determined for any reason that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if notice of termination had been issued pursuant to Section 32 (Termination For Convenience).

34. **Severability**: This Contract is executed by all parties under current interpretations of applicable federal, state or local statute, ordinance, law and regulations. Each and every separate division (paragraph, clause, conditions, covenant, agreement, section, or subsection) herein contained shall have independent and severable status from each other, so that if any separate division herein is determined to be unconstitutional, illegal, violative of trade commerce, in contravention of public policy, void, voidable, invalid or unenforceable for any reason, that separate division shall have no effect on the validity or enforceability of each and every other separate division herein contained, or any other combination thereof.

35. **Interpretation**: The headings contained in this Contract are inserted for convenience only and shall not constitute a part hereof. The language used in this Contract is language developed and chosen by all parties to express their mutual intent and no rule of strict construction shall be applied against any party.

36. **Notices:** Except as otherwise provided in this Contract, all requests, notices, demands, authorizations, directions, consents, waivers, services of process or other documents required by or associated with this Contract shall be written in English and shall be delivered to, or deposited postage prepaid in the registered or certified mails of the United States addressed to, or if delivered in person to the District at:

Northern Indiana Commuter Transportation District
Attention: President
33 East U.S. Highway 12
Chesterton, IN 46304-3514
Ph: (219) 926-5744/Fax: (219) 929-4438

For the Contractor:

Attention:

or to such person and at such other address as either party may at any time or from time to time designate for itself by notice in accordance herewith. Each such request, notice, demand, authorization, direction, consent, waiver or other document shall be deemed to be delivered to a party when received at its address set forth or designated as above provided.

37. **Disadvantaged Business Enterprise:** The DBE goal for this Contract is nine and 78/100 (9.78) percent of the Contract Price. The Contractor shall make good faith efforts to ensure that this goal is met or exceeded consistent with the level of certification reflected at Exhibit 2.C.

38. **Civil Rights Obligations:** The following requirements apply to the underlying Contract:

a. **Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, 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 FTA may issue.

b. Equal Employment Opportunity. The following equal employment opportunity requirements apply to the underlying Contract:

(1) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. 5332, 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 U.S.C. § 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 FTA may issue.

(2) Age - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 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 FTA may issue.

(3) Disabilities - In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

c. Disadvantaged Business Enterprise. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The requirements of 49 CFR Part 26 and the District's approved Disadvantaged Business Enterprise (DBE) program are incorporated in this Contract by reference. 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 District deems appropriate.

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

39. **Labor Provisions:**

a. **Overtime Requirements.** No Contractor or Subcontractor contracting for any part of the Goods which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such Goods to work in excess of forty (40) hours in such work week 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 (40) hours in such work week.

b. **Violations; Liability for Unpaid Wages; Liquidated Damages.** In the event of any violation of the requirements of 29 CFR § 5.5 (b) (1), the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under Contract for the District of Columbia or a territory, to such district or to such territory) 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 29 CFR § 5.5 (b) (1) in the sum of Ten Dollars (\$10.00) for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty (40) hours without payment of the overtime wages required by 29 CFR § 5.5 (b) (1).

c. **Withholding for Unpaid Wages and Liquidated Damages.** The FTA or the District 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 production of Goods 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 clauses set forth at 29 CFR § 5.5 (b) (2).

d. **Maintenance of Payroll Records.** 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 (3) 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 case 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. Additionally, the Contractor must provide any union agreement to substantiate the wages they are paying their employees and subcontractors.

This documentation shall include the one hundred (100) percent rate as well as any apprentice rates. 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.

e. Subcontracts. The Contractor or Subcontractor shall insert in all subcontracts the clauses set forth in this Section, paragraphs “a” through “e”, of this Contract 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, paragraphs “a” through “e”, of this Contract.

40. **Disputes:**

a. Except for the other rights and remedies reserved to the District elsewhere within this Contract, any dispute or question arising under this Contract, which is not disposed of, shall be decided by the Project Engineer or Contract Officer, who shall reduce his decision to writing and forward by certified mail, a copy thereof to the Contractor. The Contractor shall abide by the decision of the Project Engineer or Contract Officer.

b. Pending final disposition of a dispute hereunder, and thereafter, the Contractor shall carry on the production schedule and continue to maintain all progress schedules unless otherwise agreed to by the Project Engineer or Contract Officer and the Contractor in writing.

41. **Notice to the District of Labor Disputes:**

a. Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the District.

- b. The Contractor agrees to insert the substance of this sentence in any subcontract hereunder as to which a labor dispute may delay the timely performance of this Contract except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the Subcontractor shall immediately notify his next higher tier Subcontractor, or the prime Contractor, as the case may be, of all relevant information with respect to such dispute.

42. **Attorney's Fees / Indiana Law and Courts.** The following requirements apply to the underlying Agreement:

- a. **Attorney's Fees** - The Contractor shall pay to the District any and all attorney's fees incurred by the District pertaining to Contractor's default, whether or not litigation ensues, and whether or not the District has terminated this Contract due to Contractor's default, along with all costs of the District's paid staff incurred in order to remedy the default and/or to complete the Work, whether or not litigation ensues.

- b. **Indiana Law and Courts** - This Agreement is to be construed and enforced pursuant to the laws of the State of Indiana. The parties agree and the Contractor specifically acknowledges that the sole and exclusive venue for any lawsuit filed as a result of this Agreement shall be the Superior or Circuit Court of Porter County, Indiana.

43. **Limitations:** No suit, action or proceeding shall lie or be maintained by Contractor against the District upon any claim relating to, arising out of or based upon the Contract, unless such suit, action or proceeding shall be commenced within one (1) year after the date that the District tenders final payment under the Contract; or upon any claim relating to monies permitted or required to be retained for any period after final payment, unless commenced within six (6) months after such monies become due and payable under the terms of the Contract; or, if this Contract is terminated or declared abandoned by the District as herein provided, unless commenced within six (6) months after the date of such termination or declaration of abandonment.

44. **Patent, Copyright and Other Rights:**

- a. If, in accordance with this Contract, Contractor furnishes research or development services in connection with the manufacture or delivery of the Goods and if, in the course of such research or development, patentable subject matter is produced by Contractor, its officers, agents, employees, subcontractors or suppliers, then subject to the last sentence of this paragraph, the District shall have, without cost or expense to it, an irrevocable, non-exclusive, royalty-free license to make, have made, and use, either itself or themselves or by anyone on its or their behalf, such subject matter in connection with any activity now or hereafter engaged in or permitted by the District.

Promptly upon request by the District, Contractor shall furnish or obtain from the appropriate person a form of license satisfactory to the District, but as between Contractor and the District the license herein provided for shall nevertheless arise for the benefit of the District immediately upon the production of said subject matter and shall not await formal exemplification in a written license agreement as provided for above. In any case, however, if any patentable subject matter referred to in the first sentence of the paragraph is produced by a subcontractor or supplier, and, if, after the exercise of its best efforts to have such subcontractor or supplier furnish the form of license provided for in the second sentence of this paragraph, Contractor is unable to have such subcontractor or supplier do so, then the license referred to in the first sentence of this paragraph shall not be deemed to have arisen with respect to such subcontractor or supplier, and Contractor shall have no further obligation to procure the form of license referred to in the second sentence of this paragraph.

b. The right to use all patented goods, compositions of matter, manufacturers, apparatus, appliances, processes of manufacture or types of construction as part of the Goods shall be obtained by Contractor without separate or additional compensation, whether the same is patented before, during or after the manufacture and delivery of the Goods.

c. Subject to the provisions set forth below in this paragraph, Contractor shall indemnify the District, its directors, officers, agents and employees against and save them harmless from all loss and expense incurred in the defense, settlement or satisfaction of any claims in the nature of patent infringement arising out of or in connection with the use, in accordance with the preceding two paragraphs, of such patentable subject matter or patented goods, compositions of matter, manufacturers, apparatus, appliances, processes of manufacture or types of construction; provided, however, that nothing in this Contract shall be construed to require Contractor to procure a patent license for or indemnify the aforementioned parties against patent claims arising out of or in connection with any patentable subject matter or patented goods, compositions of matter, manufacturers, apparatus, appliances, processes or manufacture or types of construction, if the complete details of the patented or patentable aspects thereof are contained in the Contract Documents in their present form to be of such manufacture, and, if there is a patent infringement and if Contractor notifies the District of such probability within ten (10) days after such order, then if the District does not cancel such order, it shall not be entitled, with respect to such item, to the indemnity provided for in the first sentence of the paragraph and the District shall indemnify Contractor against and save it harmless from all loss and expense incurred by Contractor in the defense, settlement or satisfaction of any claims in the nature of patent infringement arising out of or in connection with the use of such item in the Goods provided that:

(1) The District is afforded the opportunity before any action is taken by Contractor to contest said claim in the manner and to the extent that the District may choose and to settle or satisfy said claim, and such attorney as the District may designate is authorized to act for the purpose of contesting, settling and satisfying said claim.

(2) Contractor gives immediate notice to the District of any such claim, cooperates with the District and its designated attorney in contesting said claim and furnishes promptly to the District and said attorney all information and documents necessary or convenient for contesting said claim, said information and documents to be preserved for six (6) years after the date of payment for the last unit of Goods delivered or longer if such a claim is pending or threatened at the end of such six (6) years. If the District elects to contest any such claim, it will bear the expense of such contest. If requested by the District and if notified promptly in writing of any claim as to which Contractor shall conduct all negotiations with respect to, and defend, such claim without expense to the District. If the District is enjoined from using the equipment or any portion thereof as to which Contractor is to indemnify the District against patent claims, the District may, at its option, and without thereby limiting any other right it may have hereunder at law or in equity, require Contractor to supply at its own expense, temporarily or permanently, facilities not subject to such injunction and not infringing any patent, and if Contractor fails to do so, Contractor shall, at its expense, remove all such facilities and refund the costs of the offending equipment to the District or take such steps as may be necessary to insure compliance by the District with such injunction, to the satisfaction of the District.

d. All drawings, parts, lists, data and other papers, to include electronic files, of any type whatsoever, whether in the form of writing, figures of delineations, which have been or may be received by from the Contractor, at any time either prior to or subsequent to the execution of this Contract and which are prepared in connection with the Contract and submitted to the District shall become the property of the District. Except to the extent that rights are reserved to others under existing valid patents and are not given to the District under this paragraph, the District shall have the right to use or permit the use of all such drawings, data, and other papers, and also any oral information of any nature whatsoever received by the District, and any ideas or methods represented by such papers and information, for any purposes and at any time without other compensation than that specifically provided herein, and no such papers or information shall be deemed to have been given in confidence and any statement or legend to the contrary on any of said drawings, data, or other papers shall be void and of no effect.

45. **Contractor Representations:** Contractor represents and warrants:

a. That it is financially solvent, and that it is authorized by the laws of the state of its incorporation, the State of Indiana and any and all locations where the Goods are to be produced.

b. That the Contractor represents that any subcontractors it uses shall be experienced in the production of the Goods they manufacture in order for the Contractor to perform pursuant to this Contract, financially solvent and authorized by the laws of the State of their incorporation, the State of Indiana and any and all locations where the Goods are to be produced, and that they have adequate facilities, sufficient technical expertise, and experienced labor to enable them to produce the Goods and to complete it within the time required.

c. That it is familiar with all general and special Federal, State and Municipal local laws, ordinances and regulations, if any, which may in any way affect the Goods or its performance, or those employed thereunder, and with the appropriate professional standards referred to in the Specifications. The Contractor shall indemnify the District from all fines or penalties assessed against the District arising solely out of Contractor's performance of the Contract.

d. That it has carefully examined the Contract, including all relevant exhibits, and that from its own investigation it has satisfied itself as to the nature of the Goods, the character of the equipment and other facilities needed to perform the obligations contained within the Contract and all other matters which may in any way affect the manufacture or delivery of the Goods.

e. That those who signed the bid or proposal submitted by it were fully authorized so to do, with the full intent to commit and bind it, should the bid or proposal become a Contract, by the acceptance of the District.

f. That to the best of its knowledge, no member, director, officer, agent or employee of the District is personally interested directly or indirectly in the Contract or the compensation to be paid thereunder; and that no representation, statement or promise, oral or in writing, of the District or its members, directors, officers, agents or employees has induced it to enter into the Contract, excepting only those contained in the Specifications.

g. That no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the District shall have the right to annul this Contract without liability or at its discretion, to deduct from the Contract Price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

h. That it has not offered or given gratuities (in the form of entertainment or otherwise) to any official or employee of the District with a view toward securing favorable treatment in the award, amendment or evaluation of the Contract.

i. The Contractor covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, which would conflict in any manner with the performance of services required to be performed under this Contract. The Contractor further covenants that, in the performance of this Contract, no person having any such interest shall be employed.

46. **Third Party Benefits**: Nothing expressed or implied in the Contract is intended or shall be construed to confer upon any person, firm or corporation, other than the parties thereto and their successors and assigns, any right, remedy, claim or benefit under or by reason of the Contract or of any term, covenant or condition hereof.

47. **Taxes, Duties, Etc.:** Contractor covenants and agrees to pay all Federal, State and Municipal taxes, assessments and charges arising out of or in connection with the manufacture or delivery of said Goods. Inasmuch as the District is exempt from payment of state and municipal taxes in the State of Indiana, Contractor shall not include or add to the price to be paid for any goods or services provided in relation to the Goods any possible sales, occupation, service or use taxes with respect to the goods or services provided hereunder or the transfer or delivery of any such goods or services to the District. In the event any claim is made against Contractor for payment of any such taxes, the District shall be promptly notified and afforded the opportunity, before payment of any such taxes, to contest said claim in the manner and to the extent it may choose and to settle or satisfy such claim. In the event Contractor shall be required to pay any such taxes, the District shall reimburse Contractor therefore, but Contractor shall assign to the District any rights with respect to refund thereof, and shall cooperate with the District in connection with any contest thereof, and shall furnish all information or documents necessary or convenient for contesting same.

48. **Audit, Inspection, and Retention of Records:**

a. The Contractor agrees to provide the District, the United States Department of Transportation, the Federal Transit Administration, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers, to include electronic files and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 CFR 633.17 to provide the FTA Administrator or his authorized representatives including any Project Management Oversight (PMO) Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

b. The 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 claim arising from the performance of this Contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

c. The Contractor agrees to permit the District's Secretary and the Comptroller General of the United States, or their authorized representatives, to inspect all Contract work, goods, payrolls, and other data, and to audit the books, records, and accounts of the Contractor and its sub-contractors pertaining to this Contract. The Contractor agrees to require each third party contractor whose Contract award is not based on competitive bidding procedures to permit the Secretary of Transportation, the District, and the Comptroller General of the United States, or their duly authorized representative, to inspect all work, goods, payrolls, and other data and records involving said Contract, and to audit the books, records, and accounts involving said Contract as it affects this Contract.

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

49. **Pre-Award and Post-Delivery Audit Requirements:** The Contractor agrees to comply with 49 U.S.C. §5323(1) and FTA's implementing regulation at 49 CFR Part 663 and to submit the following certifications:

a. 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.

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

50. **Counterparts:** This Contract may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

51. **Energy Conservation:** To the extent applicable to this Contract and the associated operations, the Contractor shall comply with mandatory standards and policies relating to energy efficiency that are contained in applicable federal and state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 et seq.

52. **Environmental Requirements:** The Contractor recognizes that many Federal and State statutes imposing environmental, resource conservation, and energy requirements may apply to this Contract. Accordingly, the Contractor agrees to adhere to, and impose on its Subcontractors, any such Federal requirements, as the Government may now or in the future promulgate. Listed below are requirements of particular concern to the District. The Contractor expressly understands that this list does not constitute the Contractor's entire obligation to meet Federal requirements.

a. **Environmental Protection.** To the extent applicable, the Contractor agrees to comply with the requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 et seq.; Section 14 of the Federal Transit Act, as amended, 49 U.S.C. app. §§ 1610; the Council on Environmental Quality regulations, 40 CFR Part 1500 et seq.; and the joint FHWA/FTA regulations, "Environmental Impact and related Procedures," at 23 CFR Part 771 and 49 CFR Part 622.

b. Air Pollution. The Contractor agrees to comply with the joint FHWA/FTA regulations, “Air Quality Conformity and Priority Procedures for Use in Federal-Aid Highway”, 49 CFR Part 623. The Contractor agrees to obtain satisfactory assurances that any facilities or equipment acquired, constructed, or improved as a part of this Contract are or will be designed and equipped to limit air pollution as provided in accordance with the following EPA regulations: “Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines,” 40 CFR Part 85; “Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures,” with applicable Federally-approved State Implementation Plan(s) (in particular, the Transportation Control Measures); and in accordance with applicable Federal regulations, directives and other standards.

c. Use of Public Lands. No publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance may be used for this Contract unless specific findings required by 49 U.S.C. § 303 are made by the U.S. DOT.

d. Historic Preservation. The Contractor agrees to assist the Government to comply with Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f, involving historic and archaeological preservation by:

(1) Consulting the State Historic Preservation Officer on the conduct of investigations, in accordance with Advisory Council on Historic Preservation regulations, “Protection of Historic and Cultural Properties,” 36 CFR Part 800, to identify properties and resources listed in or eligible for inclusion in the National Register of Historic Places that may be affected by this Contract, and notifying the Government (FTA) of the existence of any such properties; and

(2) Complying with all Federal requirements to avoid or mitigate adverse effects upon such properties.

e. Mitigation of Adverse Environmental Effects. Should the Contractor or Subcontractors cause adverse environmental effect in the performance of this Contract, the Contractor agrees to take all reasonable steps to minimize such effects pursuant to 49 U.S.C. § 1610, all other applicable statutes, and the procedures set forth in 23 CFR Part 771 and 49 CFR Part 622. The Contractor agrees to undertake all environmental mitigation measures that may be identified as commitments in applicable environmental documents (such as environmental assessments, environmental impact statements, memoranda of agreements, and statements required by 49 U.S.C. § 303) and with any conditions imposed by the Government as part of a finding of no significant impact or a record of decision; all such mitigation measures are incorporated in and made part of this Contract by reference. If some or all mitigation measures are deferred, as soon as the Government and the Contractor agree on those measures, those agreed-upon measures will be incorporated into this Contract. Such mitigation measures may not be modified or withdrawn without the express written approval of the Government or the District.

f. **Recovered Goods.** The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulator provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

g. The Contractor agrees to report any violations to the District and understands and agrees that the District will, in turn, report each violation as required to assure notification to FTA and the appropriate regional office. The Contractor also agrees to include these requirements in each subcontract exceeding One Hundred Thousand Dollars (\$100,000.00) financed in whole or in part with federal assistance provided by FTA.

53. **Cargo Preference:** The Contractor agrees, in those circumstances where equipment, goods, or commodities may be transported by ocean vessel in carrying out this Contract:

a. To utilize privately owned United States flag commercial vehicles to ship at least fifty (50) percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, goods, or commodities pursuant to this Contract to the extent such vessels are available at fair and reasonable rates for United States flag commercial carriers.

b. To furnish within twenty (20) 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 shipment originating outside of the United States, a legible copy of a rated "on-board" commercial bill of lading in English for each shipment of cargo described in paragraph "a" above to the District (through the prime Contractor in the case of Subcontractor bills of lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street SW, Washington, DC 20590, marked with appropriate identification of this Contract.

c. To insert the requirements of this Section in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, good, or commodities by ocean vessel.

54. **Employment Eligibility Verification.** The Consultant affirms it does not knowingly employ unauthorized aliens. The Consultant shall enroll in and verify the work eligibility status of all its newly hired employees through the E-Verify program as defined in I.C. 22-5-L7-3. The Consultant is not required to participate should the E-Verify program cease to exist. The Consultant shall not knowingly employ or contract with any unauthorized alien. The Consultant shall not retain an employee or contract with a person whom the Consultant learns is an unauthorized alien.

The Consultant shall require all of its sub-consultants, who perform work under this Contract to certify to the Consultant that the sub-consultant does not knowingly employ or contract with unauthorized aliens and that the sub-consultant has enrolled and is participating in the E-Verify program. However, the sub-consultant is not required to participate if the sub-consultant is self-employed and does not employ any employees. The Consultant agrees to maintain this certification requirement throughout the duration of the term of its contract with a sub-consultant.

55. **Certification Regarding Investment Activities in Iran.** Consultant certifies that it is not engaged in investment activities in Iran pursuant to I.C. 5-22-16.5, et seq., and shall provide at the time of execution of this Agreement the Certification Regarding Investment Activities In Iran by an authorized officer of the Consultant.

56. **Buy America:** Unless otherwise exempt by federal law, Contractor shall submit to the District, on the form provided, certification of compliance or non-compliance with the Buy America provisions. Contractor agrees to comply with the obligations set forth at 49 U.S.C. 5323(j) and 49 CFR Part 661, consistent with the type or goods procured by this Contract.

57. **Fly America:** To the extent that the contract involves the international transportation of goods, equipment, or personnel by air, the Contractor will use, to the extent that service is available, U.S. flag air carriers, consistent with the requirements set forth at 49 USC 40118 and 4 CFR Part 52.

58. **Software Compliance:** In addition to the warranties specified within this Contract, the Contractor warrants that any equipment, internal or external component, device, or software products supplied under this Contract that process any date-time data will continue to function accurately to process the date-time data. In the event of any breach of warranty, the Contractor shall restore the products to the same level of performance as stated herein, or repair or replace the products with conforming products so as to minimize interruption to the use of the Goods, time being of the essence, at Contractor's sole cost and expense.

59. **Prompt Payment:** The prime contractor agrees to pay each subcontractor (whether DBE or non-DBE) under this prime contract for satisfactory performance of its contract no later than 30 calendar days from its receipt of each payment from the District. The prime contractor agrees further to return retainage payments to each subcontractor within 30 calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from these time frames may occur only for good cause following written approval of the District of the prime contractor's written request for such a delay or postponement. The request for delay or postponement must state the reasons for the request in sufficient detail as to permit the District to make a determination. The decision to allow a delay or postponement shall rest solely and exclusively with the District.

Absent written approval from the District for a delay or postponement, and upon receipt by the District of written notification from the subcontractor that prompt payment requirements have not been met, the District may withhold reimbursement from future prime contractor invoices for amounts due to subcontractors for satisfactory work unless and until the prime contractor takes corrective action by paying its subcontractors any past due amounts promptly in accordance with this requirement and also assuring, in writing, that future payments will be so made. A prime contractor who does not take such corrective action when required to do so will not be permitted to bid on future projects involving subcontractors unless and until a written assurance of compliance with prompt payment provisions is provided to the District. The District reserves the right to determine that a prime contractor who has not met prompt payment provisions is not a responsible bidder for future contracts.

60. **Final Payment and Release:** The acceptance by Contractor or any person claiming under it of the final payment for the Goods, whether such payment be made pursuant to any judgment or order of any Court or otherwise, shall be and shall operate as a release to the District from all claim and liability for anything theretofore done or furnished for, or default by the District, its trustees, officers, agents or employees, relating to or affecting the Goods, except only the claim against the District for the remainder, if any there be, of the amounts kept or retained as provided in the Contract.

61. **Authority:** Each party warrants that it has all of the requisite authority to execute this Contract and to carry out all obligations under this Contract.

62. **Binding Nature of Contract:** The terms of this Contract shall be binding and effective upon all the parties to it. Unless and until terminated as provided above, this Contract shall also inure to the benefit of and be binding upon the parties' successors, lessees, heirs, executors, administrators, assigns, and legal or personal representatives.

63. **Effective Date:** This Contract and the obligations of the parties herein shall be effective as of this _____ day of _____ 2017.

WITNESS WHEREOF, the District and Contractor have caused this Contract to be executed on the day and year first above written.

By: _____

Date: _____

Attest:

NORTHERN INDIANA COMMUTER
TRANSPORTATION DISTRICT

By: _____

Michael Noland
President

Date: _____

Attest:

**TECHNICAL SPECIFICATIONS,
PLANS AND DRAWINGS**

Exhibit 1

OVERHAUL OF NICTD COMMUTER RAIL CAR HVAC SYSTEMS

PROJECT DESCRIPTION

Northern Indiana Commuter Transportation District (NICTD) is seeking a qualified contractor to overhaul seventy (70) sets of commuter rail car HVAC systems. All units are to be quoted as FOB Michigan City, IN for both inbound and outbound shipments. The system is comprised of an under-floor exterior mounted condenser and two internal overhead mounted evaporators. Upon receipt of the units by NICTD, they are expected to be fully functional, pending installation and charging.

Technical Specifications, Plans and Drawings

The following is the Technical Specification to be followed in order to refurbish and convert to R-407C, the HVAC system used in the NICTD passenger cars. Each car consists of an underfloor mounted condenser and two interior overhead mounted evaporators.

The illustrated parts catalog of the HVAC system is included to show assembly of the condensers and evaporators. Should any questions arise during the overhaul process, the appropriate NICTD representative shall be notified for clarification or instruction. A NICTD representative will inspect the first units refurbished prior to shipment for confirmation of adherence to specifications. The contractor will communicate status of rebuild so inspection can occur for initial units.

Although every attempt has been made to specify what is to be repaired or replaced, in general all valves should be replaced as well as all gaskets and seals. Motors are to be Baldor brand and of the same model and spec number or better; condenser motors are to be wash down grade. All hardware is to be torqued to OEM specs where listed or standard torques for the specific grade and diameter of the fastener if not specified. It is **imperative** that all fan blades be installed, aligned, balanced and set screws tightened to proper torque settings with the application of a thread locking compound.

The OEM paint specification is also included. However, in order to provide an environmentally friendly option, the use of a polyester based exterior grade powder coat of the same color, texture and gloss finish may be substituted for solvent-based paint. If powder coating is to be used, NICTD is to be notified of this fact and the test specifications for the cured powder coating material is to be forwarded for final approval as well as a sample coupon to illustrate color, texture and gloss finish.

Compressor/Condenser Unit

1. Disassemble unit; media blast frame if needed, screens, fans and guards. Repair or replace any damaged components. Repair or replace side stone guards and expanded metal screens as needed. Prime and paint above parts in accordance with the attached paint specification, as an option powder coating may be used.
2. The contractor will furnish the following to be installed on the unit:
 - a. New compressor complete with pre-set unloaders and compatible with R-407C (1 ea.)
 - b. Crankcase heater (1 ea.)
 - c. New receiver tank compatible with R-407C (1 ea.)
 - d. Condenser fan motor
 - e. Condenser fan blades
 - f. Condenser coil
3. Remove and discard condenser fan motors. Replacement motors shall be Baldor wash down rated brand and equivalent or better than that removed. Fan blades shall be installed, aligned and balanced as called out in the Maintenance Instructions in section 2.1.1-2 under Condenser Fans and section 6.1.3. In addition, use a thread locking material (such as Loctite 271) on setscrews.
4. If system and control box show excessive corrosion, replace with stainless steel enclosure of the same size and shape. Door gasket, pressure switches and wiring is to be replaced. Pressure switches are to be of the same manufacture and model as those installed. Pressure switches are to be set according to section 8.1.4.1 in the Maintenance manual. Wiring shall be transit grade Exane of the same voltage rating and gauge as originally installed. Valve cores, caps and retention chain shall be replaced.
5. Copper lines or hoses and the shut off valves in the control box to the compressor are to be replaced with Aeroquip brand hose #FC505-04 with GA24048-4-4 and FJ3149-0404S fittings (1 each per hose). The high-pressure side is to have 2.5 – 3 loops for service; the low-pressure side is to have 1 service loop. 90° fittings go on the control cabinet side as well as the compressor. Hoses to be neatly attached to the frame in a manner similar to the copper lines they replace. A material list is listed with the illustrated parts catalog.
6. All compressor and frame resilient mounts are to be replaced; cutoff valves are to be replaced with brass bodied equivalents.
7. Coils are to be pressure tested to 450 PSIG. Repair of any leaks are to be done by silver brazing, using materials that are certified as lead, cadmium and mercury free.

8. Vibration isolator on the discharge side will be shipped back with the condenser uninstalled. NICTD will install the vibration isolator once unit is returned to prevent damage during shipping.
9. Service valves are to leak tested at 225 PSIG. Replacement service valves are to be made of brass.
10. Remove all outlet piping from the desiccant dryer. Valve, moisture/liquid indicator (if present) and desiccant element are to be discarded; valve and desiccant element is to be replaced with new.
11. Inspect all piping for physical damage and or leaks, replace any defective or damaged piping and or fittings; any piping or fittings replaced must be of the same length and material as original. Check valve is to be rebuilt and leak tested. All anti-rattle isolators under clamps are to be replaced. Insulation on the suction line is to be replaced. Any additional piping revisions are to be completed as described in the photos.
12. Fully assembled compressor/condenser is to be leak tested to 450 PSIG on the discharge side and 225 PSIG on the suction side.
13. After leak testing, unit is to be evacuated to less than 200 microns of vacuum for a minimum of 24 hours. If unit is unable to hold this vacuum, leaks are to be found and repaired. Unit is to be shipped with a nominal charge of nitrogen to prevent contamination. A tag stating what the unit is charged, is to be attached in an obvious location. A startup filter is to be installed prior to shipment, with a service filter sent along with each unit.
14. All piping joints are to be made by silver brazing in a professional manner, all materials used in the brazing process are to be certified as lead, cadmium and mercury free. All piping must be Type K copper, ½ hard and cleaned for use in HVAC systems; all elbows are to be **long sweep elbows**.
15. Leak testing must be performed with a gauge of appropriate sensitivity; vacuum must be measured with a gauge of suitable accuracy measuring in microns. The standard manifold gauge is not acceptable.
16. All items not covered under this specification will be treated as work over and above quoted price and therefore must be approved by NICTD prior to commencement.
17. The vendor will furnish a complete part description with part numbers for components added to the condenser necessary for the conversion to R-407C.

Evaporator Blower Units

1. Disassemble unit and media blast frame, if needed. Blowers and housings are to be cleaned and repaired as needed. Prime and paint above parts in accordance with the attached paint specification as needed. If not already done so, powder coating may be used. Remove and discard blower motor, heater elements, thermostat, expansion valves, and solenoid valves. All coils, power assemblies and other operating components shall be replaced with OEM or equivalent replacements. Brass valve bodies may be reused if serviceable. Cages are to be cleaned and or replaced as needed. Clean strainer and replace site glass.
2. NICTD will furnish the following to be installed on the unit:
 - a. Heater elements (18 pcs.)
3. The following items are to be replaced with new:
 - a. Motor (Baldor equivalent)
 - b. Duct plenum
 - c. Rubber drain hoses
 - d. Heat protective material
 - e. All valves – with exact or approved equivalent, compatible with R-407C
 - f. Condensation insulation
 - g. All gaskets, compatible with R-407C and POE lubricant.
4. Clean evaporator coil to bare metal. If an acid wash is used, it must be neutralized and thoroughly rinsed off with clear water so as to remove all traces of acid or neutralizer. Straighten all deformed or bent fins as needed. Interior piping is to be cleaned to remove all traces of oil or other contaminants. Coils are to be pressure tested to 225 PSIG. Repair of any leaks are to be done by silver brazing, using materials that are certified as lead, cadmium and mercury free.
5. Blower wheels shall be installed, aligned and balanced as called out in the Maintenance Instructions in section 2.1.1-2 under Evaporator Blowers and section 15.1. In addition, use a thread locking material (such as Loctite 271) on setscrews. All resilient mounts are to be replaced. Dwyer pressure switch is to be replaced. Quantity and description of components used is attached.
6. Insulate piping using material that meets or exceeds all APTA/FRA specifications regarding flame, smoke and toxicity. Insulation shall conform to piping and valve bodies. Expansion valve detection bulbs shall be located on a cleaned section of piping and installed in accordance with OEM's instructions.
7. Replace all heater elements, thermostats and stand-offs. Replace wiring as shown in new configuration. Wiring shall be of same specification, voltage rating, and gauge as originally installed.

8. Assembled unit shall be leak tested to 225 PSIG at minimum.
9. After leak testing, unit is to be evacuated to less than 200 microns of vacuum for a minimum of 24 hours. If unit is unable to hold this vacuum, leaks are to be found and repaired. Unit is to be shipped with a nominal charge of nitrogen to prevent contamination. A tag stating what the unit is charged with is to be attached in an obvious location.
10. All piping joints are to be made by silver brazing in a professional manner, all materials used in the brazing process are to be certified as lead, cadmium and mercury free. All piping must be Type K copper, ½ hard and cleaned for use in HVAC systems; all elbows are to be **long sweep elbows**.
11. Leak testing must be performed with a gauge of appropriate sensitivity; vacuum must be measured with a gauge of suitable accuracy measuring in microns. The standard manifold gauge is not acceptable.
12. All items not covered under this specification will be treated as work over and above quoted price and therefore must be approved by NICTD prior to commencement.
13. The vendor will furnish a complete part description with part numbers for components added to the evaporator necessary for the conversion to R-407C.
14. All work performed on the condenser and evaporators by the contractor will hold a warranty for no less than one year from the date of NICTD receiving the refurbished condenser or evaporator.

TECHNICAL CLARIFICATIONS

1. R-407C uses Polyol ester lubricants (POE).
2. Compressor capacity will be comparable to R-22 in medium temperature applications.
3. The capacity of the existing R-22 thermal expansion valve (TEV) will be approximately the same when using R-407C.
4. Filter-driers must be changed at the time of conversion.
This is proper air conditioning, refrigeration practice.
5. R-407C exhibits higher pressures than R-22 at normal condensing temperatures. This may require adjusting the high pressure safety controls to operate as intended.

The following items are used to overhaul the Dwyer air pressure switch.

Tygon Tubing, 2 pcs. 12" long

Air flow pickup tubes 2 pcs.

Brass hose barb fittings, 3/16" 2 pcs.

Silicon coated Fiberglass wire sleeve 16" long, 2 pcs.

Exane wire 16 ga. 600 volt, 16" long, 4 pcs.

Ring terminals, #8, 8 pcs.

Terminal block, 2 station, 2 pcs.

Rubber insulated wire straps, 2 pcs.

Ty-raps

Cord grip, 1/2" straight, 2 pcs.

Cord grip, 3/4" 90°, 2 pcs.

Dwyer pressure switch, 2 pcs.

Mounting brackets for pressure switch, 2 pcs.

Material List for Aeroquip hose and fittings

16 feet FC505 refrigeration hose

2 ea. GA24048 straight female flare

2 ea. FJ3149 90° universal swivel

4 ea. 1F40104-04C 14mm clip for size 04 hose

4 ea. 1F40105-04C cage for size 04 hose

CERTIFICATES



ELIGIBLE BIDDER CERTIFICATION

The _____ ("Contractor") hereby certifies that IT IS NOT included on the U.S. Comptroller General's Consolidated List of Persons or firms debarred from Federal contracts for violations of various public contracts incorporating Labor Standards Provisions.

By: _____
Signature of Company Official, partner
or sole proprietor

Official's Title

Date

Subscribed and sworn to before me this _____ day of _____,
20____.

Notary Public

(SEAL)



CERTIFICATION OF LOWER-TIER PARTICIPANTS REGARDING DEBARMENT, SUSPENSION, AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION

The Lower-Tier Participant (potential sub-grantee or sub-recipient under the FTA project, potential third party contractor, or potential subcontractor under a major third party contract),

(Contractor/Sub-Contractor), certifies, by submission of this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(If the Lower-Tier Participant [potential sub-grantee or sub-recipient under the FTA project, potential third party contractor, or potential subcontractor under a major third party contract] is unable to certify to any of the statements in this certification, such participant shall attach an explanation to this bid or proposal.)

THE LOWER-TIER PARTICIPANT (POTENTIAL SUB-GRANTEE OR SUB-RECIPIENT UNDER AN FTA PROJECT, POTENTIAL THIRD PARTY CONTRACTOR, OR POTENTIAL SUBCONTRACTOR UNDER A MAJOR THIRD PARTY CONTRACT)

(Contractor/Sub-Contractor), CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

Signature of Company Official, partner, or sole proprietor

Date

Official's Title

Subscribed and sworn to before me this ____ day of _____, 20 ____ .

(SEAL)

Notary Public

NOTICE TO BIDDERS: This form must be completed by the bidder/proposer (contractor) and each subcontractor which the contractor intends to employ in the performance of the work associated with this contract.



DBE AFFIDAVIT – Non-DBE Prime Proposer/Bidder

This page must be completed by non-DBE prime proposer/bidder to confirm their understanding of the percentage of DBE participation.

The undersigned bidder/proposer hereby acknowledges that the goal established for DBE participation in this project through subcontracting or entering into a joint venture with Disadvantaged Business Enterprise(s) is ten and 56/100 (10.56) percent.

The undersigned acknowledges that conformance with said goal will be determined in conformance with applicable federal laws and regulations.

I do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing statements are true and correct, and that I am authorized, on behalf of _____ to make this affidavit.

(Name of Business Entity)

Date

Authorized Signature

Title

State of _____

County of _____

On this _____ day of _____, 20____, before me, the undersigned officer, personally appeared _____, known to me to be the person described in the foregoing Affidavit, and acknowledged that he (she) executed the same in the capacity therein stated and for the purposed therein contained.

In witness thereof, I hereunto set my hand and official seal.

My Commission Expires: _____

(SEAL)

(Notary Public)



DBE AFFIDAVIT – DBE Prime Proposer/Bidder

This page must be completed by a proposed DBE prime or general contractor.

I HEREBY DECLARE AND AFFIRM that I am the _____ (title) and duly authorized representative of _____ (name of corporation or joint venture) whose address is _____, _____ (phone number).

I hereby declare and affirm that I am a Disadvantaged Business Enterprise (DBE) as defined by the most current federal certification guidelines. I attach information and/or the certification to document this fact.

I also affirm that: I/my firm acknowledges that the goal established for DBE participation in this project through subcontracting or entering into a joint venture with Disadvantaged Business Enterprise(s) is ten and 56/100 (10.56) percent.

The undersigned acknowledges that conformance with said goal will be determined in conformance with applicable federal laws and regulations.

I do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing statements are true and correct, and that I am authorized, on behalf of _____ (name of corporation or joint venture), to make this affidavit.

Date

Authorized Signature

Title

State of _____

County of _____

On this _____ day of _____, 20____, before me, the undersigned officer, personally appeared _____, known to me to be the person described in the foregoing Affidavit, and acknowledged that he (she) executed the same in the capacity therein stated and for the purposed therein contained.

In witness thereof, I hereunto set my hand and official seal.

My Commission Expires: _____

(SEAL)

(Notary Public)



AFFIDAVIT OF PRIME CONTRACTOR

To the best of my knowledge, information and belief the facts and representations contained in the aforementioned DBE Utilization Plan re true and no material facts have been omitted. The undersigned will enter into formal agreements with all listed DBE firms listed in the DBE Utilization Plan and attached letters of intent for work as indicated and will enter into such agreements within five (5) business days after receipt of the contract executed by the Northern Indiana Commuter Transportation District (NICTD).

The _____(Prime Contractor) designates the following person as the Manager, Office of Contract Compliance:

(Name – Please Print or Type) (Phone Number)

I do solemnly declare and affirm under the penalties of perjury that the contents of this document and attachments are true and correct I am authorized on behalf of the above firm, to make this affidavit.

(Name of Prime Contractor – Print or Type)

(Name of Affidavit)

Date Authorized Signature

Title

State of _____

County of _____

On this _____ day of _____, 20 ____, before me, the undersigned officer, personally appeared _____, known to me to be the person described in the foregoing Affidavit, and acknowledged that he (she) executed the same in the capacity therein stated and for the purposed therein contained.

In witness thereof, I hereunto set my hand and official seal.

My Commission Expires: _____

(SEAL)

(Notary Public)



**LETTER OF INTENT FROM DBE TO PERFORM A
SUBCONTRACTORS, SUPPLIERS AND/OR CONSULTANT**

The undersigned will enter a formal written agreement for the above work with you as Prime Contractor, conditioned upon your execution of a contract with the NICTD, and will do so within five (5) working days of your receipt of a signed contract from the NICTD.

(Signature of Owner, President or Authorized Agent of DBE)

Name/Title (Print)

Date

Phone



DBE UNAVAILABILITY CERTIFICATE

I, _____ (title) of _____
_____ (prime or general bidder/proposer/contractor) certify that on
_____ (date), I contacted the following DBE contractor to obtain
a bid/proposal for items to be performed on NICTD's _____
_____ (name of project).

FORM OF BID SOUGHT:

<u>DBE</u>		(i.e., Unit Price MATERIAL &
<u>CONTRACTOR</u>	<u>WORK ITEMS SOUGHT</u>	<u>LABOR, LABOR ONLY ETC.)</u>

To the best of my knowledge and belief, said DBE contractor was unavailable for work on this project or unable to prepare a bid/proposal for the following reason(s):

Signature: _____ Title: _____ Date: _____

To: _____ (Prime/general bidder)

From: _____ (DBE Contractor)

My firm _____ was offered an opportunity to bid on

_____ (identified work) by

_____ (prime/general bidder) on _____ (date).

The above statement is a true and accurate account of why I did not submit a bid/proposal on this project.

(Signature of DBE Contractor)

(Date)



NONDISCRIMINATION CERTIFICATE

In connection with the execution of this Contract _____ (the Contractor) agrees not to discriminate against any employee or applicant for employment because of race, religion, color, sex, age, national origin, or physical, and/or mental handicap. The contractor will take affirmative action to ensure that applicants are employed, and employees are treated during their employment, without regard to their race, religion, color, sex, age, national origin, or physical, and/or mental handicap.

Such actions shall include, but are not limited to: recruitment, hiring, advertising, employment, upgrading, demotion, transfer, layoff, discipline, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. If the contractor is required to file an Affirmative Action (AA) program with any federal, state, or local agency, the contractor assures Northern Indiana Commuter Transportation District ("NICTD") that it is in full compliance with such filing requirements. The Contractor agrees to comply with all federal and state laws, regulations, and circulars relating to the aforementioned topics including but not limited to regulations promulgated by the State of Indiana Civil Rights Commission, the U.S. Equal Employment Opportunity Commission, and the Federal Transit Administration. All such laws, rules, regulations, and circulars are understood to be incorporated into this Contract by reference.

Date

Authorized Signature

Title

State of _____

County of _____

On this _____ day of _____, 20____, before me, the undersigned officer, personally appeared _____, known to me to be the person described in the foregoing Affidavit, and acknowledged that he (she) executed the same in the capacity therein stated and for the purposed therein contained.

In witness thereof, I hereunto set my hand and official seal.

My Commission Expires: _____

(SEAL)

(Notary Public)



RESTRICTIONS ON LOBBYING CERTIFICATE

The Bidder hereby certifies that:

1. No Federal appropriated funds have been paid, or will be paid, by or on behalf of the Bidder, to any person for influencing or attempting to influence an officer or employee of any 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.
2. If any funds other than Federal appropriated funds have been paid to any person for the influencing or attempting to influence an officer or employee of any 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 Bidder shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The Bidder shall require that the language of this certification be included in the contract documents to each and every subcontract at all tiers and that all subcontractors shall certify and disclose accordingly.
4. By signing this certification the Bidder acknowledges that it is making material representations of fact upon which reliance is placed when its bid is submitted.

Signature of Company Official, partner, or sole proprietor

Date

Official's Title

Subscribed and sworn to before me this ____ day of _____, 20 ____ .

(SEAL)

Notary Public



**DRUG-FREE WORKPLACE ACT CERTIFICATION
FOR A PUBLIC OR PRIVATE ENTITY**
(Revised June 1990)

1. _____ (the Contractor) certifies that it will provide a drug-free workplace by:
 - a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Applicant's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
 - b. Establishing an ongoing drug-free awareness program to inform employees about:
 1. The dangers of drug abuse in the workplace;
 2. The Contractor's policy of maintaining a drug-free workplace;
 3. Any available drug counseling, rehabilitation, and employee assistance programs; and,
 4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
 - c. Making it a requirement that each employee to be engaged in the performance of the cooperative agreement be given a copy of the statement required by paragraph a.;
 - d. Notifying the employee in the statement required by paragraph a. that, as a condition of employment under the grant or cooperative agreement, the employee will:
 1. Abide by the terms of the statement; and
 2. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;
 - e. Notifying NICTD in writing within ten (10) calendar days after receiving notice under subparagraph d. 2. from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every project officer or other designee on whose project activity the convicted employee was working unless NICTD has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected cooperative agreement.



**DRUG-FREE WORKPLACE ACT CERTIFICATION
FOR A PUBLIC OR PRIVATE ENTITY**
(Revised June 1990)

- f. Taking one of the following actions, within thirty (30) calendar days of receiving notice under subparagraph d. 2., with respect to any employee who is so convicted:
 - 1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by the Federal, state, or local health, law enforcement, or other appropriate agency;
 - g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs a., b., c., d., e., and f.
2. The Contractor's headquarters is located at the following address. The addresses of all workplaces maintained by the Contractor are provided on an accompanying list.

Name of Contractor:

Address:

City:

County:

State:

Zip Code:

(Signature of Authorized Official)

(Title of Authorized Official)

(Name of Contractor)

(Date)



BUY AMERICA CERTIFICATE

Affix signature in only ONE box below:

Certificate for Compliance with Section 165 (a)

The Bidder hereby certifies that it will comply with the requirements of Section 165 (a) of the Surface Transportation Assistance Act of 1982 and applicable regulations in 49 CFR, Part 661.

Date

Signature

Title

Certificate for Non-Conformance with Section 165 (a)

The Bidder hereby certifies it cannot comply with the requirements of Section 165 (a) of the Surface Transportation Assistance Act of 1982, but it may qualify for a waiver to the requirement pursuant to Section 165 (b) (2) or (b) (4) of the Surface Transportation Assistance Act and regulations in 49 CFR, Part 661.7.

Date

Signature

Title



CERTIFICATE OF QUALIFICATION

I, _____, as owner, partner or designated contracting representative for _____, hereinafter referred to as "Contractor", hereby certifies to all of the following conditions:

A. The Contractor has at least _____ (____) years experience in the business of _____ and has previously completed projects of similar size and scope. Provide listing of _____ projects where performed work is equivalent to work proposed: (use reverse side if necessary)

<u>Location</u>	<u>Industry or Railroad</u>	<u>Reference (Name and Phone)</u>
-----------------	---------------------------------	-----------------------------------

B. The Contractor is currently performing the following work: (use reverse side if necessary)

<u>Project Name and Description</u>	<u>Location</u>	<u>Owner</u>
-------------------------------------	-----------------	--------------

C. The Contractor has reviewed the Plans and Specifications and has the requisite skills, machinery and tools, and professional expertise to perform the work in a satisfactory and timely manner, noting in particular the proposed schedule as stated in the Instructions to Bidders.

D. The Contractor has discussed the insurance requirements, noting in particular the Railroad Protective Liability coverage, with its insurance provider and that the Contractor will be able to comply with the requirements within the time frame specified.

E. The Contractor has read and understands the provisions and requirements of the proposed agreement or contract and the general conditions, and is prepared to immediately enter into a contract for this work if found to be the lowest cost responsive and responsible bidder.

Date

Designated Contracting Official

Title



STATE OF INDIANA)
) SS:
 COUNTY OF PORTER)

AFFIDAVIT

The undersigned, being duly sworn upon his/her oath, does state as follows:

1. He/She has personal knowledge of the facts set forth in this Affidavit.
2. That the [name of business] _____ does not knowingly employ any unauthorized aliens, as such terms is defined by Indiana Code §22-5-1.7-9.
3. This Affidavit is made for the purpose of complying with the requirements of Indiana Code §22-5-1.7, *et seq.*

Further Affiant sayeth not.

 [name and title]

I affirm, under the penalties for perjury, that the foregoing representations are true to the best of my knowledge and belief.

 [name]



CERTIFICATION REGARDING INVESTMENT ACTIVITIES IN IRAN

The undersigned certifies under penalties of perjury, pursuant to Ind. Code §5-22-16.5, et seq. that the [name of business] _____ is not engaged in investment activities in Iran (as defined in Ind. Code §5-22-16.5-8). The undersigned further acknowledges that false certification may result in the consequences enumerated in Ind. Code §5-22-16.5-14.

By: _____

[insert name and address]

STATE OF INDIANA)
) SS:
COUNTY OF PORTER)

Before me, a Notary Public, in and for said County and State, this ____ day of _____, 2016, personally appeared _____, and acknowledged the execution of the foregoing instrument to be his/her free and voluntary act.

Notary Public

My Commission Expires:

BID, OFFER OR PROPOSAL FOR SALE OR LEASE OF MATERIALS

Date: _____

1. Governmental Unit: _____
2. County: _____
3. Bidder (Firm): _____
 Address: _____
 City/State: _____
4. Telephone Number: _____
5. Agent of Bidder (if applicable): _____

Pursuant to notices given, the undersigned offers bid(s) to _____ (Governmental Unit) in accordance with the following attachment(s) which specify the class or item number or description, quantity, unit price and total amount.

The contract will be awarded by classes or items, in accordance with specifications. Any changes or alterations in the items specified will render such bid void as to that class or item. Bidder promises that he has not offered nor received a less price than the price stated in his bid for the materials included in said bid. Bidder further agrees that he will not withdraw his bid from the office in which it is filed. A certified check or bond shall be filed with each bid if required, and liability for breach shall be enforceable upon the contract, the bond or certified check or both as the case may be.

Signature of Bidder or Agent

BID OFFER OR PROPOSAL

Attach separate sheet listing each item bid based on specifications published by governing body. Following is an example of the bid format:

Class or Item	Quantity	Unit	Description	Unit Price	Amount

NON-COLLUSION AFFIDAVIT

STATE OF INDIANA)
)
 _____ COUNTY) ss:

The undersigned bidder or agent, being duly sworn on oath, says that he has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by him, entered into any combination, collusion or agreement with any person relative to the price to be bid by anyone at such letting nor to prevent any person from bidding nor to induce anyone to refrain from bidding, and that this bid is made without reference to any other bid and without any agreement, understanding or combination with any other person in reference to such bidding.

He further says that no person or persons, firms, or corporation has, have or will receive directly or indirectly, any rebate, fee, gift, commission or thing of value on account of such sale.

Bidder (Firm)

Signature of Bidder or Agent

Subscribed and sworn to before me this _____ day of _____, 20__.

My commission Expires: _____

Notary Public

County of Residence: _____

ACCEPTANCE

There now being sufficient unobligated appropriated funds available, the contracting authority of _____ (Governmental Unit) hereby accepts the terms of the attached bid for the price quoted for the materials stipulated in said bid.

Contracting Authority Members

Date: _____

NICTD BID SUMMARY SHEET

