



**NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK)**

**SUPPLEMENTARY GENERAL PROVISIONS
FOR NONCONSTRUCTION CONTRACTS (DISCRETIONARY GRANT FUNDING)**

1.0 Equal Employment Opportunity.

Contractor shall comply with and shall cause its subcontractors and lower tier subcontractors to comply with the regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." The equal opportunity clause provided under 41 CFR 60-1.4(b) is hereby incorporated by reference. Contractor shall prohibit discrimination based on race, color, religion, national origin, sex (including gender identity), disability, or age.

2.0 Rights In Intangible Property.

2.1 Definition. Intangible property, as defined herein means property having no physical existence, such as trademarks, copyrights, patents and property applications.

2.2 Title to Intangible Property. Intangible property acquired or created in the performance of this Contract vests in Amtrak upon acquisition or creation, as applicable. The requirements of this Section 2.0 shall apply only to intellectual property acquired or created under a planning, experimental, developmental, or research grant or contract.

2.3 Copyright. Amtrak may copyright any work that is subject to copyright and was created or for which ownership was acquired under this Contract. For any work acquired or created under a planning, experimental, developmental, or research grant or contract, Contractor agrees that the Federal Railroad Administration has reserved a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes and to authorize others to do so for Federal Government purposes.

2.4 Patents. The following provisions will apply to patents under this Contract:

2.4.1 If the Contract involves the performance of experimental, developmental, or research work, the rights of the Federal Government and Amtrak shall be in accordance with 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 Railroad Administration (FRA).

2.4.2 If any invention, improvement, or discovery of Contractor or any of its subcontractors is conceived or first actually reduced to practice in the course of or under a planning, experimental, developmental, or research grant or contract, Contractor agrees to grant

Amtrak and the Federal Railroad Administration, a royalty-free, nonexclusive, and irrevocable license to use and to authorize others to use the patented device or process for Federal Government purposes.

2.5 Research Data. For any research data (as defined in 2 CFR Part 200.315(e)) acquired under this Contract, the Federal Railroad Administration has a right to:

2.5.1 Obtain, reproduce, publish, or otherwise use the research data produced under this Agreement for Federal Government purposes; and

2.5.2 Authorize others to receive, reproduce, publish, or otherwise use such research data for Federal Government purposes.

3.0 Byrd Anti-Lobbying Amendment.

Contractors that apply or bid for an award exceeding \$100,000 shall file the required certification at 49 CFR Part 20, and attached hereto as Appendix A. Each tier contractor certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier contractor shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to Amtrak.

4.0 Debarment And Suspension.

For contracts that exceed \$250,000, Contractor shall certify to Amtrak that Contractor is not listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with OMB guidelines at 2 CFR Part 180 that implement Executive Orders 12549 and 12689, "Debarment and Suspension". SAM exclusions contain the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractor shall comply and cause its subcontractors to comply with U.S. DOT regulations, 2 CFR Part 180 and 2 CFR Part 1200, "Nonprocurement Suspension and Debarment," Contractor shall execute the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion" set forth in Appendix B. Contractor agrees to obtain the same such certification on debarment and

suspension from its subcontractors and lower tier subcontractors.

5.0 Domestic Buying Preference/Buy America Act.

5.1 For infrastructure projects, steel, iron, and manufactured products supplied by Contractor are subject to and shall comply with 49 U.S.C. § 22905(a), as implemented by FRA. The Contractor acknowledges that this Contract is neither a waiver of 49 U.S.C. § 22905(a)(1) nor a finding under 49 U.S.C. § 22905(a)(2). For infrastructure projects, construction materials used in the Project are subject to the domestic preference requirement at § 70914 of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021) and 2 C.F.R. part 184, as implemented by OMB, USDOT and FRA. Contractor acknowledges that this Agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

5.2 For non-infrastructure projects, steel, iron, and manufactured products supplied by Contractor are subject to and shall comply with 49 U.S.C. § 22905(a), as implemented by FRA. Contractor acknowledges that this Agreement is neither a waiver of 49 U.S.C. § 22905(a)(1) nor a finding under 49 U.S.C. § 22905(a)(2).

5.3 In this Section, “infrastructure project” has the definition provided in 2 C.F.R. § 184.3.

5.4 In accordance with 2 C.F.R. § 200.322, as appropriate and to the extent consistent with law, Contractor shall, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subcontracts and purchase orders for work or products under this Contract.

(a) For the purposes of this Section 5.4:

(1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

6.0 Cargo Preference--Use Of United States-Flag Vessels. As required by U.S. DOT, Maritime Administration regulations, “Cargo Preference -- U.S.-Flag Vessels,” 46 CFR Part 381, if

equipment, materials or commodities may be transported by ocean vessel in carrying out the activities funded under this Contract, Contractor agrees:

6.1 To utilize 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, materials, or commodities pursuant to this Contract, to the extent such vessels are available at fair and reasonable rates.

6.2 To furnish within 20 days following the date of loading for shipments originating within the United States or within 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 paragraph (a) above to Amtrak (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of Cargo Preference and Domestic Trade, Maritime Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590, marked with appropriate identification.

6.3 To insert the substance of the provisions of this Section in all subcontracts issued pursuant to this Contract.

7.0 Drug-Free Work Place. Contractor agrees to comply with U.S. DOT regulations, “Government-wide Requirements for Drug-Free Workplace (Grants)”, 49 CFR Part 32, and FRA regulations, “Control of Alcohol and Drug Use”, 49 CFR Part 219.

8.0 Compliance With 2 C.F.R. § 200.321. Contractor shall comply with the requirements of 2 CFR § 200.321 consistent with all Executive Orders (EO) including, EO 14173 titled “Ending Illegal Discrimination and Restoring Merit-Based Opportunity” and EO 14151, titled “Ending Radical and Wasteful Government DEI Programs and Preferencing.” Contractor shall insert this provision in all subcontracts issued pursuant to this Contract.

9.0 Record Retention And Access.

9.1 Contractor shall retain all financial records, supporting documents, statistical records and all other Contractor records pertinent to this Contract for a period of three years after contract closeout as set forth in 2 CFR 200.333-200.337.

9.2 Authorized representatives of the Federal Railroad Administration, Inspectors General, and the Comptroller General of the United States shall have access to and the right to examine, audit and copy any of Contractor’s directly pertinent books, documents,

papers, or other records involving transactions related to this Contract as long as the records are retained.

9.3 In cases where litigation, a claim, or an audit is initiated prior to the expiration of the three-year period, records must be retained until completion of the action and resolution of the issues or the end of the three-year period, whichever is later.

9.4 In accordance with the May 2013 Executive Order on Making an Open and Machine Readable the New Default for Government Information, the Contractor shall, whenever practicable, collect, transmit, and store Contract-related information in open and machine readable formats rather than in closed formats or on paper.

10.0 Environmental Protection. *This section applies if the Contract exceeds \$150,000.* Contractor will conduct work under this Contract, and will require that work that is conducted as a result of this Contract be in compliance with the following provisions, as modified from time to time, all of which are incorporated herein by reference: the Clean Air Act, 42 U.S.C. 7401 *et seq.*, and the Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and all regulations issued thereunder. Where applicable, Contractor shall comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 *et seq.*).

11.0 Application To Lower-Tier Subcontractors. Contractor shall insert in each subcontract the provisions set forth in these Supplementary General Provisions and also a provision requiring the subcontractors to include these provisions in any lower tier subcontracts. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth herein. Contractor shall also include in each subcontract that exceeds \$250,000, and cause its subcontractors to include in each lower tier subcontract that exceeds \$250,000 provisions that allow for administrative, contractual or legal remedies in instances which a contractor or subcontractor violates or breaches contract terms.

12.0 Contract Termination Provisions. All subcontracts in excess of \$10,000 shall address termination for cause and termination for convenience, including the manner by which termination will be effected and the basis for settlement.

13.0 Allowable Costs. Contractor's expenditures will be reimbursed only if they conform with Federal guidelines or regulations and Federal cost principles as set forth in Federal Acquisition Regulation, 48 CFR Chapter I, Subpart 31.2, "Contracts with Commercial Organizations", which are incorporated herein by reference. If any costs are disallowed, as determined

by an audit by Amtrak or the Federal Government, Contractor agrees to reimburse Amtrak for such disallowed costs within sixty (60) days of advice to Contractor of the determination of disallowance.

14.0 Americans With Disabilities Act. Contractor shall comply and cause its subcontractors and lower tier subcontractors to comply with the requirements of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. § 12101 *et seq.*), the Rehabilitation Act of 1973, as amended (29 U.S.C. 794 *et seq.*) and the implementing Department of Transportation regulations at 49 CFR Parts 27, 37 and 38.

15.0 Capital Acquisition. The FY 2016 Appropriations Act requires Amtrak to include a statement in any contract for a capital acquisition that exceeds \$10,000,000 in life cycle costs that funding for the acquisition is subject to the availability of funds appropriated by Congress in an Appropriations Act, even though Amtrak is not subject to the Anti-Deficiency Act, does not receive appropriations directly from Congress, and possesses other sources of revenue that may fund the capital acquisition.

16.0 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. Contractor shall provide no equipment, services, or systems under the Contract that causes Amtrak to be in violation of 2 CFR §200.216 (Prohibition on certain telecommunications and video surveillance services or equipment). As of the effective date of 2 CFR §200.216, companies that may be implicated by this provision are: Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). Contractor shall include this provision in all subcontracts it issues.

17.0 Equivalent Labor Protections. Contractor shall, to the extent applicable, comply with FRA's Equivalent Labor Protections Appendix, available at: <https://railroads.dot.gov/elibrary/equivalent-labor-protections>.

18.0 Application of Federal Laws and Regulations. Contractor understands that Federal laws, regulations, policies, and related administrative practices may be modified from time to time. Contractor agrees that the most recent of such Federal requirements will govern this Contract at any particular time, except if there is sufficient evidence in this Contract of a contrary intent. Amtrak, in



accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and applicable regulations, hereby notifies all bidders that it will affirmatively ensure that for any contract entered into pursuant to this advertisement,

disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

ADDITIONAL CLAUSES

Contractor hereby agrees that it is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled *Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation—Effectuation Of Title VI Of The Civil Rights Act Of 1964*);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory cites hereinafter are referred to as the “Acts” and “Regulations,” respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, Contractor hereby gives assurance that it will promptly take any measures necessary to ensure that: *“No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity.”*

Contractor also agrees to comply (and require any sub-recipients, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing FRA’s access to records, accounts, documents, information, facilities, and staff. Contractor also recognizes that it must comply with any program or compliance reviews, and/or compliance investigations conducted by FRA. Contractor must keep records, reports, and submit the material for review upon request to FRA, or its designee in a timely, complete, and accurate way. Additionally, Contractor must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

Patent Rights

Contractor agrees to comply with the standard patent rights clauses found at 37 C.F.R §401.14, as applicable. Contractor is a “Contractor” as that term is used in 37 C.F.R. §401.14.

EXHIBIT A

During the performance of this Contract, Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees as follows:

1. **Compliance with Regulations:** Contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally assisted programs of the U.S. Department of Transportation, Federal Railroad Administration (FRA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** Contractor, with regard to the work performed by it during the Contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Contractor of the Contractor’s obligations under this Contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by Amtrak or FRA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish the information, Contractor will so certify to Amtrak or FRA, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of Contractor’s noncompliance with the Non-discrimination provisions of this Contract, Amtrak will impose such Contract sanctions as it or FRA may determine to be appropriate, including, but not limited to:
 - a. withholding payments to Contractor under the Contract until Contractor complies; and/or
 - b. cancelling, terminating, or suspending the Contract, in whole or in part.
6. **Incorporation of Provisions:** Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. Contractor will take action with respect to any subcontract or procurement as Amtrak or FRA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Contractor may request Amtrak to enter into any litigation to protect the interests of Amtrak. In addition, Contractor may request the United States to enter into the litigation to protect the interests of the United States.

EXHIBIT B

During the performance of this Contract, Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 C.F.R. Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 C.F.R. Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 *et seq.*).

EXHIBIT C - POLICY TO BAN TEXT MESSAGING WHILE DRIVING

a) *Definitions.* The following definitions are intended to be consistent with the definitions in DOT Order 3902.10, Text Messaging While Driving (Dec. 30, 2009) and Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving (Oct. 1, 2009). For clarification purposes, they may expand upon the definitions in the executive order.

For the purpose of this Term B.4, “**Motor Vehicles**” means any vehicle, self-propelled or drawn by mechanical power, designed and operated principally for use on a local, State or Federal roadway, but does not include a military design motor vehicle or any other vehicle excluded under Federal Management Regulation 102-34-15.

For the purpose of this Term B.4, “**Driving**” means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic congestion, a traffic signal, a stop sign, another traffic control device, or otherwise. It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

For the purpose of this Term B.4, “**Text messaging**” means reading from or entering data into any handheld or other electronic device (including, but not limited to, cell phones, navigational tools, laptop computers, or other electronic devices), including for the purpose of Short Message Service (SMS) texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless this practice is prohibited by State or local law. The term also does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to remain stationary.

For the purpose of this Term B.4, the “**Government**” includes the United States Government and State, local, and tribal governments at all levels.

b) *Workplace Safety.* In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving (Oct. 1, 2009) and DOT Order 3902.10, Text Messaging While Driving (Dec. 30, 2009), Amtrak and its subrecipients, contractors, and subcontractors are encouraged to:

1. adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving—
 - i. Company-owned or -rented vehicles or Government-owned, leased or rented vehicles; or
 - ii. Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.
2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as—
 - i. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
 - ii. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

c) *Subawards and Contracts.* To the extent permitted by law, Contractor shall insert the substance of this exhibit, including this paragraph (c), in all subawards, contracts, and subcontracts under this award that exceed the micro-purchase threshold, other than contracts and subcontracts for the acquisition of commercially available off-the-shelf items.



**APPENDIX A TO SUPPLEMENTARY GENERAL PROVISIONS
FOR
NONCONSTRUCTION CONTRACTS**

CERTIFICATION REGARDING LOBBYING

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

(1) 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 an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with 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.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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 section 1352, title 31, U.S. Code. 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.

Name of Bidder/Offeror/Contractor

Signature of Authorized Representative

Printed Name of Authorized Representative

Title of Authorized Representative

Date

**APPENDIX B TO SUPPLEMENTARY GENERAL PROVISIONS FOR
NONCONSTRUCTION CONTRACTS**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY
MATTERS -- PRIMARY COVERED TRANSACTIONS
2 C.F.R. Parts 180 and 1200**

These assurances and certifications are applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FRA approval or that is estimated to cost \$25,000 or more—as defined in 2 C.F.R. Parts 180 and 1200.

By submitting its proposal or entering into this Contract, Contractor is providing the assurances and certifications for First Tier Participants and Lower Tier Participants, as set out below.

1. Instructions for Certification – First Tier Participants:

- a. The prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency’s determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms “covered transaction,” “civil judgment,” “debarred,” “suspended,” “ineligible,” “participant,” “person,” “principal,” and “voluntarily excluded,” as used in this clause, are defined in 2 C.F.R. Parts 180 and 1200. “First Tier Covered Transactions” refers to any covered transaction between a Recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a Recipient or subrecipient of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers to any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion- Lower Tier Covered Transactions,” provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment, including a civil settlement, rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to its proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FRA approval or estimated to cost \$25,000 or more - 2 C.F.R. Parts 180 and 1200)

a. The prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms “covered transaction,” “civil settlement,” “debarred,” “suspended,” “ineligible,” “participant,” “person,” “principal,” and “voluntarily excluded,” as used in this clause, are defined in 2 C.F.R. Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. “First Tier Covered Transactions” refers to any covered transaction between a Recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a Recipient or subrecipient of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of its proposal or entering into a contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to its proposal.

**APPENDIX C TO SUPPLEMENTARY GENERAL PROVISIONS
FOR
NONCONSTRUCTION CONTRACTS**

**REQUIREMENTS REGARDING DELINQUENT TAX LIABILITY OR A FELONY CONVICTION
UNDER ANY FEDERAL LAW**

As required by sections 744 and 745 of Title VII, Division E of the Consolidated Appropriations Act, 2022, Pub. L. No. 117-103 (Mar. 15, 2022), and implemented through USDOT Order 4200.6, the funds provided under this award shall not be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that:

- (1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless a Federal agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or
- (2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless a Federal agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government.

Contractor therefore agrees:

1. Definitions. For the purposes of this exhibit, the following definitions apply:

“Covered Transaction” means a transaction that uses any funds under this award and that is a contract, memorandum of understanding, cooperative agreement, grant, loan, or loan guarantee.

“Felony Conviction” means a conviction within the preceding 24 months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the United States Code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. 3559.

“Participant” means Contractor, an entity who submits a proposal for a Covered Transaction, or an entity who enters into a Covered Transaction.

“Tax Delinquency” means an unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

2. Mandatory Check in the System for Award Management. Before entering a Covered Transaction with another entity, Contractor shall check the System for Award Management (the “SAM”) at <http://www.sam.gov/> for an entry describing that entity.

3. Mandatory Certifications. Before entering a Covered Transaction with another entity, a Participant shall require that entity to:

- (a) Certify whether the entity has a Tax Delinquency; and
- (b) Certify whether the entity has a Felony Conviction.

4. Prohibition. If

- (a) the SAM entry for an entity indicates that the entity has a Tax Delinquency or a Federal Conviction;
- (b) an entity provides an affirmative response to either certification in section 3; or



- (c) an entity's certification under section 3 was inaccurate when made or became inaccurate after being made

then a Participant shall not enter or continue a Covered Transaction with that entity unless the USDOT has determined in writing that suspension or debarment of that entity are not necessary to protect the interests of the Government.

5. Mandatory Notice to Amtrak.

- (a) If the SAM entry for a Participant indicates that the Participant has a Tax Delinquency or a Felony Conviction, Contractor shall notify Amtrak in writing of that entry.
- (b) If a Participant provides an affirmative response to either certification in section 1, Contractor shall notify Amtrak in writing of that affirmative response.
- (c) If Contractor knows that a Participant's certification under section 1 was inaccurate when made or became inaccurate after being made, Contractor shall notify Amtrak in writing of that inaccuracy.

6. Flow Down. For all Covered Transactions, including all tiers of subcontracts and subawards, Contractor shall:

- (a) require the SAM check in section 2;
- (b) require the certifications in section 3;
- (c) include the prohibition in section 4; and
- (d) require all Participants to notify Contractor in writing of any information that would require Contractor to notify Amtrak under section 5.

Certification Regarding Tax Delinquency and Felony Convictions

By submitting its proposal or entering into this Contract, Contractor certifies, in accordance with the above instructions, that it has neither a Tax Delinquency nor a Felony Conviction.