



ALASKA RAILROAD CORPORATION
327 W. Ship Creek Ave.
Anchorage, AK 99501
Phone 907-265-4467
Fax 907-265-2439
HOPem@AKRR.COM

June 21, 2024

REQUEST FOR PROPOSAL 24-48-212232

ARRC TALKEETNA RIVER BRIDGE 227.1 REHABILITATION, CONSTRUCTION ADMINISTRATION SERVICES

Response Requested,

This form must be completed and returned to ensure receipt of future addenda or additional information. Email this form to: Hopem@akrr.com. Addenda will be emailed to the contact listed below; however, it is the responsibility of the offeror to make sure they have received all addenda, and have acknowledged all addenda on their Proposal Bid Form.

Firms that have not returned this cover sheet will not be informed of addenda and will only be alerted to addenda by checking with the ARRC procurement officer or by checking ARRC's internet site: www.alaskarailroad.com. Offerors must acknowledge the receipt of all issued addendum on their Proposal Bid Form.

Company _____

Address _____

Contact _____

Phone _____

Fax _____

Email _____

Website: www.alaskarailroad.com



Alaska Railroad Corporation
327 W. Ship Creek Avenue, Anchorage, AK 99501
P.O. Box 107500, Anchorage, AK 99510-7500
Telephone 907.265.4467 Facsimile 907.265.2439

June 21, 2024

REQUEST FOR PROPOSALS

The Alaska Railroad Corporation (ARRC) is soliciting proposals from interested offerors for the following:

24-48-212232

ARRC TALKEETNA RIVER BRIDGE 227.1 REHABILITATION, CONSTRUCTION ADMINISTRATION SERVICES

IMPORTANT

Proposals will be received until **3:00 PM LOCAL TIME on July 8, 2024 via Dropbox.**

One electronic copy of your firm's Proposal must be submitted using Dropbox. Proposals shall be submitted to the Dropbox link

<https://www.dropbox.com/request/ZYljQXBwx6stXeckofPZ> by proposal due date/time.

It is the offeror's responsibility to verify with the Contract Administrator that their proposal was received timely. If your firm has restrictions on Dropbox submittals, you must contact ARRC Contract Administrator at least seven days prior to the proposal due date to discuss alternatives.

File naming convention shall be: Firm Name-RFP#-RFPName

The original copy of your proposal will need to be mailed to the address provided below by the proposal due date. The Dropbox submittal date/time will be used for the official receipt. Your proposal package (qualifications and proposals) must be complete.

Alaska Railroad Corporation
Attn. Michele Hope, 2nd Floor
327 W. Ship Creek Avenue
Anchorage, Alaska 99501

Proposals received by facsimile transmission will not be considered for award. Proposals shall be submitted on the forms furnished herein. Amendments or withdrawals must be received by ARRC's Contracts Section via Dropbox prior to the date and time listed above.

Pre-Bid Conference: A pre-bid conference will be held on June 26, 2024 at 10:00 AM local time you may attend in person at 327 W Ship Creek Avenue, in the IT Conference Room, or via WebEx. You may attend the pre-bid conference via Webex by pasting the following link into your web browser.

<https://akrr.webex.com/akrr/j.php?MTID=md86c6571ab1741362b35a7d5414af05f>

This is not a mandatory meeting, although interested firms are encouraged to participate. A bidder's failure to attend the pre-bid conference will in no way relieve the bidder of the responsibility of performing the work in strict compliance with the true intent and meaning of the terms, conditions and specifications of this ITB.

FUNDING: The project is funded by Federal Transit Administration (FTA) 2021 5337 funds.

IMPORTANT NOTES:

1. HDR is the designer of record and is not eligible to propose on these construction administration services. The eligibility for subcontractors to provide construction administration services for this project will be subject to approval by ARRC if the subcontractor had involvement in the design phase.
2. All Contractors and subcontractors working track-side on ARRC projects will be required to comply with FRA Title 49 Part 270 ARRC System Safety Program. Workers must attend the ARRC safety training provided by the ARRC Project Manager prior to on-site work.

The Contractor's CPM Schedule for the construction project is available to assist Offerors in preparing their proposals. (Attachment 1)

The ARRC may award a contract resulting from this solicitation to the responsible offeror whose offer conforming to this solicitation will be most advantageous to the ARRC.

ARRC may reject any or all offers if such action is in the best interest of ARRC, and waives informalities and minor irregularities in offers received. ARRC may award a contract on the basis of initial offers without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint. Any contract resulting from this solicitation shall incorporate ARRC's Standard Terms and Conditions contained in this solicitation package.

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

Please direct all responses and/or questions concerning this Request for Proposals to Michele Hope, Alaska Railroad Corporation, Supply Management, 327 Ship Creek Avenue, Anchorage, AK 99501, telephone number (907) 265-4467, or hopenm@akrr.com.

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1. Construction Contractor's CP Schedule for the Construction Project

SECTION A

STATEMENT OF SERVICES

1. Introduction and Background

Introduction and Background

The Alaska Railroad Corporation (ARRC) proposes to rehab the existing 2 span bridge made up of 2, 200-foot Thru Truss and replace the current 400-foot walkway with a new walkway. Bridge mile post 227.1 over the Talkeetna River.

This federally funded project will rehab an existing Thru Truss bridge and replace the walkway which has reaching the end of its useful life span to maintain the safety and reliability of ARRC's rail operations

1.1 Project Description

The construction project was awarded on 3-1-2024 to Martinus Bottom line the anticipated completion date for Construction is May 1st 2025. The contract completion date for this agreement is June 30th 2025.

The intent is to negotiate and award a professional services contract for Construction Administrations Services on the Talkeetna Bridge 227.1 project.

Contractors may view all of the as advertised documents, including plans and specifications, of the ITB#23-78-211574 Talkeetna River Bridge 227.1 Rehabilitation project via the following link:

<https://www.alaskarailroad.com/corporate/procurement/solicitations>. It is located in the archived 2024 projects.

2. Professional Services Agreement Task Groups

The contract will be setup in three tasks as described below:

Task 1 Preliminary Duties. Activities prior to on-site construction activities.

Task includes Project familiarization; project records/files setup; initial communications with Construction Contractor, stakeholder user groups, Maintenance & Operations; preliminary meetings with ARRC, preconstruction/post-award conference, submittal review/approval, processing of design clarifications. This task includes the cost of office supplies for project office setup. The method of payment will be Fixed Price (FP).

Task 2 On-site Construction Administration. This task encompasses all duties required to administer the on-site work of the contract, from 2 weeks prior to On-site Construction (field office setup), for the duration of the Construction Contractor's on-site work schedule (through Project Completion). Project Completion will be upon completion of the final construction inspection and punch list items and all work is found to be satisfactorily complete. The method of payment will be Fixed Price (FP).

Task 3 Project Closeout. Submit all project records, including "As-Built" drawings, and final closeout package in ARRC's standard format to the Project Manager after project completion. Submitted records should be complete and accurate.

Make corrections and resubmit the records and a final estimate for the project at the appropriate time. All records shall be turned in to ARRC for retainage by ARRC. The method of payment will be Fixed Price (FP).

Contract Completion Date. The contract completion date for this agreement is June 30, 2025. It is anticipated that all final records will be completed and accepted before this date.

3.0 SPECIAL REQUIREMENTS

3.1 The Contractor's required principal staff, by name and title, are identified as:

_____ Contract Manager

_____ Construction Manager (Engineer II/III)

3.1.1 Coordination: A Contract Manager and/or a Construction Manager are envisioned to coordinate the needs of the project as directed by the ARRC Project Manager. Requirements are for one (1) dedicated Construction Manager.

3.2 Contractor's staffing must have the capability to match the Construction Contractor's schedule. Night shifts may be a possibility. Some inspectors may not be needed for the whole life of this Project. Flexibility of inspectors, and the ability to do more than one type of inspection is very desirable.

3.3 The office is provided by the Construction Contractor in accordance with the construction contract provisions.

3.4 Wages and travel time will not be compensated when off the project.

4.0 GENERAL INSPECTION DUTIES

4.1 General: Provide to the satisfaction of ARRC, construction administration, and inspection services. All items of work shall be subjected to management and inspection procedures in accordance with:

- Construction Contract Plans, Specifications, and Special Provisions, included permits and agreements.
- All manuals, methods and procedures cited in the Contract.
- All laws and regulations that apply to the work and the workmen, including the ARRC Procurement Code.
- ARRC's construction manuals and instructional memoranda.
- All other standards as may be required by the construction contract and applicable regulatory agencies.

4.2 The Contractor shall: become familiar with the contract and plans, specifications and the special provisions; monitor the Construction Contractor's activities and perform all administrative duties in accordance with ARRC's construction manual, instructional memos, the construction contract and standard procedures; measure quantities of all

construction pay items and force account work; perform tests and inspections of materials and workmanship; become familiar with permits, coordinate with

Deficient work: Immediately notify the Construction Contractor in writing of work not in compliance with the construction contract. This is not limited to the physical work but also includes the traffic control, safety practices, "Buy American" provisions, and other administrative requirements. The Contractor shall immediately notify the ARRC Project Manager, prior to sending the letter to the Construction Contractor, detailing the particular requirement, work or material that fails to conform to the Construction Contract, plans or specifications.

5. DUTIES and RESPONSIBILITIES of PERSONNEL

5.1 All times employ sufficient knowledgeable, skilled and experienced personnel and adequate equipment for prosecuting the work to full completion in the manner and time required by this Agreement. All staff members shall be familiar with the construction contract and with Federal-aid documentation procedures as outlined in ARRC's *Construction Manual*, and any *Instructional Memoranda*.

5.2 Communication, representation and resolution of all issues with Subcontractors will be through the Contractor.

5.3 The Contractor's staff time shall be commensurate with the Construction Contractor's current operations. The Construction Manager will be on-site every day that the Construction Contractor is working, and be available at other times via cellular telephone.

5.4 Contractor personnel shall meet the minimum requirements of the for the equivalent state position and must be approved by the ARRC prior to assignment to the Project. For changes during the Project submit new résumés to the ARRC Project Manager for review and acceptance.

5.5 Contractor's personnel shall have valid drivers' licenses appropriate for the vehicles being operated. These will be verified and kept current for the life of this contract.

6. MANAGEMENT REPORTING

6.1 Using the RAKEN management program, keep the ARRC Project Manager informed on a continuous basis of project status and of relevant changes. Report by phone or e-mail daily. Submit digital photographs by e-mail. The Contractor will be given emergency contact numbers.

6.2 Report general work progress, ongoing work activities, and activities planned for the immediate future, including actual or anticipated delays or extension of work elements, and deficiencies or changes in the work or schedule.

6.3 Report any activities that have a potential to generate changes, claims, or public controversy.

6.4 Report any anticipated activities, such as meetings, inspections, visitors, or anything of special interest, requiring the ARRC Project Manager's presence, authorization, or input.

6.5 If the project requires public information dissemination, including arranging public information meetings, it will be the responsibility of the owner to provide full coordination of this work between the AKRRC and the public.

6.6 Treatment of the public with disrespect or in an adverse manner shall be grounds for immediate removal of a Contractor employee from the Project.

7. PROJECT RECORDS

7.1 Photograph and video the project prior to any construction work starting and at various phases of construction. Keep and provide other data that may be required for proper completion of records for the construction contract. Photographs of the Project shall be taken and labeled with dates in the RAKEN management program as part of the permanent record of the work. They shall include before, during and post-construction perspectives, with particular attention to access and approaches. Detailed videos of this Project shall be taken before the start of construction, during construction, and after completion of the construction.

7.2 Using the RAKEN management program, prepare and maintain all required books, files, records, reports, and calculations in accordance with procedures established by ARRC. Such records are to include, but not be limited to: construction inspection, measurement and acceptance information, job site files of correspondence, reports of job conferences, photographs, videos, test reports, shop drawings, purchase orders, materials deliveries, and other submissions, reproductions or original construction contract documents.

7.3 Maintain a daily job diary/project journal and individual inspector's daily reports in accordance with the ARRC's construction manuals and instructional memoranda. They should include descriptions of work progress, specific problems encountered, corrective actions taken, construction equipment, material deliveries, weather conditions, material shortages, tests, labor disputes, general observations, and all other information pertinent to the execution of the construction contract. When required for pay items or as related to any requested or anticipated claim, maintain force account records of construction activities.

8. SAFETY

8.1 Monitor the Construction Contractor's operations that affect the safety of the workers, the public, and the Contractor's and ARRC's employees. This includes all industry standards for such items as confined space entry, trenching, lifting, elevated and suspended loads, work zone spacing and separation, lighting, traffic maintenance and vehicle separation, suspended inspection operations.

8.2 During daily project safety briefing, assure Construction Contractor's workers have attended the required FRA Title 49 Part 270 ARRC System Safety Program training. If Construction Contractor's workers have not attended the training, Construction Manager shall provide the training. Workers must attend the ARRC safety training prior to on-site work.

8.3 If you observe or become aware of operations that are believed to be unsafe for workers, the public, structures, or other works, immediately notify the Construction Contractor. Also call to inform the ARRC Project Manager.

If the Construction Contractor does not voluntarily take acceptable corrective action, discuss the situation with the ARRC Project Manager. Call for assistance from the State Department of Labor's OSHA Program. The Construction Manager has the authority and responsibility to suspend any operation believed to be unsafe until such time as appropriate safety measures can be employed. The authority to suspend the unsafe operation should be used with great care, and discussed with the ARRC Project Manager, if possible, prior to such a directive. The ARRC Project Manager shall be notified immediately of any shutdown directive. Only the unsafe operation shall be suspended, not all work on the Project.

8.4 Attend the Construction Contractor's safety meeting at least once each month, or more often if requested by the Construction Contractor or the ARRC Project Manager.

8.5 Any Contractor's employee who fails to follow the safety rules established for the Project shall be replaced. Refusal to wear seat belts when operating any vehicle on this Project, failure to wear hard hats, safety vests, and other safety equipment, and similar violations are grounds for removal of an employee from the Project.

SECTION B

PROPOSAL INFORMATION, CONDITIONS & INSTRUCTIONS

1. Pre-Submission Proposal Inquires

Offerors shall promptly notify ARRC of any ambiguity, inconsistency, conflict, or error which they may discover upon examination of the solicitation documents. Verbal inquiries regarding this RFP are not permitted. All inquiries must be made in writing and received at ARRC's offices 10 days prior to submission deadline. Written inquiries must be submitted to Michele Hope hopem@akrr.com.

ARRC will respond to all or part of the written inquiries received through the issuance of a written Addendum to the RFP, if in the opinion of ARRC, such information is deemed necessary to submit proposals or if the lack of it would be prejudicial to other prospective Offerors. Oral and all other non-written responses, interpretations and clarifications shall not be legally effective or binding. Any Offeror who attempts to use or uses any means or method other than those set forth above to communicate with ARRC or any director, officer, employee or agent thereof, regarding this RFP shall be subject to disqualification.

2. Proposal Submission Deadline

Proposals will be received until **3:00 PM LOCAL TIME on July 8, 2024 via Dropbox.**

One electronic copy of your firms Proposal must be submitted using Dropbox. Proposals shall be submitted to the Dropbox link <https://www.dropbox.com/request/ZYljQXBwx6stXeckofPZ> by proposal due date/time. It is the Offeror's responsibility to verify with the Contract Administrator that their proposal was received timely. If your firm has restrictions on Dropbox submittals you must contact ARRC Contract Administrator at least 7 days prior to proposal due date to discuss alternatives.

File naming convention shall be: Firm Name-RFP#-RFPName

The original copy of your proposal will need to be mailed to the address provided below by the proposal due date. The Dropbox submittal date/time will be used for the official receipt. Your proposal package (qualifications and proposals) must be complete.

Alaska Railroad Corporation
Attn. Michele Hope, 2nd Floor
327 W. Ship Creek Avenue
Anchorage, Alaska 99501

Proposals received by facsimile transmission will not be considered for award. Proposals shall be submitted on the forms furnished herein. Amendments or withdrawals must be received by ARRC's Contracts Section via Dropbox prior to the date and time listed above.

Proposals received after the time and date set forth above shall be rejected. All proposals submitted in response to this solicitation must be signed by an individual with the legal authority to submit the offer on behalf of the company.

3. Proposal Open and Subject to Acceptance

All proposals shall remain open and subject to acceptance by ARRC for ninety (90) days after the deadline for proposal submission.

4. Proposal Opening

Proposals will be opened privately at ARRC's convenience on or after the proposal due date.

5. Reserved Rights

In addition to other rights in this RFP, ARRC reserves, holds and may exercise at its sole discretion, the following rights and options:

- (a) To supplement, amend, or otherwise modify or cancel this RFP with or without substitution of another RFP.
- (b) To issue additional or subsequent solicitations for proposals.
- (c) To conduct investigations of the Offerors and their proposals.
- (d) To clarify the information provided pursuant to this RFP.
- (e) To request additional evidence or documentation to support the information included in any proposal.
- (f) To reject any and all proposals, or parts thereof, and/or to waive any informality or informalities in any of the proposals or the proposal process for the RFP, if such rejection or waiver is deemed in the best interest of ARRC.
- (g) To award a contract or contracts resulting from this solicitation to the responsible Offeror whose proposal conforming to this solicitation will be most advantageous to ARRC.
- (h) To negotiate any rate/fee offered by a Offeror. ARRC shall have the sole right to make the final rate/fee offer during contract negotiations. If the selected Offeror does not accept ARRC's final offer, ARRC may, in its sole discretion, reject the proposal and start negotiations with the next highest ranked Offeror.
- (i) If an award is made and, prior to entering into a contract, subsequent information indicates that such award was not in the best interest of ARRC, ARRC may rescind the award without prior notice to Offerors and either award to another Offeror or reject all proposals or cancel the RFP.
- (k) To terminate the contractor at any point in the evaluation process or after award if the approved personnel become unavailable, are switched off project by the firm, or the qualifications are generally found to be inadequate. All personnel reassignments to and from the project will be approved by ARRC.

6. Proposal Costs

Each Offeror shall be solely responsible for all costs and expenses associated with the preparation and/or submission of its proposal, and ARRC shall have no responsibility or liability whatsoever for any such costs and expenses. Neither ARRC nor any of its directors, officers, employees or authorized agents shall be liable for any claims or damages resulting from the solicitation or collection of proposals. By submitting a proposal, Offeror expressly waives (i) any claim(s) for such costs and expenses, and (ii) any other related claims or damages.

7. Taxes

Pursuant to AS 42.40.910, ARRC is exempt from all forms of state or local sales, property and other taxes. Accordingly, any Offeror who submits a proposal shall not include any such tax in any of its proposal prices or in any calculation thereof.

8. Proposal Format

Interested firms shall submit one electronic (soft copy) proposal, containing a statement of qualifications and a concise narrative that fully addresses each evaluation criteria. Proposals shall have a maximum of twenty (10) pages. Page count does NOT include the 2-page cover letter, the questionnaire response, or the signed Federal Terms.

A signed cover letter of a maximum two pages should introduce the proposed firm,

- summarize the main qualifications of the firm and verifying that the firm meets the minimum qualifications (item #14) and whether the firm qualifies for the Alaska Bidder/Offeror's Preference – if applicable (item #15)
- disclose any information that may pose an actual conflict of interest in providing these services or give the appearance of a conflict of interest
- provide a representative list of clients including addresses, contact names and phone numbers
- include any other information the Contractor deems will emphasize the Contractor's ability to successfully perform the services required and demonstrate why selection of Contractor would be advantageous to ARRC

Important Instructions To be considered responsive, Offerors must submit the following with their proposal

- a. **Service Bid Form (signed and with all addendum acknowledged)**
- b. **Bidders Questionnaire in Section F**
- c. **Signed Item #25 of the Federal Terms & Conditions**

9. Capacity to Perform

Any Offeror considered for award as a result of this solicitation may be required to make assurance to the Contract Administrator concerning the Offeror's capacity and capability to perform. Previous contracts of a like nature, financial solvency, and other information may be requested of the considered Offeror. Failure to provide assurances requested in a timely manner may be cause for rejection of the Proposal.

10. Costs

Other direct costs (ODC) on contracts incurred shall be billed at cost. If travel is required, ARRC will be billed per diem for meals and incidentals using the current Department of Defense rate. Airfare will be billed at cost with coach airfare only, no first class or business class. Lodging must be reasonable. ARRC will not pay for alcohol, valet parking, or expenses it considers to be exorbitant.

11. Purchase Obligation

ARRC and responding firms expressly acknowledge and agree that ARRC has made no express or implied promises to expend any dollar amounts with respect to the services addressed by this RFP. By submitting a proposal in response to this RFP, each firm acknowledges and agrees that the provisions of this RFP, and/or any communication, statement, act or omission by representatives of ARRC (including Contractors) in the selection process, shall not vest any right, privilege, or right of action in any Offeror.

12. Exceptions to Terms, Conditions and Specifications

Any contract resulting from this solicitation shall incorporate the General Terms and Conditions contained in this solicitation package. Each Offeror shall indicate all exceptions to terms, conditions, and specifications of this solicitation individually in its proposal. Exceptions received or placed after the proposal submission date will be considered as counter offers and as such will render the entire proposal non-responsive.

13. Public Information

All submitted proposals will be considered confidential until notice of intent to award is issued. After notice of intent to award is issued, all proposals will become public information.

14. Qualifications of Offerors

Minimum Qualifications:

Offeror must have minimum of 2 years' experience providing the services similar in scope and size of this project.

General Qualifications:

Offerors will be evaluated by ARRC based upon their experience in performing the services requested, financial stability, appropriate personnel, responsiveness, technical knowledge and general organization. ARRC reserves the right to take any actions it deems necessary to determine if Offerors have the ability to perform the services outlined in the Scope of Work in a satisfactory manner. Such actions will include an evaluation of the Offeror's qualifications and references prior to Contract Award. Offerors may be disqualified, and their Proposals rejected, for any reason deemed appropriate by ARRC including, but not limited to, the following:

- (a) Evidence of collusion between an Offeror and any other Offeror(s).
- (b) An unsatisfactory performance record on prior projects for ARRC, or any other organization.
- (c) The appearance of financial instability (in the opinion of ARRC) and/or evidence that Offeror may not be financially able to complete the work required by the Scope of Work in a satisfactory manner.
- (d) If Offeror has failed to complete one or more public contracts in the past.
- (e) If Offeror has been convicted of a crime arising from previous public contracts.
- (f) If Offeror is not authorized to perform work in the State of Alaska.

15. Alaska Bidder's Preference- N/A Federally Funding

16. Contract Period

The contract shall be effective from contract execution for two years.

17. ARRC Disadvantaged Business Enterprise (DBE) Program:

ARRC Disadvantaged Business Enterprise (DBE) Program: ARRC is an equal opportunity corporation that encourages the participation of DBEs as prime contractors and subcontractors on its contracts funded in whole or in part by the Federal Transit Administration (FTA) or the Federal Highway

Administration (FHWA). The ARRC has a race neutral DBE Program and does not set DBE goals on individual solicitations. Nonetheless, the ARRC aspires to achieve an overall DBE participation of 4.0% in federal fiscal years 2022-2024 on contracts funded by agencies within the U.S. Department of Transportation. If this contract is funded in whole or in part by funds from the FTA or the FHWA, it is imperative that you consult the Federal Terms and Conditions portion of this solicitation.

18. DBE Reports

Firms are required to report annually to the ARRC Contracting officer all work by DBE contractors or subcontractors and the dollar amount. ARRC will provide the Firm a 14-day notice, by email, when to provide the information.

19. Protests

A protest based on alleged improprieties or ambiguities in a solicitation must be filed at least 10 days before the due date of the bid or proposal, unless a later protest due date is specifically allowed in the solicitation. If a solicitation is made with a shortened public notice period and the protest is based on alleged improprieties or ambiguities in the solicitation, the protest must be filed before the due date of the bid or proposal.

20. Alaska Business License.

Per AS 43.70.020(a) a business license is required for the privilege of engaging in a business in the State of Alaska.

An Alaska Business License is required of Contractors who do business in Alaska at time of award. Information regarding applying for an Alaska Business License can be found on-line at <https://www.commerce.alaska.gov/web/cbpl/BusinessLicensing.aspx> or by calling 1-907-465-2550. The business license must be in the name of the company under which the proposal is submitted.

SECTION C

PROPOSAL FORMAT AND CONTENT

Alaska Railroad Corporation (ARRC) is requesting proposals from interested firms qualified to perform the work described in the Scope of Services. This is intended to be an unbiased evaluation. ARRC reserves the right to determine that proposed services will meet ARRC requirements. ARRC reserves the right to withdraw this RFP, reject any and all proposals, advertise for new proposals, or accomplish the work by other means including issuing only some of the tasks defined in the Scope of Services above, that ARRC in its sole discretion, determines to be in its best interest. ARRC may request additional information from any firm to make a proposal responsive to this RFP or otherwise obtain clarification or additional information that ARRC, in its sole discretion, deems necessary to analyze and compare proposals.

Proposals must be complete as to the requested information.

Failure to follow this format in a proposal or failure to include complete information as requested will result in a lower score and may result in rejection of the proposal.

Prepare a distinct Response for each criterion. Failure to respond directly to any criteria will result in an evaluation score of zero for that criteria. Acceptable Responses must be specific and directly related to the proposed Statement of Services. Marketing brochures, marketing resumes, and other non-project specific materials will be discarded without evaluation and should not be submitted.

Each criterion Response must be titled, numbered and assembled in the order in which the criteria are listed in Section D, so the criterion to which information applies shall be plainly evident. Material not so identified or assembled may be discarded without evaluation.

SECTION D

EVALUATION CRITERIA

The selection of a firm to perform the requested services will be made in accordance with Section E. Proposals will be evaluated on the basis of advantages and disadvantages to ARRC using the criteria described in this Section.

ARRC reserves the right to select the top ranked firm based solely on the scoring of the written proposals and to enter directly into negotiations with said firm. However, at its sole discretion, ARRC may require the highest ranked firms to make an oral presentation to the evaluation committee. In this event, oral presentations will be scheduled and held via video conference. The selected firms will have an opportunity to summarize the information provided in their written proposals, expand on their capabilities, experience and proposed approach and work plan and answer questions from the selection committee. It is important that the primary individuals servicing the contract are present for this presentation. Scores obtained in the initial phase will not carry over to the presentation phase. Upon completion of the oral presentations, the evaluation committee will review the material presented and determine a ranking order for the firms interviewed.

DESCRIPTION

WEIGHT

1. Objectives and Services

1. Weight: 10

Response must **demonstrate your comprehension of the objectives and services** for the proposed contract. Do not merely duplicate the Statement of Services provided with this RFP. Also, consider if Statement of Services is sufficiently explicit; are expressed or implied schedules attainable/economically feasible; etcetera? Explain. **Define any assumptions made** in formulating Criteria Response.

2. Methods

2. Weight: 10

Response must outline the methods for accomplishing the proposed contract. Describe what, when, where, how, and in what sequence the work will be done. Address how proximity to the Project site, *particular* geographic familiarity, experience, and capabilities of your firm (Offeror and Proposed Subcontractors), and Project Staff might *specifically* contribute to the proposed methods. Identify the amount and type of work to be performed by any Subcontractors. Consider how each task may be carried out; what services or interaction required from/with ARRC; etcetera. Suggest alternatives, if appropriate. Identify any **distinct and substantive qualifications** for undertaking the proposed contract such as the availability of specialized equipment or unique approaches or concepts **relevant to the required services** that the firm may use.

3. Management

3. Weight: 10

Describe your administrative and operational structure that will be used for performing the proposed contract. Discuss the following:

1. The management plan you propose to use, with emphasis on maximum oversight with minimal staff.
2. Your organizational structure or chain of command, preferably in graphic form.
3. The procedure for solving problems and claims avoidance/resolution.

4. Proposed Project Staff

4. Weight: 25

Response must name the individuals to perform the following **FUNCTIONS** plus any other professional/technical functions you deem essential to perform the services:

1. Contract Management (contract compliance)
2. Construction Management (single point-of-contact directly engaged in contract performance)

ARRC requires that the Construction Manager will be AK-CESCL certified.

Describe the work to be performed by the individuals you name to perform essential functions and detail their specific qualifications and substantive **experience directly related to the proposed contract services**, including their knowledge of State or the Federal funding partner's regulations (e.g., FTA). A response prepared specifically for this proposal is required. Marketing resumes often include non-relevant information which may detract from the evaluation of proposal. Lists of projects are not useful. Focus on individual's specific duties and responsibilities and how project experience is relevant to the proposed contract.

For each person named, identify their: employer, professional discipline or job classification and state of residency. List at least three (3) professional references (contact persons and telephone numbers) for each person.

5. Workload and Resources

5. Weight: 10

Response must: (1) discuss both current and potential time commitments of your proposed Project Staff to all clients; (2) discuss the projected workload of each firm (Offeror and Proposed Subcontractors) for all clients; (3) demonstrate adequate capability and support personnel, facilities and other resources to provide the services required and meet project schedule and deadlines; and (4) capability of a branch office that will perform these services to work independently of the home office, or conversely, its capability to obtain necessary support from the home office. Provide a list of current contracts with ARRC in which your proposed Project Staff are participating.

6. Past Performance

6. Weight: 20

Response must describe previous projects the project team has worked on that are related in size and scope to this project. Describe the dollar amount of the projects, and a brief narrative of the successes of the projects. Address how the experience will help your team to perform under this contract. Provide references (contact name and phone number) for each project. Indicate which of the proposed firms and project staff was involved in each project. ARRC reserves the right to investigate referenced projects, contact references and research other projects that the respondent has worked on.

7. Cost and Quality Controls

7. Weight: 15

ARRC is concerned with balancing the cost of construction and inspection with that of the construction contract to achieve optimum cost effectiveness. Discuss your company's approach to this Contract with respect to minimizing the construction engineering and inspection costs while fulfilling the documentation requirements, continuing to assure the quality of the construction, and the proper management of the construction contract.

Discuss your firm's in-place plan for Quality Control.

CONTRACT AWARD

Once ranking has been established, ARRC will begin negotiations with the highest ranked firm. If an agreement cannot be reached on contract terms, negotiations will be terminated, and negotiations will be conducted with the next highest ranked firm, until an agreement is reached, or until ARRC exercises its right to cancel the solicitation.

SECTION E SELECTION PROCESS

Evaluation of Proposals

Proposals will be evaluated by a committee. Evaluation of responses to criteria set forth in Section D results in a numerical score for each proposal. Each criterion has an assigned weight for this IRFP which demonstrates its relative importance. The total of all weights is 100 (100%). Each one- percent weight equates to a range of 0-5 points per Evaluator. The maximum points (score) obtainable for any proposal is equal to the product of 500 multiplied by the number of Evaluators.

1. Scoring of proposals will be accomplished as follows:

1.1 Each Evaluator will individually read and rate each Offeror's response to each criterion described in Section D - Technical Proposal. Ratings will be based solely on contents of proposal and in compliance with the ARRC's Instructions for Evaluation Committee. Except as may be stated within any criterion description, a rating of "5"= Best Response from all Offerors; "4" to "1" = Progressively Less Responsive; "0" = Non-Responsive. Ratings are multiplied by the assigned weights for each criterion to obtain criteria scores.

1.2 After completion of individual ratings, the Evaluation Committee will meet to discuss proposals. Evaluators may then alter their ratings; however, any changes shall be based solely on the criteria set forth in Section D.

1.3 After scoring Section D - Technical Proposal, criteria scores - Cost (if applicable), will be calculated based on criteria descriptions.

1.4 The total score for each Offeror will be obtained by summing the scores determined for each criterion in Section D. The order of ranking for negotiations shall be as follows: highest scored Offeror will be ranked first, next highest scored second, and etcetera.

2. Evaluators may discuss factual knowledge of, and may investigate Offerors' and proposed Subcontractors' prior work experience and performance, including projects referenced in proposal, available written evaluations, etcetera, and may contact listed references or other persons knowledgeable of a Contractor's and/or a Subcontractor's past performance. Factors such as overall experience relative to the proposed contract, quality of work, control of cost, and ability to meet schedules may be addressed. If any issues of significant concern to the proposed contract are discovered, the Committee may:

2.1 Provide written recommendations for consideration during contract negotiations;

2.2 Conduct discussions in accordance with paragraph 3, below.

3. The Committee may decide to conduct discussions (or "interviews") with responsible Offerors whose proposals are determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors selected by the Committee for discussions may be permitted to submit Best and Final Offers (BAFO) for final Committee Evaluation. After discussions and any BAFO's, Evaluators will determine the final scoring and ranking for contract negotiations by evaluating written and oral responses using only the criteria set forth in Section D.

4. All Offerors will be advised of the Offeror selected for negotiation and, after completion of negotiations, a Notice of Intent to Award will be provided to all Offerors. If contract negotiations are unsuccessful with Offeror(s) selected for negotiation, ARRC may either cancel the solicitation or negotiate with other Offerors in the order of ranking.

SECTION F
CONTRACTOR RESPONSIBILITY QUESTIONNAIRE

PART I - INSTRUCTIONS

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

PART II - IDENTITY OF OFFEROR

1. Offeror's Full Legal Name: _____
2. The Offeror represents that it operates as the following form of legal entity: (Check whichever applies and fill in any appropriate blanks.)
 - ☐ an individual or sole proprietorship
 - ☐ a general partnership
 - ☐ a limited partnership
 - ☐ a joint venture consisting of: _____
and _____
(List all joint ventures on a separate sheet if this space is inadequate.)
 - ☐ a non-profit organization
 - ☐ a corporation organized or incorporated under the laws of the following state or country: _____
on the following date: _____
 - ☐ a limited liability company organized under the laws of the following state or country: _____
on the following date: _____
3. Offeror's federal taxpayer identification number: _____
4. Offeror's Alaska business license number: _____
5. Offeror's contractor's license number (for construction only): _____
6. Offeror's legal address: _____

Telephone Number: (____) _____ Fax Number: (____) _____

7. Offeror's local or authorized point of contract address:

Name: _____ Title: _____

Address: _____

Telephone Number: (____) _____ Email: _____

8. How long has the Offeror been in business? _____

9. Has Offeror been in business under another name? If so, identify name and dates used.

10. Does your firm consider itself to be an MBE, WBE or DBE?

YES ☐ NO ☐

If answer is "YES," attach a copy of certification.

11. Number of employees: _____ including _____ employees in the State of Alaska.

PART III - CONTRACTING HISTORY

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

YES ☐ NO ☐

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

YES ☐ NO ☐

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

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

A. Been suspended, debarred, disqualified, or otherwise declared ineligible to bid?
YES ☐ NO ☐

B. Failed to complete a contract for a public or private entity?
YES ☐ NO ☐

C. Been denied a low-bid contract in spite of being the low bidder?
YES ☐ NO ☐

D. Had a contract terminated for any reason, including default?
YES ☐ NO ☐

E. Had liquidated damages assessed against it during or after completion of a contract?
YES ☐ NO ☐

F. Been a defaulter, as principal, surety or otherwise?
YES ☐ NO ☐

G. Been denied an award of a public contract based upon a finding by a public agency that your company was not a responsible contractor?
YES ☐ NO ☐

H. A public entity requested or required enforcement of any of its rights under a surety agreement on the basis of your company's default or in lieu of declaring your company in default?
YES ☐ NO ☐

I. Been denied a performance or payment bond by a surety company?
YES ☐ NO ☐

J. Been required to pay back wages and/or penalties for failure to comply with state or federal prevailing wage or overtime laws?
YES ☐ NO ☐

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

5. Does Offeror have any present or anticipated commitments and/or contractual obligations that might impact its ability to meet the required delivery or performance requirements of this solicitation? If yes, on a separate sheet of paper describe any apparent conflicts as between the requirements/commitments for this solicitation with respect to the use of Offeror's resources, such as management, technical expertise, financing, facilities, equipment, etc.
YES ☐ NO ☐

PART IV-CIVIL ACTIONS

If "Yes" to Parts IV or V, provide details on a separate sheet of paper including a brief summary of cause(s) of action; indicate if Offeror, its principals, officers or partners were plaintiffs or defendants; define charges explicitly, by what authority, court or jurisdiction, etc. In the case of

tax liens, please indicate whether the liens were resolved with the tax authorities. Please submit proof of payment or agreements to pay the liens. Complete details are required!

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

YES ☐ NO ☐

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

YES ☐ NO ☐

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

YES ☐ NO ☐

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

YES ☐ NO ☐

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

YES ☐ NO ☐

PART V-COMPLIANCE WITH LAWS AND OTHER REGULATIONS

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

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

YES ☐ NO ☐

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

YES ☐ NO ☐

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

YES ☐ NO ☐

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

YES ☐ NO ☐

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

YES ☐ NO ☐

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

YES ☐ NO ☐

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

YES ☐ NO ☐

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

YES ☐ NO ☐

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

YES ☐ NO ☐

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

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

YES ☐ NO ☐

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

YES ☐ NO ☐

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

YES ☐ NO ☐

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

YES ☐ NO ☐

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

YES ☐ NO ☐

PART VI-FINANCIAL

Copies of the following documents are to be submitted with this Questionnaire:

1. Offeror's current Alaska Business License, if required by state law.

2. Offeror's Financial Statements may be requested:

A. PUBLICLY TRADED COMPANIES: Financial information will be accessed on-line. However, if additional information is needed, it will be specifically requested from the Offeror.

B. NON-PUBLICLY TRADED COMPANIES WITH AUDITED OR REVIEWED FINANCIAL STATEMENTS: Statements, including balance sheet, statement of earnings and retained income, with footnotes, for the most recent three years **may be requested**.

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

PART VII -VERIFICATION AND ACKNOWLEDGMENT

The undersigned recognizes that the information submitted in the questionnaire herein is for the express purpose of inducing ARRC to award a contract, or to allow Offeror to participate in ARRC projects as contractor, subcontractor, vendor, supplier, or Contractor. The undersigned has read and understands the instructions for completing this Questionnaire.

STATE OF _____

COUNTY OF _____

I, (printed name) _____, being first duly sworn, state that I am the (title) _____ of Offeror. I certify that I have read and understood the questions contained in the attached Questionnaire, and that to the best of my knowledge and belief all information contained herein and submitted concurrently or in supplemental documents with this Questionnaire is complete, current, and true. I further acknowledge that any false, deceptive or fraudulent statements on the Questionnaire will result in denial or termination of a contract.

I authorize ARRC to contact any entity named herein, or any other internal or outside resource, for the purpose of verifying information provided in the Questionnaire or to develop other information deemed relevant by ARRC.

Signature of Certifying Individual

Date

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

Signature of Notary
Notary Public in and for the State of _____

My Commission Expires: _____

NOTICE TO OFFERORS

A material false statement, omission or fraudulent inducement made in connection with this Questionnaire is sufficient cause for denial of a contract award or revocation of a prior contract award, thereby precluding the Offeror from doing business with, or performing work for ARRC, either as a vendor, prime contractor, subcontractor, Contractor or subContractor for a period of five years. In addition, such false submission may subject the person and/or entity making the false statement to criminal charges under applicable state and/or federal law.

NAME _____

ADDRESS _____

Addenda Number	Date Issued	Addenda Number	Date Issued	Addenda Number	Date Issued

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SECTION G

GENERAL TERMS AND CONDITIONS (Professional Service Contracts) (Revised 3/4/08)

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

1. Definitions.

"ARRC" shall mean the Alaska Railroad Corporation.

"Contractor" shall mean the person or entity entering into the contract to perform the work or services specified therein for ARRC.

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

"Services" shall mean any work, direction of work, technical information, technical consulting or other services, including but not limited to design services, analytical services, consulting services, construction management services, engineering services, quality assurance and other specialized services furnished by Contractor to ARRC under the contract.

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

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

4. Nondiscrimination.

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

4.2 The Contractor shall cooperate fully with ARRC efforts which seek to deal with the problem of unlawful discrimination, and with all other ARRC efforts to guarantee fair employment

practices under this contract, and promptly comply with all requests and directions from the State Commission for Human Rights or any of its officers or agents relating to prevention of discriminatory employment practices.

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

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

5. Cancellation/Termination.

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

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

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

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

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

5.3 Upon receipt of a notice of cancellation or termination, Contractor shall immediately discontinue all service and it shall immediately cause any of its suppliers or subcontractors to cease such work unless the notice directs otherwise and deliver immediately to ARRC all reports, plans, drawings, specifications, data, summaries or other material and information, whether completed or in process, accumulated by Contractor in performance of the contract. In the event of termination for default, Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the amount to be paid on this contract exceeds the expense of finishing the work, compensation for additional managerial and administrative services and such other costs and damages

as ARRC may suffer as a result of Contractor's default, such excess shall be paid to Contractor. If such expense, compensation, costs and damages shall exceed such unpaid balance, Contractor shall be liable for and shall pay the differences to ARRC. The rights and remedies of ARRC provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

6. No Assignment or Delegation. The Contractor may not assign, subcontract or delegate this contract, or any part of it, or any right to any of the money to be paid under it, except with the prior written consent of ARRC. The hiring or use of outside services, subcontractors or Contractors in connection with the work shall not be permitted without the prior written approval of ARRC. No such approval shall relieve Contractor from any of its obligations or liabilities under this contract.

7. Independent Contractor. The Contractor's relationship to ARRC in performing this contract is that of an independent contractor and nothing herein shall be construed as creating an employer/employee relationship, partnership, joint venture or other business group or concerted action. The personnel performing services under this contract shall at all times be under Contractor's exclusive direction and control and shall be employees of the Contractor, and not of ARRC.

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

9. Ownership of Work Product. Except for items that have preexisting copyrights, all exhibits, drawings, plans, specifications, notes, reports, data, recommendations, artwork, memoranda and any other information prepared or furnished by Contractor to ARRC in the performance of this contract (collectively "Work Product") shall become the property of ARRC and may be used by ARRC for any other purpose without additional compensation to the Contractor. Contractor hereby grants ARRC an irrevocable, perpetual, royalty-free, fully assignable license (with full sublicense rights) to use all proprietary and confidential information and other intellectual property that may be incorporated into any of Contractor's Work Product for ARRC. Should ARRC elect to reuse said Work Product, ARRC shall indemnify, hold harmless and defend Contractor and its subcontractors against any damages or liabilities arising from said reuse. When Work Product produced by the Contractor and its Subcontractors under this Contract are reused by ARRC, the Contractor's and Subcontractor's signatures, professional seals, and dates shall be removed. If such Work Product requires professional signature and seal, it will be signed, sealed, and dated by the professional who is in direct supervisory control and responsible for the new project for which such Work Product is being reused.

Contractor hereby represents and warrants to and for the benefit of ARRC and its successors and assigns that no part of its work product for ARRC will infringe any patent rights or copyrights or utilize any proprietary, confidential or trade secret information or other intellectual property for which Contractor does not have the unqualified right to grant ARRC the license and sublicensing rights referred to above. Contractor shall defend, indemnify and hold harmless ARRC, its successors and assigns, and their respective representatives, agents and employees from and against, any and all claims, defenses, obligations and liabilities which they may have or acquire under or with respect to any patent, copyright, trade secret, proprietary or confidential information, or any other form of intellectual property that may be asserted by Contractor or any other person which arises out of, results from or is based upon the manufacture, use or sale by ARRC or any of its successors or assigns of any of Contractor's work product for ARRC. ARRC shall have the right to select its legal counsel and control its defense in any litigation resulting from any such claim.

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

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

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

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

12. Non-Disclosure of Confidential Information. Contractor acknowledges and agrees that for and during the entire term of this contract, any information, data, figures, projections, estimates, reports and the like received, obtained or generated by Contractor pursuant to the performance of this contract shall be considered and kept as the private, confidential and privileged records of ARRC and will not be divulged to any person, firm, corporation, regulatory agency or any other entity except upon the prior written consent of ARRC. Furthermore, upon termination of this contract, Contractor agrees that it will continue to treat as private, privileged and confidential any information, data, figures, projections, estimates, reports and the like received, obtained or generated by Contractor during the term of the contract and will not release any such information to any person, firm, corporation, regulatory agency or any other entity, either by statement, deposition or as a witness except upon the express written authority of ARRC. ARRC shall be entitled to an injunction by any competent court to enjoin and restrain the unauthorized disclosure of such information.

Contractor's agreement of non-disclosure as specified in this section applies except to the extent required for (1) performance of services under this contract; (2) compliance with professional standards of conduct for preservation of the public safety, health, and welfare (so long as Contractor has given ARRC prior notice of the potential hazard and ARRC has had a reasonable opportunity to correct the hazard prior to disclosure); (3) compliance with a court order or subpoena directed against Contractor (so long as Contractor has given ARRC prior notice of such and ARRC has had an opportunity to contest the same in a court of law); or (4) Contractor's defense against claims arising from performance of services under this contract.

13. Covenant Against Contingent Fees. Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this contract, and that it has not paid or agreed to pay any person, company, individual, or firm any commission, gift, percentage, fee, contingent upon or resulting from the award or making of this contract. For the breach or violation of this warranty, ARRC may terminate this contract without liability and, at its discretion, deduct from the contract price or otherwise recover the full amount of the commission, percentage, gift, or fee.

14. Standard of Performance. Contractor shall perform its services with care, skill and diligence in accordance with normally accepted industry standards and shall be responsible for the professional quality, technical accuracy, completeness, and coordination of all reports, designs, drawings, plans, information, specifications and other items and services furnished under this Contract. Contractor shall comply with all applicable federal, state and local laws and ordinances, codes, and regulations in performing its services. If any failure to meet the foregoing standard of performance appears within one (1) year after the services are accepted by ARRC, Contractor shall, at a minimum, re-perform the work at no cost to ARRC and shall reimburse ARRC for any additional costs that may be incurred by ARRC or any of its contractors or subcontractors as a result of such substandard work. If Contractor should fail to re-perform the work, or if ARRC determines that Contractor will be unable to correct substandard services before the time specified for completion of the project, if any, ARRC may correct such unsatisfactory work itself or by the use of third parties and charge Contractor for the costs thereof. The rights and remedies provided for in this section are in addition to any other remedies provided by law.

15. Warranty. In the event Contractor supplies equipment, goods, materials or other supplies in addition to services under this contract, Contractor warrants that said items: (a) shall be of good quality and free from all defects and deficiencies in workmanship, material and design; (b) shall be fit, suitable and operate successfully for their intended purpose; (c) shall be new; (d) shall be free from all liens, claims, demands, encumbrances and other defects in title; and (e) shall conform to the specifications, if any, stated in the contract. Contractor shall honor all guarantees and warranties offered by the manufacturer of the equipment, goods, materials or other supplies provided under this contract. The rights and remedies provided for in this section are in addition to any other remedies provided by law.

16. Indemnification. Contractor shall defend, indemnify and hold ARRC harmless from and against all claims and actions asserted by a third party (or parties) and related damages, losses and expenses, including attorney's fees, arising out of or resulting from the services performed or neglected to be performed by Contractor or anyone acting under its direction or control or in its behalf in the course of its performance under this contract and caused by any error, omission or negligent act, provided that Contractor's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability based upon the independent negligence of ARRC. If there is a claim of, or liability for, the joint negligent error or omission of the Contractor and the independent negligence of ARRC, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. The term "independent negligence" is negligence other than ARRC's selection, administration, monitoring, or controlling contractor and in approving or accepting Contractor's work.

17. Insurance. Without limiting Contractor's indemnification, it is agreed that Contractor shall purchase at its own expense and maintain in force at all times during the performance of services under this contract the following policies of insurance. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the Contractor's policy contains higher limits, ARRC shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to the ARRC contracting officer prior to beginning work and must provide for a 30-day prior notice of cancellation, non-renewal or material change. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach and grounds for termination of the Contractor's services.

17.1 Workers' Compensation Insurance: The Contractor shall provide and maintain, for all employees of the Contractor engaged in work under this contract, worker's compensation insurance as required by applicable law. The Contractor shall be responsible for worker's compensation insurance for any subcontractor who directly or indirectly provides services under this contract. This coverage must include statutory coverage for states in which employees are engaging in work and employer's liability protection not less than \$100,000 per person, \$100,000 per occurrence. Where applicable, coverage for all federal acts (i.e. U.S.L. & H. and Jones Acts) must also be included.

17.2 Comprehensive (Commercial) General Liability Insurance: With coverage limits not less than \$1,000,000 combined single limit per occurrence and annual aggregates where generally applicable and shall include premises-operations, independent contractors, products/completed operations, broad form property damage, blanket contractual and personal injury endorsements. Said policy shall name ARRC as an additional insured and contain a waiver of subrogation against ARRC and its employees.

17.3 Comprehensive Automobile Liability Insurance: Covering all owned, hired and non-owned vehicles with coverage limits not less than \$100,000 per person/\$300,000 per occurrence bodily injury and \$50,000 property damage. Said policy shall name ARRC as an additional insured and contain a waiver of subrogation against ARRC and its employees.

17.4 Professional Liability (E&O) Insurance: Covering all errors, omissions or negligent acts of the Contractor, its subcontractor or anyone directly or indirectly employed by them, made in the performance of this contract which result in financial loss to ARRC. Limits required are per the following schedule:

<u>Contract Amount</u>	<u>Minimum Required Limits</u>
Under \$100,000	\$ 500,000 per Occurrence/Annual Aggregate
\$100,000-\$499,999	\$1,000,000 per Occurrence/Annual Aggregate
\$500,000-\$999,999	\$2,000,000 per Occurrence/Annual Aggregate
Over \$1,000,000	Negotiable-Refer to Risk Management

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

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

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

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

22. Forum Selection. The parties shall not commence or prosecute any suit, proceeding or claim to enforce the provisions of the contract, to recover damages for breach or default under the contract, or otherwise arising under or by reason of the contract, other than in the courts of the State of Alaska for the Third Judicial District at Anchorage. The parties hereby irrevocably consent to the jurisdiction of said courts.

23. Conflict of Interest. Contractor shall act to prevent any actions or conditions which could result in a conflict with ARRC's best interests. This obligation shall apply to the activities of Contractor's employees and agents in their relationships with ARRC's employees, their families, vendors, subcontractors and third parties accomplishing work under this contract.
24. Publicity. Contractor shall not release any information for publication or advertising purposes relative to this contract or to the material, equipment and/or services furnished under this contract without the prior written consent of the ARRC.
25. Audit. ARRC has the right to audit at reasonable times the accounts and books of the Contractor in accordance with the provisions of ARRC Procurement Rule 1600.10.
26. Internal Controls and Record Keeping. Contractor shall keep full and accurate records and accounts of all of its activities in connection with this contract, including, without limitation, reasonable substantiation of all expenses incurred and all property acquired hereunder.
27. Force Majeure. Neither ARRC nor Contractor shall be responsible for failure to perform the terms of this contract when performance is prevented by force majeure, provided that: (1) notice and reasonably detailed particulars are given to the other party and (2) the cause of such failure or omission is remedied so far as possible with reasonable dispatch. The term "force majeure" shall mean acts of God, earthquakes, fire, flood, war, civil disturbances, governmentally imposed rules, regulations or other causes whatsoever, whether similar or dissimilar to the causes herein enumerated, which is not within the reasonable control of either party and which through the exercise of due diligence, a party is unable to foresee or overcome. In no event shall force majeure include normal or reasonably foreseeable or reasonably avoidable operational delays.
28. Permits and Licenses. The Contractor shall, at its own expense, obtain all necessary permits, licenses, certifications and any other similar authorizations required or which may become required by the government of the United States or any state or by any political subdivision of the United States or of any state except where laws, rules or regulations expressly require the ARRC to obtain the same.
29. Environmental Protection. When performing all obligations under the contract, Contractor shall comply with all specific instructions of ARRC with regard to environmental concerns, regardless of whether such instructions are based upon specific law, regulation or order of any governmental authority.
30. Set Off. If ARRC has any claim against the Contractor related or unrelated to this contract, it may set off the amount of such claim against any amount due or becoming due under this contract.
31. Observance of Rules. The contractor's personnel performing work or services hereunder on ARRC's premises shall observe all fire prevention, security, and safety rules in force at the site of the work.
32. No Third-Party Beneficiary Rights. No provision of this contract shall in any way inure to the benefit of any third parties (including the public at large) so as to constitute any such person a third-party beneficiary of the contract or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.
33. Entire Agreement. This contract represents the entire and integrated agreement between ARRC and the Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. This contract may be amended only by a written instrument signed by both ARRC and the Contractor.

34. Key Personnel Changes. Contractor shall secure prior written approval from ARRC for any changes of key personnel assigned to perform services under this contract. ARRC reserves the right to reject any of Contractor's employees whose qualifications and/or experience in ARRC's good faith and reasonable judgment do not meet the standards necessary for the performance of the services required under this contract.

35. Reasonable Best Efforts. Subject to the terms and conditions herein provided, Contractor agrees to use all commercially reasonable best efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to complete the work contemplated by this Agreement.

SECTION H
REQUIRED CONTRACT PROVISIONS
FOR
FEDERAL-AID CONTRACTS
[Revised March 21, 2023]

**REQUIRED CONTRACT PROVISIONS
FOR
FEDERAL-AID CONTRACTS
[Revised March 21, 2023]**

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

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

Cargo Preference-Use of United States Flag Vessels - The contractor agrees: **a. to use** privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; **b. to furnish** within twenty (20) working days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding subsection to the Division of Cargo Preference and Domestic Trade, Maritime Administration, 1200 New Jersey Avenue, SE, Washington, D.C. 20590 and to ARRC (through the contractor in the case of a subcontractor's bill-of-lading), marked with appropriate identification of the project; **c. to include these** requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

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

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

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

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

The certification in this clause is a material representation of fact relied upon by the ARRC. If it is later determined by the ARRC that the Contractor, bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the ARRC, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor, bidder or proposer agrees to comply with the requirements of 2 CFR Part 180, subpart C, as supplemented by 2 CFR Part 1200, while its offer is valid and throughout the period of any contract that may arise from its offer. The contractor, bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Withholding - ARRC shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any

subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, ARRC may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - 40 USC 3701-3708.; 29 CFR Part 5; 29 CFR 1926; 2 CFR Part 200, App. II (E) [Applicable to all Federal-aid construction in excess of \$100,000 and all nonconstruction contracts which employ mechanics and laborers on a public work in excess of \$100,000]

A. Overtime (Applicable to construction and nonconstruction contracts)

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

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

(3) Withholding for unpaid wages and liquidated damages - ARRC shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other

federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

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

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

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

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

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. The Contractor agrees to report each violation to ARRC and understands and agrees that ARRC will, in turn, report each violation as required to assure notification to the Federal grantor agency and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal funds.

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

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

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

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

1. Contractor agrees to provide ARRC, the Federal grantor agency, the Comptroller General, or any of their duly authorized representatives access to the Contractor's books, documents, papers and records which are directly pertinent to this contract for the purpose of making audit, examination, excerpts and transcriptions.
2. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. Contractor agrees to comply with the record retention requirements in accordance with 2 CFR 200.333. Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain the same until ARRC, the Federal grantor agency, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.
4. Contractor agrees to permit the Federal grantor agency and its contractors access to the sites of performance under this contract as reasonably may be required.
5. Contractor agrees to include these requirements in each subcontract financed in whole or in part with Federal funds.

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

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

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

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

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

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

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC §3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract,

the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the Federally assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

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

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

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

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

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

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

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

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

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

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

(a) Race, Color, Creed, National Origin, Sex - In accordance with 49 USC 5332 and Title VI 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, religion, national origin, sex, gender identity, sexual orientation, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements the Federal grantor agency may issue.

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

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

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

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

Rights and Remedies of the ARRC

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

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

Rights and Remedies of Contractor

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

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

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

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

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

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

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

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

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

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

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

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

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

16. NATIONAL HISTORIC PRESERVATION ACT REQUIREMENTS – 54 USC 300101 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, 54 USC 300101 et seq. Contractor is advised that both historic and cultural sites may be eligible for inclusion on the National Register.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM - 49 CFR Part 26. [Applicable to all U.S. Department of Transportation-funded contracts, including those funded by FTA, FRA and FHWA]

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

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

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

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

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

Unless a waiver has been granted by the FHWA, all steel and iron materials which are incorporated into the work, and the action of applying a coating to a covered material (i.e., steel and iron), shall be manufactured in the United States except that minor amounts of steel and iron materials of foreign manufacture may be used, provided the aggregate cost of such materials does not exceed one tenth of one percent (0.1 percent) of the total contract amount, or \$2500, whichever is greater. Coating includes epoxy coating, galvanizing, painting, and any other coating that protects or enhances the value of a material subject to the requirements of this section. For the purposes of this section, the cost is the value of the products as they are delivered to the project. When steel and iron materials manufactured in the United States are shipped to a foreign country where non-steel or iron products are installed on or in them (i.e., electronic components in a steel cabinet), the steel and iron is considered to meet the requirements

of this section. A certification of materials origin, attesting to compliance with this provision, shall be furnished to the Engineer prior to incorporating any steel or iron products into the project. Bidders may submit an alternate bid for the project based on the use of foreign iron or steel materials. In this event, the contract will be awarded to the bidder who submits the lowest total responsive bid based on furnishing domestic iron and steel materials unless such total bid exceeds the lowest total responsive bid based on furnishing foreign steel and iron materials by more than 25 percent.

Certificate of Compliance with 23 CFR 635.410

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

Date: _____

Signature: _____

Company Name: _____

Title: _____

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

Buy America - The contractor agrees to comply with 49 USC 5323(j), 49 CFR Part 661, and 2 CFR 200.322, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7. Separate requirements for rolling stock are set out at 49 USC 5323(j)(2)(C), 49 USC 5323(u), and 49 CFR 661.11.

Construction materials used in the Project are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA.

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

Certification requirement for procurement of steel, iron, manufactured products, and construction materials:

Certificate of Compliance

The bidder or offeror hereby certifies that it will meet the requirements of 49 USC 5323(j)(1), the applicable regulations in 49 CFR Part 661.6, and the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021).

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

Certificate of Non-Compliance

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 USC 5323(j), 49 CFR 661.6, or the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), but it may qualify for an exception pursuant to 49 USC 5323(j)(2)(A), 5323(j)(2), as amended; the applicable regulations in 49 CFR 661.7; or applicable waivers published by the Secretary of the U.S. Department of Transportation.

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

Certification requirement for procurement of rolling stock and associated equipment:

Certificate of Compliance

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

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

[continued next page]

Certificate of Non-Compliance

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

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

23. FRA BUY AMERICAN REQUIREMENTS-SUPPLIES - 41 USC 8301-8305; 48 CFR Part 25 [If required under the terms of the grant agreement, applicable only to FRA funded contracts for the purchase of goods, supplies or equipment in excess of \$10,000]

(a) The FRA requires its grantees to comply with The Buy American Act (41 U.S.C. 8301 *et seq.*) which provides that preference be given to domestic end products.

Commercially available off-the-shelf (COTS) item, as used in this clause, means

- (1) any item of supply (including construction material) that is (i) a commercial item, as defined in paragraph (1) of the definition at 48 CFR 2.101; (ii) sold in substantial quantities in the commercial marketplace; and (iii) offered under this contract in the same form in which it is sold in the commercial marketplace; and
- (2) does not include bulk cargo, as defined in 46 USC 40102(4), such as agricultural products and petroleum products.

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

Cost of components, as used in this clause, means

- (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

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
 - (i) 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; or
 - (ii) the end product is a COTS item.

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

Foreign end product, as used in this clause, means an end product other than a domestic end product.

United States, as used in this clause, means the 50 States, the District of Columbia, and outlying areas (as defined at 48 CFR 2.101).

(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 25.104;

(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

In accordance with 41 USC 1907, the component test of the Buy American statute is waived for an end product that is a COTS item (See 48 CFR 12.505(a)(1).

A bidder must submit to ARRC the Buy American certification (below) with its bid response for FRA funded supply contracts. The Contractor shall deliver only domestic end products except to the extent that it specifies delivery of foreign end products in its provision of the Buy American Certificate. Bids that are not accompanied by a completed Buy American certification may be rejected as nonresponsive.

Buy American Certificate
Certificate of Compliance with 41 USC 8301-8305 - Supplies

(a) The bidder or offeror hereby certifies that the products it proposes to supply hereunder comply with the requirements of 49 USC 8301-8305 and the applicable regulations in 48 CFR Part 25. The bidder or offeror certifies that each end product, except those listed in paragraph (b) of this certificate, is a domestic end product and that for other than COTS items, the bidder or offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The bidder or offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS items and does not meet the component test in paragraph (2) of the definition of "domestic end product."

(b) Foreign End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

(List as necessary)

Date: _____

Signature: _____

Company Name: _____

Title: _____

24. FRA BUY AMERICAN REQUIREMENT-CONSTRUCTION - 41 USC 8301-8305; 48 CFR Part 25
[Applicable only to FRA funded construction contracts in excess of \$10,000]

(a) The FRA requires its grantees to comply with The Buy American Act (41 U.S.C. 8301 *et seq.*) which provides that preference be given to domestic construction materials. As used in this clause-

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

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

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

(b)(1) The Buy American Act (41 USC 8301-8305) 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.

^{1/}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 American certification (below) with its bid response for FRA funded construction. Bids that are not accompanied by a completed Buy American certification may be rejected as nonresponsive.

Certificate of Compliance with 41 USC 8301-8305 - Construction

The bidder or offeror hereby certifies that the construction materials it proposes to provide hereunder comply with the requirements of 49 USC 8301-8305 and the applicable regulations in 48 CFR Part 25.

Date: _____

Signature: _____

Company Name: _____

Title: _____

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

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

1. The undersigned Contractor certifies, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. The undersigned also agrees that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

3. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 USC 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

Signature of Contractor's Authorized Official: _____

Name and Title of Contractor's Authorized Official: _____

Date: _____

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

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

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

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

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

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

Certificate of Compliance with 49 CFR 26.49

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

Date: _____

Signature: _____

Company Name: _____

Title: _____

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

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

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

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

This Project is funded through a Federal award for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this contract. The Contractor shall grant the ARRC intellectual property access and licenses deemed necessary for the work performed under this contract and in accordance with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31. Prohibition on Certain Telecommunications and Video Surveillance Services and Equipment 2 CFR § 200.216 [Applicable to all Federal-aid contracts]

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to use and procurement of certain telecommunications and video surveillance services or equipment in compliance with the National Defense Authorization Act [Public Law 115-232 § 889].

32. Notification to FTA; Flow Down Requirement – FTA Master Agreement, Section 39(b)(1), (2); 2 CFR 180.220; 2 CFR 1200.220 [Applies to FTA-funded contracts/third party contracts in excess of \$25,000]

If a current or prospective legal matter that may affect the Federal Government emerges, CONTRACTOR shall promptly notify ARRC, the FTA Chief Counsel, and the Regional Counsel for FTA Region 10. CONTRACTOR shall include these requirements as a flow down clause in any subcontract related to this Contract. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

33. Veteran Hiring Preference – 49 USC § 5325(k) [Applies to all FTA-funded contracts for capital construction projects]

Contractor shall give a hiring preference, to the extent practicable, to veterans (as defined in 5 USC § 2108) who have the requisite skills and abilities to perform the construction work required under the Contract. This clause shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.