

**REQUIRED CONTRACT PROVISIONS
FOR
FEDERAL-AID CONTRACTS
(Revised 8/02/10)**

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

1. CARGO PREFERENCE REQUIREMENTS-46 USC §1241, 46 CFR Part 381

[Applicable to all Federal-aid contracts involving equipment, materials or commodities which may be transported by ocean vessel]

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

2. DEBARMENT, SUSPENSION, INELIGIBILITY & VOLUNTARY EXCLUSION-49 CFR Part 29; Executive Order 12549 [Applicable to all Federal-aid contracts which exceed \$25,000]

Instructions for Certification-Lower Tier Covered Transactions:

1. By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, ARRC may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to ARRC if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact ARRC for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by ARRC.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, ARRC may pursue available remedies including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transaction

- (1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 CFR §29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall

attach an explanation to this proposal.

3.. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS-40 USC 3141 et seq.; 18 USC 874; 29 CFR Part 5; 49 CFR 18.36(i)(5)
[Applicable to all Federal-aid construction contracts which exceed \$2,000]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

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

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

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

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal grantor agency or the Department of Labor, and shall permit such representatives to

interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

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

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

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

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

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

4. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT-40 USC 3701 et seq.; 29 CFR Part 5; 29 CFR §1926 [Applicable to all Federal-aid construction in excess of \$100,000 and all nonconstruction contracts which employ mechanics and laborers on a public work in excess of \$100,000]

A. Overtime (Applicable to construction and nonconstruction contracts)

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

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

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

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

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

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

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

5. CLEAN WATER REQUIREMENTS-33 USC 1251 [Applicable to all Federal-aid contracts which exceed \$100,000]

Clean Water- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. The Contractor agrees to report each violation to ARRC and understands and agrees that ARRC will, in turn, report each violation as required to assure notification to the Federal grantor agency and the appropriate EPA Regional Office. (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal funds.

6. CLEAN AIR REQUIREMENTS-42 USC 7401 et seq., 40 CFR 15.61 & 49 CFR Part 18 [Applicable to all Federal-aid contracts which exceed \$100,000]

Clean Air- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC 7401 et seq. The Contractor agrees to report each violation to ARRC and understands and agrees that ARRC will, in turn, report each violation as required to assure notification to the Federal grantor agency and the appropriate EPA Regional Office. (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal funds.

7. ACCESS TO RECORDS AND REPORTS-49 CFR 18.36 [Applicable to all Federal-aid contracts]

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

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

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

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

8. FEDERAL CHANGES-49 CFR Part 18 [Applicable to all Federal-aid contracts]

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

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

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

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

10. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS-31 USC 3801 et seq.; 49 CFR Part 31; 18 USC 1001 [Applicable to all Federal-aid contracts]

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

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

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

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

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

12. ENERGY CONSERVATION REQUIREMENTS-42 USC 6321 et seq. & 49 CFR Part 18 [Applicable to all Federal-aid contracts]

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

13. CIVIL RIGHTS REQUIREMENTS-29 USC §623, 42 USC §2000, 42 USC §6102, 42 USC §12112, 42 USC §12132, 29 CFR Part 1630, & 41 CFR Parts 60 et seq. [Applicable to all Federal-aid contracts]

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

1. Nondiscrimination-In accordance with Title VI of the Civil Rights Act, as amended, 42 USC §2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 USC §6102, and section 202 of the Americans with Disabilities Act of 1990, 42 USC §12132, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin,

sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements the Federal grantor agency may issue.

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

(a) Race, Color, Creed, National Origin, Sex-In accordance with Title VII of the Civil Rights Act, as amended, and 42 USC §2000e, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC §2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements the Federal grantor agency may issue.

(b) Age-In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, and 29 USC § 623, 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 the Federal grantor agency may issue.

(c) Disabilities-In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 USC §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 the Federal grantor agency may issue.

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

14. BREACHES AND DISPUTE RESOLUTION-49 CFR Part 18 [Applicable to all Federal-aid contracts in excess of \$100,000]

Disputes-Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in accordance with ARRC's Procurement Rules.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17. FLY AMERICA REQUIREMENT-49 USC §40118; 41 CFR § 301-3.61(b) & 301-10.131 et seq.

[Applicable to all Federal-aid contracts which may involve the international air transportation of equipment, materials, commodities, products or personnel]

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

18. RECYCLED PRODUCTS-42 USC §6962; 40 CFR PART 247

[Applicable to all Federal-aid contracts for items designated by the EPA, for the purchase of \$10,000 or more of one of these items during the fiscal year]

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 USC 6962), including but not limited to the regulatory 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. The contractor agrees to include this requirement in all subcontracts issued pursuant to this contract when the subcontract may involve the purchase of said items.

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

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

20. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM [Applicable to all FTA and FHWA funded contracts]

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

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

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

21. FHWA BUY AMERICA REQUIREMENTS-23 CFR §635.410
[Applicable only to FHWA funded construction contracts in excess of \$100,000]

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

Certificate of Compliance with 23 CFR §635.410

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

Date: _____
Signature: _____
Company Name: _____
Title: _____

22. FTA BUY AMERICA REQUIREMENTS-49 USC §5323(j); 49 CFR Part 661 [Applicable only to FTA funded construction contracts and contracts for the purchase of goods or rolling stock in excess of \$100,000]

Buy America - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

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

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

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

Date _____
Signature _____
Company Name _____
Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____
Signature _____
Company Name _____
Title _____

Certification requirement for procurement of buses, other rolling stock and associated equipment:

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date _____
Signature _____
Company Name _____
Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.

Date _____
Signature _____
Company Name _____
Title _____

23. FRA BUY AMERICA REQUIREMENTS-SUPPLIES-41 USC §§10a-d; 48 CFR Part 25 [Applicable only to FRA funded contracts for the purchase of goods, supplies or equipment in excess of \$100,000]

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

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

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

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

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

(1) For use outside the United States;

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

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

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

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

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

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

Date: _____

Signature: _____

Company Name: _____

Title: _____

24. FRA BUY AMERICA REQUIREMENT-CONSTRUCTION-41 USC §10a-d; 48 CFR Part 25 [Applicable only to FRA funded construction contracts in excess of \$100,000]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON

Construction material description	Unit of Measure	Quantity	Price (Dollars) ^{1/}
Item 1: Foreign construction material Domestic construction material			
Item 2: Foreign construction material Domestic construction material			

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

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

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

Certificate of Compliance with 41 USC § 101a-d—Construction

The bidder or offeror hereby certifies that the construction materials it proposes to provide hereunder comply with the requirements of 49 USC §§101a-d and the applicable regulations in 48 CFR Part 25.

Date: _____

Signature: _____

Company Name: _____

Title: _____

25. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING-31 USC §1352, 49 CFR Parts 19, 20 [Applicable to all Federal-aid contracts and to all related subcontracts which exceed \$100,000]

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

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

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

Signature of Contractor's Authorized Official: _____

Name and Title of Contractor's Authorized Official: _____

Date: _____

26. FTA PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS - 49 U.S.C. 5323 & 49 CFR Part 663 [Applicable only to FTA funded contracts for the purchase of rolling stock in excess of \$100,000]

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

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

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

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

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

Certificate of Compliance with 49 CFR 26.49

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

Date _____

Signature _____

Company Name _____

Title _____