

**Request for Proposal**  
**for the Purchase of**  
**New Bi-Level Passenger Railcars**

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April 20, 2012

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**Section 1: Notice of Request for Proposals**

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## **SECTION 1: NOTICE OF REQUEST FOR PROPOSALS**

For definitions and acronyms please see Section 3: General Conditions (GC 1).

### **NR 1. Title/Description of the Work to be Done**

The California Department of Transportation (Department or Caltrans) as the lead agency in joint agreement with the Illinois Department of Transportation (IDOT) who is representing the Midwest Coalition (the States of Illinois, Michigan, and Missouri) is soliciting Proposals from railcar manufacturers to perform engineering, design, production, assembly, inspection, testing, delivery and warranty services on New Bi-Level Passenger Railcars (Railcars).

The total amount dedicated to this Work is \$551 Million dollars.

The Work under the Contract will be set out as follows:

A base quantity of up to 130 Railcars and associated goods and services such as, but not limited to, spare parts, training materials, parts and maintenance manuals, special tools and diagnostic equipment as specified.

In addition to the base order quantity, there will be Options for 200 Railcars and associated goods and services such as, but not limited to, spare parts, training materials, parts and maintenance manuals, special tools and diagnostic equipment, as specified in this RFP.

### **NR 2. Obtaining Proposal Documents**

Proposal documents may be obtained electronically at <http://www.bidsync.com/>. (See IP 3 for additional information).

### **NR 3. Proposal Due Date and Submittal Requirements**

Proposals must be received by 5:00 PM (Pacific Time) on the dates shown in Section IP 2 "Proposed Schedule for the Procurement".

1. Proposals shall be submitted to the following address for mail, courier delivery, or hand delivery:

State of California  
Department of Transportation  
Administration  
Division of Procurement and Contracts – MS 65  
1727 30th Street  
Sacramento, CA 95816-7006  
Attention: Ryan Mak  
Telephone: (916) 227-0223

In the upper portion of the sealed mailing envelope, label outer package:  
RFP 75A0362  
RFP Title: New Bi-Level Passenger Railcars  
Firm Name: \_\_\_\_\_  
DO NOT OPEN

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\* If your Proposal is hand delivered, you must date and time stamp it immediately upon arrival. The date/time stamp machine is located in the lobby of the first floor to the right of the security guard station at the address noted above. After date/time stamping, Proposals should be placed in the locked bid cabinet located below the time stamp. If the Proposal package is too large to be electronically stamped, date/time stamp one of the labels provided and attach it to the Proposal package. When the Proposal package is too large for the locked bid cabinet, ask the security guard to call the Contracts' reception desk at 227-6000 to have your Proposal package picked up by Contracts' staff.

2. Proposers shall submit one original (marked clearly as such), eight (8) hard copies, and two (2) CDs, each containing an electronic PDF copy of the Proposal to Caltrans. In case of any discrepancies, the original will be considered by Caltrans in evaluating the Proposal, and the electronic version is provided for Caltrans's administrative convenience only.
3. Caltrans will not accept any Final Proposals delivered after the dates and times indicated above. Late Final Proposals shall be returned unopened to the sender.

#### **NR 4. Cost of Proposal Documents**

All costs for developing Proposal documents shall be borne by the Proposer.

#### **NR 5. Validity of Proposals**

Final Proposals shall be valid for a period of 120 days following the scheduled date for Contract Award. Caltrans may request Proposers to extend the period of time specified herein by written agreement between Caltrans and the Proposer(s) concerned.

#### **NR 6. Pre-Proposal Meeting Information**

A Pre-Proposal Meeting, including web-cam, will be held on May 9, 2012. The meeting will convene at 10:00 a.m. P.S.T and end at 12:00 p.m. (Please see IP 5.1).

#### **NR 7. Identification of Source of Funding**

Financial support of this project is provided through financial assistance grants from the Federal Railroad Administration (FRA) and the State of California Proposition 1B bonds.

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**Section 2: Instructions to Proposers**

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## SECTION 2: INSTRUCTIONS TO PROPOSERS

For definitions and acronyms please see Section 3: General Conditions (GC 1).

### IP 1: Scope of Work

The California Department of Transportation (Department or Caltrans) as the lead agency in joint agreement with the Illinois Department of Transportation (IDOT) who is representing the Midwest Coalition (the States of Illinois, Michigan, and Missouri) is soliciting Proposals from railcar manufacturers to perform engineering, design, production, assembly, inspection, testing, delivery and warranty services on New Bi-Level Passenger Railcars (Railcars).

The total amount dedicated to this Work is \$551 Million dollars.

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In addition to the base order quantity, there will be Options for 200 Railcars and associated goods and services such as, but not limited to, spare parts, training materials, parts and maintenance manuals, special tools and diagnostic equipment, as specified in this RFP.

See the table below for a summary of vehicle quantities:

Vehicle Type	Base Quantity	Option Quantity
Coach Car	80	Up to 150 cars
Café/Lounge Car	5	Up to 50 cars
Café/Business Class Car	21	Up to 50 cars
Cab/Baggage Car	24	Up to 50 cars
Total	130	

Of the 130 cars identified above, 88 will be delivered to the Midwest Coalition and 42 will be delivered to Caltrans.

In addition to meeting the technical requirements of this Request for Proposal (RFP) found in the technical specifications, Proposers must adhere to all of the Instructions to Proposers requirements of this RFP to be responsive. These requirements include the format specified in IP 12.3, the completion of the price schedule specified in IP 12.3.3 and the additional requirements of this Section 2.

Responses to this RFP will be evaluated based on the Evaluation Criteria of this RFP. An award, if made, will be to a single Proposal awarded the greatest number of total points as calculated in accordance with the methodology defined in the Evaluation Criteria of this RFP.

### IP 2: Proposed Schedule for the Procurement

This Procurement will follow a phased approach designed to increase the likelihood that Final Proposals will be received without disqualifying defects. This approach will (1) ensure that the Proposers clearly understand the Department's requirements before attempting to develop their final solutions; (2) ensure that the Department clearly understands what each Proposer intends to propose before those Proposals are finalized; and (3) give the Department and each Proposer the opportunity to discuss weaknesses or potentially unacceptable elements of a Proposal and give the Proposer the opportunity to modify its Proposal to correct such problems.

In order for a Proposer to be afforded the benefits of the phased approach included in this RFP, the Proposer must take the responsibility to:

- carefully read the entire RFP;
- if clarification is necessary, ask appropriate questions in a timely manner

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- submit all required responses, complete to the best of the Proposer’s ability, by the required dates and times;
- make sure that all procedures and requirements of the RFP are accurately followed and appropriately addressed; and
- carefully reread the entire RFP before submitting each Proposal.

The following is the anticipated schedule for this procurement. All dates are subject to change by addenda.

<b>Date</b>	<b>Activity</b>
4/20/2012	Request for Proposals issued
5/4/2012	Last day to submit questions for Pre-Proposal Meeting
5/9/2012	Pre-Proposal Meeting
5/11/2012	Last day to submit Notice of Intent to Bid (CER 9)
5/11/2012	Last day to submit questions regarding RFP
5/16/2012	Last day to respond to Proposers questions regarding RFP
5/18/2012	Last day to submit Initial Protests for Requirements (see IP 11.2 “Initial Protests”)
5/30/2012	Draft Proposals due, including Forms for Proposal Deviations (CER 4)
6/25/2012	Begin Confidential Discussions
7/13/2012	Last day for Confidential Discussions with Proposers
7/18/2012	Last day to submit questions prior to release of Addenda
7/27/2012	Release RFP addenda and final Questions and Answers
8/3/2012	Last day to submit Initial Protests for Addenda (see IP 11.2 “Initial Protests”)
8/17/2012	Final Proposals due
9/7/2012	Cost Opening
9/10/2012	Notice of Intent to Award
9/10/2012	Begin FRA “Buy America” Pre-Award audit
9/14/2012	Last day to protest Recommended Award (see IP 11.3 “Recommendation Award Protests”)
10/5/2012	Complete FRA “Buy America” Pre-Award audit
10/9/2012	Contractor submits Performance Bond and Insurance Certificates
10/10/2012	Notice of Contract Award

Caltrans reserves the right to modify the procurement schedule as circumstances may warrant. If Caltrans finds it necessary to change any of these dates up to and including the date that Final Proposals are submitted, the change in schedule will be accomplished via an addendum to this RFP.

### **IP 3: Obtaining Proposal Documents**

Proposal documents may be obtained electronically at <http://www.bidsync.com/>.

The Proposer should carefully examine the entire RFP, any addenda thereto, and all related materials and data referenced in the RFP or otherwise available to the Proposer. The Proposer should become fully aware of the nature and location of the Work, the quantities of the Work, and the conditions to be encountered in performing the Work.

The Caltrans Division of Procurement and Contracts (DPAC) Procurement Official is Ryan Mak ([Ryan.Mak@dot.ca.gov](mailto:Ryan.Mak@dot.ca.gov)). This is the individual responsible for conducting the solicitation process and will be the Department’s recipient for Proposals, questions or copies of protests.

To comply with the nondiscrimination requirements of the Americans with Disabilities Act (ADA), it is the policy of the State of California to make every effort to ensure that its programs, activities, and services are available to all persons, including persons with disabilities.

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For persons with a disability needing a reasonable accommodation to participate in the procurement process, or for persons having questions regarding reasonable accommodation during the procurement process, you may contact the Department Official identified above. You may also contact the Department at the numbers listed below.

**IMPORTANT:** TO ENSURE THAT WE CAN MEET YOUR NEEDS, IT IS BEST THAT WE RECEIVE YOUR REQUEST FOR REASONABLE ACCOMMODATION AT LEAST 10 WORKING DAYS BEFORE THE SCHEDULED EVENT (i.e., MEETING, CONFERENCE, WORKSHOP, etc.) OR DEADLINE DUE-DATE FOR PROCUREMENT DOCUMENTS.

The Caltrans DPAC TTY and TDD telephone number is 711.

#### **IP 4: Proposal Security Requirements**

Not applicable.

#### **IP 5: Pre-Proposal Meeting/Intent to Bid**

##### **IP 5.1: Pre-Proposal Meeting**

A Pre-Proposal Meeting, including web-cam, will be held on **May 9, 2012**. The meeting will convene at **10:00 a.m.** P.S.T and end at **12:00 p.m.** in Caltrans Rail Conference Room located at 1120 N Street, Room 3400, Sacramento, CA 95814. There will be an opportunity for Buy America/small business outreach after the meeting. Proposers are urged to make every effort to attend this meeting. The webcam contact information will be posted as an addendum.

Proposers are requested to submit written questions to the DPAC Procurement Official, identified in IP 3, in advance of the Pre-Proposal Meeting.

Questions for the Pre-Proposal Meeting may be submitted up to the date specified in IP 2, "Proposed Schedule for the Procurement." Questions and responses will be shared with all Proposers. Proposers are reminded that any changes to the RFP will be by written addenda only. Nothing verbalized at the Pre-Proposal Meeting shall change or qualify in any way any of the provisions in the RFP.

Written questions received prior to the cutoff date for submission of such questions, will be answered at the Pre-Proposal Meeting without divulging the source of the query.

##### **IP 5.2: Intent to Bid**

Proposers that want to participate in the RFP must submit a Notice of Intent to Bid (CER 9) on this procurement to receive additional information. The Notice of Intent to Bid should identify the contact person for the solicitation process, an email address, and a phone and fax number. The Department shall only be responsible for notifying one (1) contact person per Proposer. All communication with each Proposer will be provided to the designated contact person. It shall be the Proposer's responsibility to immediately notify the DPAC Procurement Official, in writing, regarding any revision to the Proposer's contact information. The Department shall not be responsible for Proposal correspondence not received by the Proposer if the Proposer fails to notify the Department, in writing, about any change pertaining to the designated contact person.

## **IP 6: Questions, Clarifications and Omissions**

All correspondence, communication and contact in regard to any aspect of this RFP shall be only with the DPAC Procurement Official identified in IP 3.

Proposers and their representatives shall not make any contact with or communicate with any member of Caltrans, IDOT, the Midwest Coalition, the FRA, or any employees and/or consultants of these agencies, other than the designated DPAC Procurement Official identified in IP 3, with regard to any aspect of this RFP.

If a Proposer discovers any ambiguity, conflict, discrepancy, omission, or other error in this RFP, the Proposer shall immediately notify the DPAC Procurement Official identified of such error in writing and request clarification or modification of the document.

Proposers may request, via email to the Procurement Official in IP 3 a clarification or interpretation of any aspect, a change to any requirement of the RFP, or any addenda to the RFP, up to the time specified in IP 2 "Proposed Schedule for the Procurement". Such written requests shall be made to the DPAC Procurement Official. The Proposer making the request shall be responsible for its proper delivery to Caltrans, as identified above, on the form CER 2, Request for Pre-Offer Clarifications. Any request for a change to any requirement of the Contract Documents must be fully supported with pertinent information showing evidence that the change will result in a condition equal to or better than that required by the RFP, without substantial increase in cost or time requirements.

If it should appear to a Proposer that the performance of the Work under the RFP, or any of the matters relating thereto, is not sufficiently described or explained in the RFP, or that any conflict or discrepancy exists between different parts of the RFP or with any Federal, State, or local law, ordinance, rule, regulation or other standard or requirement, then the Proposer shall submit a written request for clarification to Caltrans within the time period specified above.

All responses to CER 2 Request for Pre-Offer Clarifications shall be provided to all Proposers. Any response that is not conveyed by a written addendum shall not be official or binding on Caltrans.

If the RFP contains an error known to the Proposer, or an error that reasonably should have been known, the Proposer shall bid at its own risk. If the Proposer fails to notify the Department of the error prior to the date fixed for submission of Proposals, and is awarded the contract, the Proposer shall not be entitled to additional compensation or time by reason of the error or its later correction.

## **IP 7: Addenda to the RFP**

Caltrans reserves the right to amend the RFP at any time in accordance with IP 2 "Proposed Schedule for the Procurement." Any changes to or interpretations of the RFP shall be described in written addenda. Notification of the addenda will be distributed to all such Proposers who submitted a Notice of Intent to Bid. Failure of any Proposer to receive the notification or addenda shall not relieve the Proposer from any obligation under the RFP as clarified, interpreted or modified. All addenda issued shall become part of the RFP. Proposers shall acknowledge the receipt of each individual addendum in their Proposals on the form CER 3, Acknowledgement of Addenda. Failure to acknowledge receipt of addenda in their Proposals may at Caltrans' sole option disqualify the Proposal.

If Caltrans determines that the addenda may require significant changes in the preparation of Proposals, then the deadline for submitting the Proposals may be extended. Any new Due Date shall be included in the addenda.

Addenda will be numbered consecutively.

## IP 8: DBE Requirements

Contractor agrees to encourage participation by small business firms and utilize small businesses including service disabled veteran-owned businesses in accordance with the respective plans developed by the States for this Project. (See FC 8)

## IP 9: Buy America Certification

### FRA Buy America Requirements:

This RFP is subject to FRA's "Buy America" statute at 49 U.S.C. § 24405 (a) (see Code Section at: <http://www.fra.dot.gov/downloads/49USC24405a.pdf>) and applicable FRA guidance (see FRA Buy America Frequently Asked Questions at: <http://www.fra.dot.gov/Pages/11.shtml>). 49 U.S.C. § 24405(a) allows the U.S. Secretary of Transportation to obligate funds for "a project only if the steel, iron, and manufactured goods used in the project are produced in the U.S." FRA has stated that what constitutes FRA Buy America compliant rolling stock is rolling stock that has undergone final assembly in the U.S. from components that are manufactured in the U.S. FRA has compiled a comprehensive list of items that it considers components of rail rolling stock (see form CER 7.X). Proposers must use this form and the appropriate completed and signed certificate (see form CER 7.1) to indicate their compliance with Buy America requirements.

While FRA uses some Federal Transit Administration (FTA) Buy America precedent as guidance for FRA grantees, the FTA Buy America requirements do not apply to this RFP. For example, FRA's Buy America statute does not contain an exception allowing for a waiver from the Buy America requirements, "when ... the cost of components and subcomponents produced in the U.S. is more than 60 percent of the cost of all components of the rolling stock; and ... final assembly of the rolling stock has occurred in the U.S."

The FRA Buy America requirement has two elements:

1. Final assembly of vehicles must occur in the United States (no waivers will be granted to this requirement), and
2. 100 percent of the components (see list of components in form CER 7.7) must be manufactured in the United States (waivers may be granted for this requirement).

However, a Proposal will be deemed compliant with the Buy America requirements in this RFP if:

1. Final assembly of the rail vehicles will occur in the U.S. and **EITHER**:
2. 100 percent of the rail vehicle's components will be manufactured in the U.S. and the Proposer submits a Certificate of Compliance (see form CER 7.1) and form CER 7.7 documenting the U.S. location of each components' manufacture; **OR**
3. 100 percent of the rail vehicle components cannot be manufactured in the U.S. and the Proposer submits a Certificate of Noncompliance (see form CER 7.1) and a form CER 7.7 documenting the components that will be manufactured in the U.S. and for components that cannot be manufactured in the U.S. submits documentation sufficient to process and support a waiver from FRA's Buy America requirement (see 49 U.S.C. § 24405(a)(2)).

Where a Certificate of Noncompliance (see form CER 7.1) and a waiver request is submitted, the waiver must be approved by FRA before any final contract award can be made. All certifications are subject to audits.

### **FRA Buy America Definitions:**

*Final assembly* is the creation of the end product (the new Bi-Level Passenger Railcar) from individual elements brought together for that purpose through application of manufacturing processes. If a system is being procured as the end product by the grantee, the installation of the system qualifies as final assembly.

*Component* means any article, material, or supply, whether manufactured or unmanufactured, that is directly incorporated into the end product at the final assembly location. A *component* is considered to be manufactured in the U.S. if there are sufficient activities taking place in the U.S. to advance the value or improve the condition of the subcomponents of that component; that is, if the subcomponents have been substantially transformed or merged into a new and functionally different article.

*End product* means a new Bi-Level Passenger Railcar, which directly incorporates constituent components at the final assembly location, that is acquired for public use under a federally-funded third-party contract, and which is ready to provide its intended end function or use without any further manufacturing or assembly change(s).

*Rolling stock* means transit, passenger and freight rail vehicles such as buses, vans, cars, railcars, locomotives, trolley cars and buses, as well as vehicles used for support services.

*Subcomponent* means any article, material, or supply, whether manufactured or unmanufactured, that is one step removed from a component in the manufacturing process and that is incorporated directly into a component.

*System* means a machine, product, or device, or a combination of such equipment, consisting of individual components, whether separate or interconnected by piping, transmission devices, electrical cables or circuitry, or by other devices, which are intended to contribute together to a clearly defined function. Factors to consider in determining whether a system constitutes an end product include: Whether performance warranties apply to an integrated system (regardless of whether components are separately warranted); whether products perform on an integrated basis with other products in a system, or are operated independently of associated products in the system; or whether transit agencies routinely procure a product separately (other than as replacement or spare parts).

### **FRA Buy America Certification Requirements:**

Each Proposer shall submit the appropriate Buy America Certification (see form CER 7.1) and completed Buy America Worksheet (form CER 7.7) with both the Draft Proposals and Final Proposals. Final Proposals that are not accompanied by a properly completed Buy America Certification and Buy America Worksheet will be rejected as nonresponsive.

The two signature blocks on the Buy America Certificate are mutually exclusive. Proposers shall sign **ONLY ONE** signature block on the certificate. Signing both signature blocks will render the Proposal nonresponsive. Making a knowing and willful false certification is a criminal act in violation of 18 U.S.C. §1001.

### **FRA Non-Compliance Certification and Waiver Process:**

Final assembly must occur in the U.S. No waiver of this requirement will be granted and a Proposal containing such a request for waiver will be rejected.

A waiver from the FRA Buy America provisions regarding the requirement that 100 percent of components must be of U.S. origin may be granted only if the FRA determines one of the following to be true:

- Applying the requirement would be inconsistent with the public interest;
- The required component(s) are not produced in the U.S. in a sufficient and reasonably available amount or are not of a satisfactory quality;

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- Including the required component(s) would cause the rolling stock or power train equipment to not be bought and delivered in the U.S. within a reasonable time; and/or
- Including the domestic component(s) will increase the cost of the overall project by more than 25 percent.

(See 49 U.S.C. § 24405(a)(2))

The FRA may grant a waiver for a class of goods. In such a case, the FRA will inform Caltrans of the waiver(s) granted, and Caltrans will make this information available to Proposers in RFP addenda. Except where a waiver for a class of goods may have been granted, the Proposer must obtain a waiver from the FRA Buy America requirement for all non-compliant component(s) before contract award. Waivers will not be liberally granted. In the instance where a waiver is granted, it would be non-precedential and apply only to the party and procurement referenced in the particular waiver. At minimum, a Proposer's written waiver request justification should contain:

- Identification and description of the project;
- Description of the component not meeting the FRA Buy America requirement;
- Description of the efforts made to secure the component(s);
- Description of the process used to find U.S. suppliers of component(s) for which a waiver is being requested;
- Description of a process that shows a commitment to finding and/or developing U.S. suppliers in future procurements;
- Cost differential(s) expressed as a percentage of added costs in order to secure domestic component(s) as compared with nondomestic component(s);
- Problems with quality or quantity of compliant component(s);
- Problems with timely delivery of compliant component(s);
- Citation to the specific 49 U.S.C. § 24405(a)(2) waiver category(ies) under which the waiver is sought;
- Justification supporting the application of the waiver category(ies) cited; and
- Contact information for the responsible party.

The Proposer is required to submit a waiver request with its written justification for that waiver together with its Certificate of Non-Compliance as part of both Draft and Final Proposals (see IP 12 Preparation of Proposals). To the extent possible, a Proposer will submit only one waiver request containing all of the components for which a waiver is being requested. In addition, Proposers will clearly identify the justification information related to each component for which a waiver is being requested. As part of the Draft Proposal submittals, Caltrans will provide FRA with all waiver requests submitted by Proposers without identifying the Proposer that submitted each waiver request. Buy America documentation (to be included in a separate Buy America Proposal Package – see IP 12.3.2 Preparation of Proposals), includes:

- Completed Buy America Worksheet (form CER 7.7)
- Completed and Signed Buy America Certification (form CER 7.1)
- Completed and signed Buy America Component Supplier Certification forms (CER 7.8) (one for each supplier)
- Any Buy America Waiver Requests and Justifications

The FRA will review waiver documentation and identify potential issues or problems, which will be forwarded to Caltrans for discussion with the Proposer during Confidential Discussions. Waiver Requests

will not be processed during the Draft Proposal phase; only an initial review will be conducted. The FRA may request cost information from Proposers submitting waiver requests due to cost differentials. Such cost information would be submitted **only with Final Proposals** and must be included in a sealed bid in Proposal Package 3: Price Proposal Requirements (see IP 12.3.3). Waiver documentation review by Caltrans or FRA does not guarantee the waiver request will be granted.

In the Final Proposal phase, Caltrans will provide the FRA with each Proposer's Buy America documentation. The FRA will review each Proposer's Buy America documentation and provide Caltrans with feedback for each Proposal and/or recommendations and reasons for approving or denying the waiver request. If FRA denies the waiver request in the Final Proposal, the Proposal will be rejected as non-compliant.

### **IP 9.1: Buy America Pre-Award and Post-Delivery Audits**

Caltrans is required to conduct pre-award and post-delivery audits verifying compliance with Buy America provisions.

The pre-award audit is required before Caltrans enters into a formal contract with a Proposer. The pre-award audit will include an inspection of the facility where final assembly is to occur, an inspection of documentation provided by Proposer detailing the assembly activities that will occur at this facility, procurement documentation, and an inspection of all Buy America Certification Forms (CER 7.8) provided by suppliers for all included components as listed on the Buy America Worksheet (form CER 7.7). All Buy America Certification Forms submitted by component suppliers shall be signed and dated by the responsible official having knowledge of the origin of manufacture for the particular component(s).

The post-delivery audit of the first serial production car for each car type (e.g. passenger coach, baggage/cab car, business class/café car), must be completed before its title is transferred to Caltrans or IDOT, whichever is applicable. Follow-on post-delivery audits may be conducted at Caltrans' or IDOT's discretion, or at FRA's request.

The post-delivery audit will include an inspection of the final assembly location, on-site inspection of the final assembly process at that facility, and on-site verification that each component assembled into the car has a manufacture origin within U.S. or that a waiver has been granted by FRA for that component.

The Contractor will be required to provide information of sufficient detail and/or give an auditor access to the manufacture or assembly location to allow an auditor to determine that the rail vehicle underwent final assembly in the U.S. and that the components were manufactured in the U.S. The Contractor must agree to provide the information requested by Caltrans to allow Caltrans or its representative to complete all audits. Caltrans or IDOT may not accept vehicles if the post-delivery audit cannot be completed to verify the Contractor's compliance with the Buy America requirements regarding final assembly in the U.S. and 100 percent U.S. content on the component level or that a waiver has been granted where 100 percent U.S. manufactured component compliance cannot be achieved. Information provided will be kept confidential to the extent allowed by Federal and State laws.

### **IP 9.2: Domestic Content on Component Level**

To support and encourage domestic manufacturing of the offered vehicles and their components, this RFP will utilize among its evaluation criteria (consistent with applicable procurement practices and FRA guidance) as shown in the Buy America Worksheet (form CER 7.7) to evaluate domestically manufactured components offered in Proposals. Toward this end, the Proposer should submit form CER 7.7 documenting all component parts of the rolling stock offered in the Proposal, identifying for each component if it will be manufactured in the United States. The domestic content will be determined by the total weighted rating of the components identified as being manufactured domestically. The Proposer's assertion regarding foreign and domestic components is subject to audit.

Proposers are encouraged to take actions to explore the further development of a domestic supply base for railcar manufacturing. Proposers are encouraged to undertake good faith efforts to support the work of Caltrans, IDOT, FRA, and the Department of Commerce's National Institute of Standards and Technology's Manufacturing Extension Partnership (NIST-MEP).

## **IP 10: Conditions, Exceptions, Limitations or Deviations**

The Department has established certain requirements with respect to Proposals to be submitted by prospective contractors. The use of "shall," "must," or "will" (except to indicate simple futurity) in the RFP indicates a requirement or condition which is mandatory. A deviation, if not material, may be waived by the Department. A deviation from a requirement is material if the deficient response is not in substantial accord with the RFP requirements, provides an advantage to one Proposer over other Proposers, or has a potentially significant effect on the delivery, quantity or quality of items proposed, amount paid to the Proposer, or on the cost to the Department. Material deviations cannot be waived.

Proposers are cautioned to limit conditions, exceptions, limitations, or deviations (Proposal Deviation) to the provisions of this RFP, as they may be determined to be so fundamental as to cause rejection of the Proposal for not responding to the requirements of the RFP.

A Proposer may propose, in its Draft Proposal, any equipment, material, article, or process that, in its opinion, is equal to that designated and not otherwise specifically prohibited. All requests for "approved equals" shall clearly and completely specify how the request meets or exceeds the required fit and/or function of the Technical Specifications, and/or how the request is equal to or superior to the requirements in the Technical Specifications.

Any and all Proposal Deviations must be explicitly, fully and separately stated in the Draft Proposal by completing CER 4 Form for Proposal Deviation, setting forth at a minimum the specific reasons for each Proposal Deviation so that it can be fully considered.

The Form for Proposal Deviation (CER 4) shall be completed for each condition, exception, limitation or deviation in the Proposal. One copy of each CER 4 form is to be placed in the Technical Proposal as specified in IP 12.3.2 Package 2 "Technical Proposal Package Requirements."

This process will not be utilized as part of the Final Proposal phase. Deviations will only be allowed in Draft Proposals. Any Deviations that are accepted will be communicated as Addenda to the RFP.

## **IP 11: Protest Procedures**

The RFP procurement process is designed to give the Proposer and Caltrans adequate opportunity to submit questions and discuss the requirements and Draft Proposals before the Final Proposal is due. The dual protest procedures are made available in the event that a Proposer disagrees with: 1) the RFP requirements; or 2) the decision regarding contract award.

All protests must be made in writing, signed by the individual authorized to represent the Proposer, and must contain a statement of the reason(s) for protest. The protester must provide law, procedures, facts, and evidence to support its claim.

There are two types of protests: Initial Protests and Recommended Award Protests. Copies of the protest procedures may be obtained from the DPAC Procurement Official identified in IP 3.

### **IP 11.1: Initial Protests**

Initial Protests are protests submitted based on the content and requirements of the RFP documents and addenda. Initial Protests related to the RFP requirements are submitted prior to the Proposer's submittal of the Draft Proposal. Initial Protests related to RFP addenda are submitted after the release of the addenda and before submittal of the Final Proposal.

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Initial Protests must be received by the DPAC Procurement Official no later than the respective times and dates indicated in IP 2, "Proposed Schedule for the Procurement." Certified or registered mail must be used unless delivered in person, in which case the protest must be time stamped to verify time of filing.

Initial Protests will be considered and either denied or sustained in part or in whole, in writing, in a manner that provides verification of receipt, prior to the receipt of Final Proposals. If an Initial Protest is sustained, then the Final Proposal due date may be extended and an addendum issued or, at the sole discretion of Caltrans, the advertisement may be canceled.

Initial Protests will be heard and resolved by the DPAC Protest Unit, whose decision will be final. All Initial Protests must be must be mailed or hand-delivered to:

State of California  
Department of Transportation  
Division of Procurement and Contracts – MS 65  
Attention: Ryan Mak for DPAC Protest Unit  
1727 30th Street  
Sacramento, CA 95816-7006

### **IP 11.2: Recommended Award Protests**

If a vendor has submitted a Final Proposal which it believes should have been selected in accordance with the selection criteria in the RFP (see IP 13 "Proposal Evaluation and Selection Process"), and the Proposer believes another Proposer has been incorrectly selected for the award, the Proposer may submit a protest of the selection as described in Appendix 3. Protests regarding selection of the "successful Proposer" will be heard and resolved by the California Department of General Services, Office of Administrative Hearings.

All Recommended Award Protests must be must be mailed or hand-delivered to the Protest Coordinator. Certified or registered mail must be used unless delivered in person, in which case the protestant should obtain a receipt of delivery.

State of California  
Department of Transportation  
Division of Procurement and Contracts – MS 65  
Attention: Ryan Mak for the Protest Coordinator  
1727 30th Street  
Sacramento, CA 95816-7006

All protests must be made in writing, signed by an individual who is authorized to contractually bind the Proposer and state the basis for protest. The Protestant must provide laws, procedures, facts, and evidence to support its claim. Eight (8) copies of the Recommended Awards Protests must be received no later than the respective times and dates indicated in IP 2, "Proposed Schedule for the Procurement."

## **IP 12: Preparation of Proposals**

This Procurement will follow the procedures in this section and a multi-phased approach as described in IP 13 designed to increase the likelihood that Final Proposals will be received without disqualifying defects.

The procurement process to be used in this acquisition is composed of two phases of Proposal development. There will be a Draft Proposal and a Final Proposal.

The Draft Proposal and Final Proposal are mandatory steps for all Proposers. Costs/Price information submitted in any submission other than the Final Proposal may disqualify the Proposer from further participation in the RFP process.

The RFP process requires Caltrans and IDOT, working together in confidence with each Proposer, to assess and discuss the Draft Proposals, including the viability and effectiveness of the Proposer's proposed methods of meeting needs reflected in the RFP. It is a departure from the rigid "either accept or reject" philosophy of traditional competitive bidding, yet it is highly competitive in nature. It provides the flexibility needed for the Proposer to test a solution prior to formal submittal of the Final Proposal, and it facilitates the correction of defects before they can result in disqualification of a Proposal.

### **IP 12.1: Use of Proposal Forms**

Proposers shall use the forms contained in this RFP for submission of a Draft and Final Proposal.

### **IP 12.2: Alternate and Multiple Proposals**

Not Applicable.

### **IP 12.3: Proposal Format Requirements**

Draft Proposals shall be submitted in two (2) separately sealed packages identified below. **NO COST/PRICE INFORMATION SHALL BE SUBMITTED WITH DRAFT PROPOSALS.** Each package shall be marked as specified below and shall contain all required Proposal documents and no other documents. Final Proposals shall be submitted in three (3) separately sealed packages.

Proposers shall submit one original (marked clearly as such), eight (8) copies, and two (2) CDs or other media, containing an electronic PDF copy of the Proposal to the Caltrans DPAC Procurement Official. In case of any discrepancies, the original will be considered by Caltrans/IDOT in evaluating the Proposal, and the electronic version is provided for administrative convenience only.

The Proposals shall be prepared double-sided on 8½ × 11 inch Paper, using at least 11-point font. The hard copies shall be contained in three-ring binders, the contents of which are identified on the outside. Use of 11 × 17 inch foldout sheets for large tables, charts or diagrams is permissible but should be limited. Elaborate formatting is not necessary. Do not provide promotional or advertising information, unless this information is requested and/or is necessary to support the technical submittal.

Mail or deliver Proposals to the Caltrans DPAC Procurement Official listed in IP 3. If mailed, it is suggested that you use certified or registered mail as delivery of documents is at the Proposer's risk.

Draft Proposals and Final Proposals must be received in the number of copies stated herein and no later than the dates and times specified in IP 2. All copies of Draft Proposals and Final Proposals must be clearly marked "DRAFT PROPOSAL," or "FINAL PROPOSAL" for "RFP 75A0362". Proposals not received by the date and time specified will be rejected.

Cost data must be submitted only with the Final Proposal, and must be submitted under separate, sealed cover and clearly marked "PRICE PROPOSAL." If price data is not submitted under separate, sealed cover, the Proposal will be rejected.

Draft Proposals and Final Proposals submitted under improperly marked covers may be rejected. If discrepancies are found between two (2) or more copies of the Proposal, the Proposal may be rejected.

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However, if not so rejected, the Original Copy will provide the basis for resolving such discrepancies. If one copy of the Final Proposal is not clearly marked "Original," DPAC may reject the Proposal; however, DPAC may at its sole option, immediately after Proposal opening, select one copy to be used as the Original.

Proposals will be comprised of the following packages, and submitted and ordered in the appropriate sections as outlined below:

**IP 12.3.1: Package 1: Qualifications and Certifications Package Requirements**

The Qualifications and Certifications package is to include twelve (12) separate submittal sections:

1. Letter of Transmittal: This cover letter, signed by the Contractor's Representative, summarizes the contents of the Proposal and confirms the validity period (see IP 13.2) of the Proposal.
2. CER 8: Proposal Form
3. CER 3: Acknowledgement of Addenda
4. CER 4: Form for Proposal Deviation (for Draft Proposals only; do not include with Final Proposals)
5. CER 5: Pre-Award Evaluation Data Form
6. CER 7.2: Debarment and Suspension Certification for Prospective Contractor
7. CER 7.3: Debarment and Suspension Certification (lower-tier covered transactions)
8. CER 7.4: Non-Collusion Affidavit
9. CER 7.5 Lobbying Certification
10. Bidder's Declaration
11. Letter of Intent from a qualified insurance carrier, indicating its willingness to provide insurance coverage for the Proposer in accordance with the RFP requirements
12. Letter of Intent from a qualified bonding company, indicating its willingness to provide a performance bond for the Proposer in accordance with the RFP requirements

**IP 12.3.2: Package 2: Technical Proposal Package Requirements**

The Technical Proposal package is to include three (3) separate submittal sections:

1. CER 4: Form for Proposal Deviation (for Draft Proposals only; do not include with Final Proposals)
2. Buy America
  - CER 7.1: Buy America Certificate of Compliance or Non-Compliance
  - CER 7.7: Buy America Worksheet
  - CER 7.8: Buy America Component Supplier Certification Form
  - Waiver Requests and Justifications, if needed
3. Technical Proposal, presented per the outline below
  - 1.1 Overall Vehicle Information
    - 1.1.1 General Arrangement Drawings
    - 1.1.2 Vehicle Weight Schedule
  - 1.2 Vehicle Major Systems and Suppliers
  - 1.3 Qualifications
    - 1.3.1 Previous Similar Experience (CER 10)
    - 1.3.2 Manufacturing Capacity and Capability
    - 1.3.3 Staffing Plan and Resumes
    - 1.3.4 Program Management, Design, Testing, Quality Assurance Plans, and Workflow Diagram
  - 1.4 Schedule and Narrative

**TECHNICAL PROPOSALS SHOULD INCLUDE THE FOLLOWING INFORMATION IN THE FORMAT PROVIDED BELOW.**

**1. Technical Proposal**

**1.1 Overall Vehicle Information**

**1.1.1 General Arrangement Drawings**

4. For each car type: coach, cab/baggage, café/lounge, and café/business class, provide nine (9) general arrangement drawings to scale with appropriate dimensions that indicate the following:

- Vehicle plan view (exterior)
- Vehicle side view (exterior)
- Vehicle front view (exterior)
- Vehicle seating, seat pitch, table layout/design arrangement, trash and recycling containers, luggage bins, utility lockers, and other passenger amenities (interior plan view, both upper and lower levels)
- Vehicle equipment room arrangement
- Vehicle interior equipment arrangement
- End view (both ends)
- Three Dimensional representation (hard copy) of CEM and Pass-Thru Cab
- Dynamic Clearance Envelope

(Maximum length: nine (9) drawings for each car type on letter sized paper – multiple views or arrangements can be combined in one drawing, if desired)

5. Provide up to three (3) transverse sections for each car type at the following locations:

- Upper and lower floor section at side door vestibule
- Upper and lower floor section at transverse centerline
- Upper floor and equipment room at truck centerline bolster
- 

(Maximum length: Three (3) drawings for each car type on letter sized paper - multiple sections can be combined in one drawing, if desired)

6. Provide one (1) longitudinal section for each car type at the centerline of the car on letter sized paper

**1.1.2 Vehicle Weight Schedule (Technical Specification Chapter 4.3)**

Provide the final car dry weight schedule for each car type as follows:

<b>Car Type</b>	<b>Total Weight</b>
Coach Car	
Café/Lounge Car	
Cab/Baggage Car	
Café/Business Class Car	

## 1.2 Vehicle Major Systems and Suppliers

The Proposer shall provide a detailed description of each of the following thirteen (13) systems (in the order listed) as offered by each proposed supplier to comply with this Contract.  
(See Technical Specification Section 6)

- Chapter 4: Carbody
- Chapter 5: Trucks
- Chapter 6: Couplers and Draft Gear
- Chapter 7: Brakes
- Chapter 8: Door Systems
- Chapter 9: Interior
- Chapter 10: HVAC (heating, ventilation and air conditioning) System
- Chapter 11: Lighting System
- Chapter 12: Communication System
- Chapter 13: Electrical System
- Chapter 14: Food Service
- Chapter 15: Water and Waste System
- Chapter 16: Cab and Train Controls

The detailed description of these systems shall include the following information:

- Concept, design, production, operation and performance information for each system and major component.
- Methodology, design concept, and performance criteria used in the design and integration of these systems per the Technical Specification requirements
- Basic system configuration
- Manufacturer name and model numbers of major components as appropriate
- Service history of each proposed system, including:
  - History of use in North American passenger rail service
  - Number of vehicles or components in use
  - Car miles and/or time in revenue service to-date
  - Agency name
  - Contact person
- Identification of any differences between the proposed system and the system as specified in the technical specification
- Identification of microprocessor and software main features, when applicable

In addition to the information requested above, specific information is requested for the following major vehicle features:

Major System	Additional Information
Carbody	Crash Energy Management and Pass-through Cab
Trucks	Truck frame design and manufacture
Couplers and Draft Gear	Pushback Coupler design
Door System	Side door operator design and Door seal
HVAC System	Operational mode analysis for all environmental conditions
Food Service	Elevator design and operation
Cab and Train Controls	Control Cab ergonomics

(Maximum length: 50 (fifty) pages total including all drawings on letter sized paper. Please use dividers to separate the information for each Chapter).

### 1.2.1 Standardization

Complete the Standardization Table in Appendix 3. Please see section GC 2.1 for Standardization provisions and directions for completing the Standardization Table.

### 1.3 Qualifications

#### 1.3.1 Previous Similar Experience

The Proposer shall provide a description of its design and manufacturing experience in providing intercity and/or commuter railcars since 2005, including fleets presently under design and/or construction. Include the following for each vehicle order using form CER 10:

- Procuring agency
- Total value of contract awarded at time of award and at end of contract (if different)
- Contact person (including phone number) at the purchasing agency. Caltrans may discuss the success of the procurement with each named agency
- Number of vehicles ordered, including car type(s)
- Contract start and end dates, schedule performance in delivery of the cars; i.e., original contract requirements versus actual delivery
- Differences between the vehicle supplied and the vehicle specified in this RFP

(Maximum length: 1 page per each vehicle order. No limit on the number of car orders described.)

#### 1.3.2 Manufacturing Capacity and Capability

Proposer shall provide a comprehensive description of its manufacturing capability, including the following:

- Location of manufacturing facilities in the United States
- Identification of Proposer's current workload, backlog and projected demand through end of this Contract
- Any facility modifications required to implement this order at each manufacturing facility.
- Layout of manufacturing facilities
- Location where the car shell will be manufactured and the experience level of this location in performing this type of work.
- Full description of the manufacturing equipment, special machinery and test facilities available at the car shell manufacturing facility.
- Location where the truck frames will be manufactured and the experience level of this location in performing this type of work.
- Location of the following test facilities:
  - Carbody compression test facility
  - Truck static load and fatigue test facility
  - Climate room test facility
  - Ride quality and speed test facility
- All locations where major subassembly work will be performed.
- Location of final assembly and the experience level of this location in performing this type of work.
- Location of truck assembly and the experience level of this location in performing this type of work.
- Location and facilities for carbody structural design development and finite element analysis, including CEM features.

(Maximum length: 5 pages Two (2) drawings can be combined)

### 1.3.3 Staffing Plan and Resumes

7. Proposer shall demonstrate the adequacy of its staffing plan and availability of each member of the key staff by providing the following:
- Program organization chart, including definitions of the functions shown thereupon. The chart shall indicate the authority and placement of all key program personnel, including the Program Manager, Project Manager, Contract Manager, Engineering Manager, Structural Engineer, Production Manager, Quality Manager, and Warranty Manager

(Maximum length: one (1) organization chart plus a two (2) page narrative keyed to the organization chart

8. The Proposer shall provide resumes for all key staff listed on the organization chart. Each resume shall contain the following, in the order given below:
- Corporate title and affiliation
  - Years of industry and company experience
  - Other relevant experience
  - Relevant education
  - Brief description of the program function to be fulfilled, including decision-making responsibilities
  - Percentage of time dedicated to this project

(Maximum length: one (1) page per resume)

### 1.3.4 Program Management, Design, Testing and Quality Assurance Plans and Work Flow Diagram

Proposer shall demonstrate, through a single flow chart and narrative, how the program management, vehicle design testing and work flow effort will be managed. The narrative should be keyed to the flow chart. Factors that should be addressed in both the flow chart and narrative include the following:

- At what point in the process will the design and testing for each major vehicle system and/or component occur Location and facilities for carbody structural design development and finite element analysis, including CEM features.
- How the Proposer will ensure that the design (including Subcontractor designs) incorporates all specification requirements
- How the Proposer will manage the program and coordinate the design effort amongst the various Subcontractors; that is, how the systems engineering and integration effort will be set up, managed and carried out
- How quality assurance during design and production will be implemented
- How Sustainability requirements, as specified in the Technical Specification, will be addressed
- Description of checks and balances in place to ensure a compliant and safe design
- How Caltrans/IDOT review comments will be incorporated into the overall engineering design effort
- How Caltrans/IDOT review and approval cycle time will be accommodated
- How first article and design qualification testing results will be incorporated into the overall design effort
- How pilot car testing, pilot train testing and CEM testing will be managed
- Describe how your warranty and FMI processes will be managed
- A complete description of the Proposer's quality assurance program. This description must include the following:
  - The structure of the Proposer's QA department

- How quality assurance department maintains independence from manufacturing
- How quality control problems are fed back into the manufacturing process and resolved
- How configuration control is managed

(Maximum length: Ten (10) total pages including one (1) flow chart)

#### **1.4 Schedule and Narrative**

Schedule is of high importance in this procurement. The Proposer shall submit a Critical Path Method (CPM) schedule indicating reasonability of achieving the key milestone dates. In addition, the Proposer will need to state a monthly production rate that Proposer can realistically achieve and provide evidence that this rate can be achieved.

The CPM schedule should incorporate adequate “float” time for contingencies, approval milestones, approval cycle times for iterative approval processes, and accommodate workarounds to ensure meeting deadlines. As a minimum, the events to be included in the Proposer’s schedule are as follows (Proposer may include additional events as appropriate):

- Submittal of general arrangement drawings
- Each major subsystem contractor placed under contract
- Completion of activities associated with vehicle design and design review
- Completion of Carshell Structural Analysis and Certification of compliance with CEM requirements
- Mock up development and review
- First Article Inspections (FAI) of major subsystems and components
- Commence first car shell parts manufacture
- Commence first car shell major sub-assemblies
- Complete first car shell prior to painting
- Car shell structural test
- Complete first car set of truck frames
- Truck frame fatigue test
- Ship first car shell to final assembly site, if separated
- Commence first car final assembly
- Complete major subsystems installation on first car
- Final truck mounting on first car
- FAI of first car
- Compliance testing of first car, including third party testing
- Climate room qualification test
- Shipment of first car to Caltrans’ facility
- Arrival of first car at Caltrans’ facility
- Conditional Acceptance of first car by Caltrans
- Complete design qualification test series on first pilot car and pilot train
- Final acceptance of pilot cars
- Complete each car shell
- Complete manufacturing of each completed car
- Ship each car to Caltrans’ or IDOT’s facility
- Arrival of each car at Caltrans’ or IDOT’s facility
- Conditional acceptance of each car (turnover to Caltrans or IDOT)
- Reliability demonstration test planned start and actual completion
- Final acceptance of each car
- Delivery of draft and final manuals and parts books

- Training program
- Warranty period
- Project closeout

(Maximum length: Four (4) pages for the schedule and four (4) pages of narrative)

### **IP 12.3.3: Package 3: Price Proposal Requirements (include with Final Proposal only)**

The Price Proposal will be included with the Final Proposal only. Do not include the Price Proposal with the Draft Proposal. The Price Proposal shall be on the prescribed Proposal form (CER 6) and shall be for the entire Contract, comprising all Proposal items, including base and option vehicles, spare parts package, manuals, training, special tools and test equipment.

The Proposer is required to complete and execute the Pricing Schedule (CER 6), contained as part of the Proposal documents, and provided in Package 3. The Contractor shall be liable for payment of all taxes applicable to Work under this Contract and should include these amounts in their Price Proposal. Neither Caltrans nor IDOT shall be responsible for any additional costs incurred by the Contractor arising out of increases in taxes during the term of the Contract or for taxes not incorporated into the Price Proposal.

### **IP 12.3.4: Package 4: Proprietary/Confidential Information Package**

Not applicable (please see IP 12.4 below).

### **IP 12.4: Caltrans Treatment of Proprietary/Confidential Information**

Proposers are advised that information required pursuant to this RFP shall be open to public inspection at the time that Caltrans issues the Notice of Intent to Award the Contract.

### **IP 12.5: Signing of Proposal Forms**

Proposals shall include the firm name (and, in the event that the Proposer is a joint venture, the names of the individual firms comprising the joint venture); business address; and the name, title and business address of the responsible individual(s) with their telephone numbers and email address, who may be contacted during the Proposal evaluation period for scheduling confidential discussions and for receiving notices from Caltrans on the Proposal Form (CER 8).

The Proposal Form, CER 8, shall be signed by a Contractor's Representative and shall bind the Proposer. The Proposer shall submit evidence of the Representative's authority to act for and bind the Proposer in all matters relating to the Proposal.

A joint Proposal (two or more Proposers quoting jointly on one Proposal) may be submitted and each participating Proposer must sign the joint Proposal. If the contract is awarded to joint Proposers, it shall be one indivisible contract. Each joint contractor shall be jointly and severally responsible for the performance of the entire contract, and the joint Proposers must designate, in writing, one individual having authority to represent them in all matters relating to the contract. The Department assumes no responsibility or obligation for the division of orders or purchases among joint venture contractors. The Proposer shall submit with its Proposal a copy of the joint venture agreement, if applicable.

### **IP 12.6: Modification or Withdrawal of Final Proposals**

A modification of a Final Proposal already received will not be accepted.

A Proposer may withdraw a Final Proposal already received by Caltrans prior to the Final Proposal Due Date by submitting a written request for withdrawal to the DPAC Procurement Official identified in IP 3. The request for withdrawal of the Final Proposal must be executed by the Proposer's Representative. The withdrawal of a Final Proposal does not prejudice the right of a Proposer to submit another Final Proposal within the time set for receipt of Final Proposals.

After the Final Proposal Due Date, a Final Proposal may be withdrawn only if Caltrans fails to award the Contract within the Proposal validity period prescribed in IP 13.2 “Duration of the Validity of Proposals” or any agreed-upon extension thereof.

### **IP 12.7: Ownership and Cost of Proposal Development**

All Proposals will become the property of Caltrans.

The Original Copy of the selected Final Proposal shall be retained for official files and will become a public record after the Notification of Intent to Award as specified in IP 2, Proposed Schedule for Procurement.

This RFP does not commit Caltrans/IDOT to enter into a Contract, to pay any costs incurred in the preparation, or presentation of a Proposal, nor to procure or contract for the equipment.

### **IP 13: Proposal Evaluation and Selection Process – General**

Proposals will be evaluated and any award made in accordance with State and Federal requirements for competitive procurements as described below.

The approach for this procurement includes Draft and Final Proposal phases. The Draft Proposal phase is the phase whereby Proposals are initially reviewed for responsiveness to requirements without regard to cost. The Final Proposal phase includes costs and will include the evaluation whereby the winning Proposer is selected.

#### Draft Proposal

The purpose of the Draft Proposal is to provide an “almost Final Proposal” in order to identify any weak or faulty technical or administrative aspect of the Proposal which, if not corrected, could cause the Final Proposal to be rejected.

The Draft Proposal package should be complete in every respect as required by the RFP Section IP 12.3, except cost. ***The inclusion of cost information in the Draft Proposal shall be grounds for rejecting the Proposal and notifying the Proposer that further participation in the procurement is prohibited.***

The Draft Proposal will be submitted for the purpose of allowing each Proposer to provide a detailed description of its Proposal to allow the Evaluation Committee to determine at an early stage whether the Proposal is responsive to all the requirements of the RFP, and if not, which elements are not responsive and what changes are required to make the Proposal responsive.

Upon receipt of the Draft Proposals, the Evaluation Committee will review each Proposal in accordance with the evaluation process outlined in the RFP Sections IP 13.4 and 13.5 for the purpose of identifying areas in which the Proposal is not responsive to a requirement, is otherwise defective, or in which additional clarification is required in order that the Evaluation Committee may fully understand the ramifications of an action proposed by the Proposer.

Review of the Draft Proposal by the Evaluation Committee may include confidential discussions with individual Proposers to provide feedback to each Proposer prior to submittal of the Final Proposal.

As a result of this review, the Evaluation Committee will prepare a discussion agenda of items to be discussed with each Proposer. A confidential discussion will be scheduled for each Proposer to meet face-to-face with Evaluators to discuss the agenda of items. The DPAC Procurement Official will make every effort to provide the agenda to the Proposer at least five calendar days before the scheduled meeting. The Proposer may submit clarifying statements or questions to the DPAC Procurement Official prior to the meeting, if desired.

The Evaluation Committee will notify the Proposer of any defects it has detected in the Draft Proposal to minimize the risk that the Final Proposal will be deemed defective.

***The Evaluation Committee will not guarantee that all defects will be detected during the Draft Proposal review. The Evaluation Committee’s review will not preclude rejection of the Final Proposal if such defects are later found.***

### Final Proposal

The Final Proposal must be complete, and satisfy all RFP requirements. As required in Section IP 12.3, cost data must be submitted under separate, sealed cover. Changes that appear in the Final Proposal, increase the risk that the Final Proposal may be found non-responsive unless those changes are:

- corrections of defects or other items addressed during confidential discussions
- items addressed in questions and answers
- items reflected in addenda

Final Proposals found to be compliant with the minimum qualifications will then be evaluated. Technical Proposals will be evaluated based on criteria identified below. Those technical Proposals achieving a score of 80% or more will have their price Proposals opened and scored. Those technical Proposals with less than 80% points will not be eligible for award. The technical score and the price score will be combined and the highest score will be established.

Price Proposal opening will occur on the date shown in IP 2 “Proposed Schedule for the Procurement.” During the Price Proposal opening, all Proposals receiving a Technical Proposal score of 80% or more will have their Technical Proposal score posted and will have their Price Proposal announced. Final scores will not be determined or announced at the Price Proposal opening.

Caltrans will make the award to the responsible Proposer whose Proposal achieves the highest total score as a sum of the Technical plus Price Proposal scores.

### **IP 13.1: Confidentiality of Proposals**

Draft Proposals will not be publicly opened. All Proposals and evaluations will be kept strictly confidential throughout the evaluation and selection process, unless otherwise required by applicable law, until the issuance of a Notice of Intent to Award the Contract. Only the members of the Evaluation Committee will be provided access to the Proposals and evaluation results during this period.

Final Proposals are public upon conclusion of the scoring process; however, the contents of all Final Proposals, correspondence, agenda, memoranda or any other medium which discloses any aspect of a Proposer’s Proposal shall be held in the strictest confidence until Notice of Intent to Award.

### **IP 13.2: Duration of the Validity of Proposals**

Final Proposals shall be valid for a period of 120 days following the scheduled date for Contract Award. Caltrans may request Proposers to extend the period of time specified herein by written agreement between Caltrans and the Proposer(s) concerned.

### **IP 13.3: Evaluation Committee**

An Evaluation Committee will evaluate the Proposals in accordance with the procedures set forth in this RFP, section IP 13.5 “Proposal Evaluation and Selection Process” below.

### **IP 13.4: Review of Proposals for Responsiveness and Proposer for Responsibility**

Each Final Proposal will be reviewed to determine if the Proposal is responsive to the submission requirements outlined in this RFP and if the Proposer is responsible.

A responsive Proposal is one that follows the requirements of this RFP, includes all documentation, is submitted in the format outlined in this RFP, is timely submitted, and has been signed by Proposer representatives authorized to bind the Proposer. Failure to comply with these requirements may result in the Proposal being deemed nonresponsive.

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A responsible Proposer is one that demonstrates the capability to satisfy the commercial and technical requirements set forth in the RFP. A Proposer's failure to demonstrate that it is responsible may result in the Proposal being rejected.

Any Proposal found to be non-responsive or a Proposer that is found to be non-responsive will not be considered further for award. Proposals that do not comply with the RFP instructions and requirements or do not include the required information may be rejected as insufficient and may not be further considered. The DPAC Procurement Official reserves the right to request a Proposer to provide additional information and/or to clarify information. Caltrans' determination regarding the responsiveness of a Proposal and the responsibility of a Proposer shall be final.

**IP 13.5: Proposal Evaluation and Selection Process**

The following describes the process by which Final Proposals will be evaluated and a selection made for a potential award. Any such selection of a Proposal shall be made by consideration of only the criteria set forth below in this section.

**IP 13.5.1: Minimum Qualifications and Responsibility Requirements**

"Minimum Qualifications and Responsibility Requirements" specifies the minimum qualifications (compliant/noncompliant) and the requirements for determining responsible Proposers, all of which must be met by a Proposer to be found qualified. Any Proposal that does not meet these minimum qualifications criteria and responsibility requirements will be eliminated from further evaluation.

**Minimum Qualifications and Responsibility Requirements**

1.	Letter of Transmittal: This cover letter, signed by the Proposer's Representative, summarizes the contents of the Proposal and confirms the validity period (see IP 13.2) of the Proposals.	Compliant/Noncompliant
2.	CER 8: Proposal Form	Compliant/Noncompliant
3.	CER 3: Acknowledgement of Addenda	Compliant/Noncompliant
4.	CER 5: Pre-Award Evaluation Data Form	Compliant/Noncompliant
5.	CER 7.1: Buy America Certificate of Compliance or Noncompliance	Compliant/Noncompliant
6.	CER 7.2: Debarment and Suspension Certification for Prospective Contractor	Compliant/Noncompliant
7.	CER 7.3: Debarment and Suspension Certification (lower tier covered transactions)	Compliant/Noncompliant
8.	CER 7.4: Non-Collusion Affidavit	Compliant/Noncompliant
9.	CER 7.5 Lobbying Certification	Compliant/Noncompliant
10.	Letter of Intent from a qualified insurance carrier, indicating its willingness to provide insurance coverage for the Proposer in accordance with the RFP requirements	Compliant/Noncompliant
11.	Letter of Intent from a qualified bonding company, indicating its willingness to provide a performance bond for the Proposer in accordance with the RFP requirements	Compliant/Noncompliant
12.	Vehicle Weight Schedule	Compliant/Noncompliant
13.	Staffing Plan and Résumés	Compliant/Noncompliant
14.	Manufacturing Capacity and Capability	Compliant/Noncompliant

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**IP 13.5.2: Detailed Evaluation of Proposals**

Portions of the Final Proposals will be evaluated based on information provided to response to the Proposal format requirements (IP 12.3), Proposal scores will be developed according to the extent to which the Proposal exceeds, meets, or does not meet the RFP requirements:

A total of 70 points are available from the Technical Proposal evaluation as shown on the table below.

1.	Technical Elements	30 points
2.	Experience/References	7 points
3.	Project Management	8 points
4.	Schedule/Rate of Production	10 points
5.	Buy America - Domestic Content	10 points
6.	Standardization	5 points
<b>Total</b>		<b>70 points</b>

Those Technical Proposals with a total score equaling 80% or more of the points available will have their Price Proposal opened and evaluated. Those Technical Proposals with less than 80% of the points available will not have their Price Proposal opened and will not be eligible for award.

**IP 13.5.3: Price Proposal Evaluation**

The Price Proposal will be evaluated based on the information submitted in the Pricing Schedule (CER 6).

Price Proposals will be evaluated using the evaluation criteria shown below, and a numerical score for each Price Proposal will be determined.

Total Price (basis for Price Proposal evaluation) shall be the sum of Base Contract Pricing and Optional Contract Pricing. Scoring for these criteria shall be completed in the following manner:

$$\text{Proposer's Price Score} = 30 \text{ points} \times \frac{\text{Lowest Total Price (Basis for Price Proposal Evaluation)}}{\text{Proposer's Total Price (Basis for Price Proposal Evaluation)}}$$

**IP 13.5.4: Clarifications**

After the initial evaluation, the results for all Proposals shall be gathered, compared and ranked for each of the Evaluation Criteria. If information is not complete, the Evaluation Committee will either seek clarifications or declare the Proposal nonresponsive. Questions regarding any insufficient statements or incomplete information will be sent to the Proposer by the DPAC Procurement Official with a request for clarifications and/or submittal of corrected, additional, or missing documents prior to submittal of Final Proposals. If a response is not provided prior to the deadline for submission of the response, then the Proposal may be declared nonresponsive.

The Evaluation Committee may waive technical irregularities in the form of the Proposal that do not alter the quality or quantity of the information provided.

All requests and responses will be in writing. Responses must be submitted in accordance with the request for clarification and be limited to answering the specific information requested.

In the event an error that could affect price is discovered in the RFP during the Proposal evaluation process, the DPAC Procurement Official will issue an addendum to all Proposers that have submitted Proposals requesting revised Proposals based upon the corrected RFP.

### **IP 13.5.5: Communications**

Communications may be required during the Proposal Evaluation and Selection Process. The purpose of communications is to address minor or clerical revisions in a Proposal. During the process of evaluations, there may be instances in which meaningful evaluation cannot take place or proceed, or where an erroneous evaluation might occur without seeking additional information. In such cases, the DPAC Procurement Official will submit a request for communications in writing to the Proposer stating the information needed to address minor or clerical revisions and the procedure with a reasonable date and time by which the information must be provided. The Proposer shall provide the requested information in writing in accordance with the procedure and by the date and time indicated. If communications are not received in a timely manner, then the Proposer's ratings may be adversely affected and/or the Proposal may be declared nonresponsive.

### **IP 13.5.6: Competitive Range**

Not Applicable.

### **IP 13.5.7: Proposals Not Within the Competitive Range**

Not Applicable.

### **IP 13.5.8: Discussion with Proposers Regarding Draft Proposals**

In accordance with IP 13, the Evaluation Committee may meet with each Proposer for the purpose of discussing the Draft Proposal in detail. The Proposers will be notified of any questions or requests for additional information. Each such Proposer may be invited for confidential discussions with the Evaluation Committee to discuss answers to written or oral questions, and any facet of the Draft Proposal.

The Proposer may bring up to five (5) people to the discussion. To the maximum extent practical, the Proposer will address the major concerns of the Evaluation Committee, as expressed in the discussion agenda, and should be prepared to answer any questions. The participants will then proceed to discuss each of the agenda items.

The Evaluation Committee will not make counter Proposals to a Proposer's proposed solution to the RFP requirements. The Evaluation Committee will only identify its concerns, ask for clarification, and express its reservations if a particular requirement of the RFP is not, in the opinion of the Evaluation Committee, appropriately satisfied. The primary purpose of this discussion is to ensure that the Proposer's Final Proposal will be responsive.

If, after full discussion with a Proposer, the Evaluation Committee is of the opinion that the Proposer's Draft Proposal cannot be restructured or changed in a reasonable time to satisfy the needs of the RFP, and that further discussion would not likely result in an acceptable Proposal in a reasonable time, the Proposer will be given written notice that a Final Proposal submitted along such lines would be nonresponsive.

The Evaluation Committee shall have the right to reject any and all such conditions and/or exceptions identified per IP 10, and may instruct the Proposer to amend its Proposal to remove said conditions and/or exceptions. Any Proposer failing to do so in its Final Proposal may cause the Evaluation Committee to find the Proposal nonresponsive.

### **IP 13.5.9: Factory and Site Visits**

The Evaluation Committee reserves the right to conduct factory visits to inspect the Proposer's facilities and/or other rail or transit systems to which the Proposer has supplied the same or similar equipment.

### **IP 13.5.10: Final Proposals**

Although the Evaluation Committee reserves the right to issue addenda, the Evaluation Committee is under no obligation to do so.

- Only the Proposers who submitted a Draft Proposal shall be afforded the opportunity to submit a Final Proposal.
- Only those Proposers who submit a Final Proposal may compete for contract award and may compete for contract award only so long as all other RFP requirements are met.

Final Proposals will be evaluated by the Evaluation Committee according to the same requirements and criteria as for Draft Proposals as specified in IP 13.5 “Proposal Evaluations and Selection Process” unless modified by RFP addenda.

The Evaluation Committee will then choose that Proposal which has the highest score based upon the evaluation criteria. The results of the evaluations and the selection of a Proposal for any award will be documented in a report.

## **IP 14: Response to Proposals**

### **IP 14.1: Single Proposal Response**

If only one proposal is received in response to this RFP and it is found to be acceptable, then a detailed Cost Proposal may be requested of the single Proposer. A cost analysis, possibly including an audit, may be performed by or for Caltrans/IDOT. The cost analysis will establish if the price is fair and reasonable. The Proposer has agreed to provide needed data by submitting a Proposal in response to this RFP.

### **IP 14.2: Availability of Funds**

It is mutually understood between the parties that this Contract may have been written before ascertaining the availability of congressional or legislative appropriation of funds, for the mutual benefit of all parties in order to avoid program and fiscal delays that would occur if the Contract were executed after the determination was made.

This Contract is valid and enforceable only if sufficient funds are made available to Caltrans and IDOT by the United States Government, the California State Legislature, the Illinois State Legislature, other state legislatures, or other government agencies as appropriate, for the purpose of the Work. In addition, the Contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress or States, or other government agencies that may affect the provisions, terms or funding of this Contract in any manner.

### **IP 14.3: Caltrans Contract Approval Process**

See State of California General Provision number 2.

Award of contract, if made, will be in accordance with IP 13 to a responsible Proposer whose Final Proposal complies with all the requirements of the RFP documents and any addenda thereto, except for such immaterial defects as may be waived by Caltrans. Award, if made, will be made within forty-five (45) days after the scheduled date for Contract Award specified in IP 2; however, a Proposer may extend the offer beyond forty-five (45) days in the event of a delay of Contract Award.

Caltrans reserves the right to modify or cancel in whole or in part this RFP.

A debriefing may be held after Contract Award at the request of any Proposer for the purpose of receiving specific information concerning the evaluation. The discussion will be based primarily on the technical and cost evaluations of the Proposer's Final Proposal. A debriefing is not the forum to challenge the RFP specifications, requirements or award.

#### **IP 14.4: Caltrans Rights**

Caltrans reserves the right to cancel the procurement at its sole discretion, at any time before the Contract is fully executed and approved on behalf of Caltrans/IDOT.

Caltrans reserves the right to reject all Proposals, to declare all Final Proposals to be Draft Proposals, to undertake confidential discussions with one or more Proposers, and to accept that Proposal which, in its judgment, will be most advantageous to Caltrans, considering price and other evaluation criteria. Caltrans reserves the right to determine any specific Proposal that is conditional or not prepared in accordance with the instructions and requirements of this RFP to be non-responsive. Caltrans reserves the right to waive any defects, or minor informalities or irregularities in any Proposal that do not materially affect the Proposal or prejudice other Proposers.

If there is any evidence indicating that two (2) or more Proposers are in collusion to restrict competition or are otherwise engaged in anticompetitive practices, then the Proposals of all such Proposers shall be rejected, and such evidence may be a cause for disqualification of the participants in any future solicitations undertaken by Caltrans.

Caltrans may reject a Final Proposal that includes unacceptable conditions or deviations.

#### **IP 14.5: Execution of Contract**

Caltrans shall deliver a written Notice of Intent to Award to the successful Proposer. Within twenty-nine (29) calendar days after receipt of the Notice of Intent to Award, the Proposer shall provide a Performance Bond, and copies of the certificates of insurance pursuant to the Contract Documents.

At Notice of Intent to Award, FRA will conduct a Buy America pre-award audit of the selected Proposer to verify the Buy America content in the Proposal.

Verification of Performance Bonds, Insurance and Buy America requirements are a condition of the Award of the Contract.

In the event that Proposer fails to fulfill these requirements within the specified time, Caltrans reserves the right to award the Contract to the next eligible responsive Proposer.

Upon verification of the Proposers Performance Bond, Insurance and Buy America requirements, Caltrans shall deliver a written Notice of Award to the successful Proposer. The parties shall execute the Contract within twenty-one (21) calendar days after receipt of the Notice of Award of the Contract.

Caltrans shall then issue the Notice to Proceed (NTP) within seven (7) calendar days of the execution of the Contract.

#### **IP 15: Conflict of Interest/Gratuities**

Proposers are prohibited from engaging in any practice that may be considered a conflict of interest under existing State and Federal laws, and to refrain from participating in any gifts, favors or other forms of compensation that may be viewed as a gratuity in accordance with existing policies and laws.

#### **IP 16: Agency-Specific Provisions**

Not Applicable

## SECTION 9 CERTIFICATIONS

### CER 1: Proposer's Checklist

Caltrans  
RFP 75A0362 - New Bi-Level Passenger Railcars

#### CER 1.1: Package 1: Qualifications and Certification

- Letter of Transmittal
- CER 3: Acknowledgement of Addenda
- CER 4: Form for Proposal Deviation, if applicable (for Draft Proposal only)
- CER 5: Pre-Award Evaluation Data Form
- CER 7.1: Buy America Certification (pilot vehicles)
- CER 7.1: Buy America Certification (fleet vehicles)
- CER 7.2: Debarment and Suspension Certification – Prospective Contractor
- CER 7.3: Debarment and Suspension Certification – lower tier covered transactions
- CER 7.4: Non-Collusion Affidavit
- CER 7.5 Lobbying Certification
- CER 8. Proposal Form
- CER 9. Notice of Intent to Bid
- Letter of Intent from a qualified insurance carrier, indicating its willingness to provide insurance coverage for the Proposer in accordance with the RFP requirements.
- Letter of Intent from a qualified bonding company, indicating its willingness to provide a performance bond for the Proposer in accordance with the RFP requirements.
- Appendix 5: Bidder's Declaration

#### CER 1.2: Package 2: Technical Proposal

- CER 4: Form for Proposal Deviation if applicable (for Draft Proposal only)
- CER 7.1: Buy America Certificate of Compliance or Non-Compliance
- CER 7.7: Buy America Worksheet
- CER 7.8: Buy America Component Supplier Certification Form
- Waiver Requests and Justifications, if needed
- CER 10. Reference Form
- Technical Proposal (See IP 12.3 "Proposal Format Requirements" for additional information)
- Appendix 3: Standardization Table

#### CER 1.3: Package 3: Price Proposal (*with Final Proposal Only*)

- CER 6 Pricing Schedules (including but not limited to base and option vehicles, Spare Parts Package, manuals, training, special tools and test equipment)

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**CER 2: Request for Pre-Offer Clarification**

This form must be used for requested clarifications or changes and must be submitted prior to submittal of Draft Proposals as specified in IP 6 Questions, Clarifications and Omissions.

<b>Caltrans RFP 75A0362 - New Bi-Level Passenger Railcars</b>			
<b>Request No.:</b>	<b>Proposer:</b>		
<b>RFP Section:</b>	<b>Page:</b>		
<b>Questions/clarification:</b>          			
<b>Caltrans action:</b>	<input type="checkbox"/> Approved	<input type="checkbox"/> Denied	<input type="checkbox"/> See response below
<b>Caltrans response:</b>          <div style="text-align: center; font-size: 48px; opacity: 0.5; font-weight: normal;">COPY</div>			

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### **CER 3: Acknowledgement of Addenda**

Failure to acknowledge receipt of all addenda may cause the Proposal to be considered nonresponsive to the Solicitation. Acknowledged receipt of each addendum must be clearly established and included with the Proposal.

The undersigned acknowledges receipt of the following addenda to the documents:	
Addendum No.:	Dated:
Proposer: Name: Title: Phone: Street address: City, state, ZIP:	
Authorized Signature	Date

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**CER 4: Form for Proposal Deviation**

This form shall be submitted with the Draft Proposals and be completed for each condition, exception, reservation or understanding (i.e. Deviation) in the Proposal according to IP 10 “Conditions, Exceptions, Limitations and Deviations.” One copy without any price/cost information is to be placed in the Technical Proposal as specified in IP 12.3.2 Package 2 “Technical Proposal Package Requirements.”

<b>Caltrans RFP 75A0362 - New Bi-Level Passenger Railcars</b>	
<b>Deviation No.:</b>	<b>Contractor:</b>
<b>RFP Section:</b>	<b>Page:</b>
<b>Complete description of deviation:</b>	
<b>Rationale (pros and cons):</b>	

COPY

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**CER 5: Pre-Award Evaluation Data Form**

This form is to be completed and included in 12.3.1 Package 1: Qualifications and Certifications Package Requirements.

<b>Caltrans</b> <b>RFP 75A0362 - New Bi-Level Passenger Railcars</b>			
<b>1. Name of firm:</b>		<b>2. Address:</b>	
<input type="checkbox"/> <b>Individual</b>	<input type="checkbox"/> <b>Partnership</b>	<input type="checkbox"/> <b>Corporation</b>	<input type="checkbox"/> <b>Joint venture</b>
<b>4. Date organized:</b>		<b>State in which incorporated:</b>	
<b>5. Names of officers or partners:</b>			
COPY			
<b>6. How long has your firm been in business under its present name?</b>			
<b>7. Has your contract been terminated for breach or have individual staff members listed on the Proposal been removed, from projects for misconduct or poor workmanship in the last five years, on any rail equipment contract you were awarded?</b>			
<input type="checkbox"/> Yes <input type="checkbox"/> No			
If yes, explain below the full particulars regarding each occurrence. Add lines as needed.			
<b>8. If the Contractor or Subcontractor is a joint venture, submit Pre-Award Evaluation Data forms (CER 5) for each member of the joint venture along with a copy of the joint venture agreement.</b>			
<b>The above information is confidential and will not be divulged to any unauthorized personnel.</b>			
The undersigned certifies to the accuracy of all information:			
<b>Name and title:</b>			
<b>Company:</b>			
_____ Signature		_____ Date	

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**CER 6: Pricing Schedules**

<p align="center"><b>Base Contract Caltrans RFP 75A0362 - New Bi-Level Passenger Railcars</b> All prices are to be in U.S. dollars.</p>				
No.	Quantity	Item	Unit Price	Extended Price
1.		Management, engineering, tooling, testing and mockups		
2.	80	New Bi-Level Coach Railcars		
3.	24	New Bi-Level Cab/Baggage Railcars		
4.	5	New Bi-Level Café/Lounge Railcars		
5.	21	New Bi-Level Café/Business Class Railcars		
6.		Training		
7.		Operations, maintenance and parts manuals		
8.		Spare parts		
9.		Special Tools and Diagnostic equipment for Caltrans/IDOT use		
10.		Field Warranty Support		
11.	6	Annual Inspector Travel	\$100,000	\$600,000
<b>TOTAL BASE CONTRACT</b>				

<p align="center"><b>Option Contract Pricing Caltrans RFP 75A0362 - New Bi-Level Passenger Railcars</b> All prices are to be in U.S. dollars.</p>				
No.	Quantity	Item	Unit Price	Extended Price
1.	Up to 150	New Bi-Level Coach Railcars		
2.	Up to 50	New Bi-Level Cab/Baggage Railcars		
3.	Up to 50	New Bi-Level Café/Lounge Railcars		
4.	Up to 50	New Bi-Level Café/Business Class Railcars		
5.		Training		
6.		Operations, maintenance and parts manuals		
7.		Spare parts		
8.		Special Tools and Diagnostic equipment for Caltrans/IDOT use		
9.		Field Warranty Support		
10.	6	Annual Inspector Travel	\$100,000	\$600,000
<b>TOTAL BASE CONTRACT</b>				

Signature \_\_\_\_\_

Date \_\_\_\_\_

## CER 7: Federal Certifications

### CER 7.1: Buy America Certificate of Compliance or Non-Compliance

The two signature blocks on the Buy America Certificate are mutually exclusive. Proposers shall **SIGN ONLY ONE SIGNATURE BLOCK** on the certificate. Signing both signature blocks will render the Proposal nonresponsive. Making a knowing and willful false certification is a criminal act in violation of 18 U.S.C. §1001.

#### Certificate of Compliance

The Proposer hereby certifies that it will comply with the FRA Buy America requirements of 49 U.S.C. Section 24405(a)(1). Please check the items below to verify compliance with Buy America requirements:

Final Assembly of Railcars will be in the U.S.

Please indicate Assembly Location: \_\_\_\_\_

100 % of Railcars' components listed in the Buy America Worksheet (form CER 7.7) will be manufactured in the U.S.

**Name and title:**

**Company:**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

#### Certificate of Noncompliance

The Proposer hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 24405(a)(1), but it may qualify for a waiver from the requirement pursuant to 49 U.S.C. Section 24405(a)(2). The Proposer also certifies that it has attached evidence it believes would qualify it for a waiver from Section 24405(a)(1) for one or more of the reasons set forth in Section 24405(a)(2). Please check the items below as applicable:

Final Assembly of Railcars will be in the U.S.

Please indicate Assembly Location: \_\_\_\_\_

100 % of the Railcars' components listed in the Buy America Worksheet (form CER 7.7) will not be manufactured in the U.S.– Waiver Request attached

**Name and title:**

**Company:**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

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**CER 7.2: Debarment and Suspension Certification for Prospective Contractor**

Choose one alternative:

- The Proposer, **[insert name]**, 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 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 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 or 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 (2) of this certification; and
  4. Have not within a three-year period preceding this Proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

**OR**

- The Proposer is unable to certify to all of the statements in this certification, and attaches its explanation to this certification. (In explanation, certify to those statements that can be certified to and explain those that cannot.)
- The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of Title 31 USC § Sections 3801 are applicable thereto.

**Executed in [insert city and state].**

**Name:**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

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**CER 7.3: Debarment and Suspension Certification  
(lower-tier covered transaction)**

This form is to be submitted by each Subcontractor receiving an amount exceeding \$250,000.

The prospective lower-tier participant (Proposer) certifies, by submission of this Proposal, that neither it nor its "principals" as defined at 49 CFR § 29.105(p) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or Agency.

If the Prospective Proposer is unable to certify to the statement above, it shall attach an explanation, and indicate that it has done so by placing an "X" in the following space: \_\_\_\_\_

**THE PROPOSER, \_\_\_\_\_, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND EXPLANATION, IF ANY. IN ADDITION, THE PROPOSER UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 USC §§ 3801 *ET SEQ.* APPLY TO THIS CERTIFICATION AND EXPLANATION, IF ANY.**

**Name and title of the Proposer's authorized official:**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

COPY

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**CER 7.4: Non-Collusion Affidavit**

This affidavit is to be filled out and executed by the Proposer; if a corporation makes the Proposal, then by its properly executed agent. The name of the individual swearing to the affidavit should appear on the line marked "Name of Affiant." The affiant's capacity, when a partner or officer of a corporation, should be inserted on the line marked "Capacity." The representative of the Proposer should sign his or her individual name at the end, not a partnership or corporation name, and swear to this affidavit before a notary public, who must attach his or her seal.

State of _____, County of _____	
I, _____, being first duly sworn, do hereby state that (Name of Affiant)	
I am _____ of (Capacity) _____ (Name of Firm, Partnership or Corporation)	
whose business is _____	
and who resides at _____	
and that _____ (Give names of all persons, firms, or corporations interested in the bid)	
is/are the only entity(ies) (s) with an interest in the profits of the herein contained Contract; that the Contract is made without any connection or interest in the profits thereof with any persons making any bid or Proposal for said Work; that the said Contract is on my part, in all respects, fair and without collusion or fraud, and also that no members of the agency's governing board, head of any department, or any employee of Caltrans/IDOT, has any direct or indirect interest therein.	
Signature of Affiant _____	Date _____
Sworn to before me this _____ day of _____, 20____.	
_____ Notary public	_____ My commission expires
Seal	

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### **CER 7.5: Lobbying Certification**

The Proposer certifies, to the best its 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 a Federal department or agency, a member of the U.S. Congress, an officer or employee of the U.S. Congress, or an employee of a member of the U.S. 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 thereof.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to 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 instruction, as amended by "Government-wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96).
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants and contracts under grants, loans and cooperative agreements) and that all sub-recipients 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 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 PROPOSER, \_\_\_\_\_, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND DISCLOSURE, IF ANY. IN ADDITION, THE PROPOSER UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 USC §§ 3801 ET SEQ. APPLY TO THIS CERTIFICATION AND DISCLOSURE, IF ANY.**

Name of the bidder or Proposer's authorized official:  
\_\_\_\_\_

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**CER 7.6: Reserved**

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**CER 7.7: Buy America Worksheet**

**Buy America Worksheet**

No	System/Group	Component	Points Available for Domestic Content	Manufactured in the US? Yes* -OR- Waiver Requested (WR)	If "Yes" name and location of manufacturer (Please complete form CER 7.8 "Buy America Component Supplier Certification Form" for each Supplier identified below)	If Yes, Domestic Component Points Earned
<b>CAR SHELLS-ASSEMBLED CARBODY STRUCTURES</b>						
1		Carshell structure	1.25			
2		Integrated Cab/CEM structure	1.25			
3		Truck to Carbody attachment	0.50			
4		Carbody steel (side frame)	1.25			
5		Carbody steel (carbody skin)	1.25			
6		End door diaphragms	1.25			
7		Full scale mockup	1.25			
8		Pilot Car third party testing	1.25			
9		Paint coatings/decals	1.25			
10		Carbody insulation	0.50			
11		Equipment Room Doors and Hardware	0.50			
<b>MAIN TRANSFORMERS</b>						
12		Transformers	0.00	N/A	N/A	0.00
13		Invertors	0.00	N/A	N/A	0.00
14		Contactors	0.00	N/A	N/A	0.00
15		Rectifiers	0.00	N/A	N/A	0.00
16		Brake choppers	0.00	N/A	N/A	0.00
17		Filter inductors	0.00	N/A	N/A	0.00
18	Pantographs		0.00	N/A	N/A	0.00
19	Traction motors		0.00	N/A	N/A	0.00
20	Propulsion gear boxes		0.00	N/A	N/A	0.00
<b>INTERIOR LININGS</b>						
21		Panels	1.00			
22		Stairways	0.75			
23		Luggage Bins	1.25			
24		Curtains	0.50			
25		Interior Doors and Hardware	0.50			
26	Acceleration and braking resistors		0.00	N/A	N/A	0.00
27	Propulsion controls		0.00	N/A	N/A	0.00
<b>LOW VOLTAGE AUXILIARY POWER SUPPLIES</b>						
28		Batteries	0.75			
29		Battery chargers	0.50			
30		Battery boxes	0.50			
31		Auxiliary AC motors	0.50			
<b>HVAC SYSTEM</b>						
32		Air conditioning units	1.25			
33		Controller/Sensor	1.25			
34		Electric baseboard heaters and covers	1.00			
<b>AIR BRAKE SYSTEM(S) BOTH PNEUMATIC AND MECHANICAL</b>						
35		Brake discs and actuators	1.25			
36		Air reservoirs	0.50			
37		Piping and fittings	0.50			
38		Hoses and connectors	0.50			
39		Control manifold and valves	0.75			
40		Tread brake units	0.75			
41		Hand Brake System	0.50			
42		Wheel slide control system and control unit	1.00			
43	Brake controls (air, electrical, and mechanical)		0.75			
44	Articulation assemblies		0.00	N/A	N/A	0.00
45	Train control systems (including PTC)		1.25			

\* If "Yes," add "Points Available for Domestic Content" into last column.

Note: While FRA uses some Federal Transit Administration (FTA) Buy America precedent as guidance for FRA grantees, the FTA Buy America requirements do not apply to this RFP.

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**Buy America Worksheet**

No	System/Group	Component	Points Available for Domestic Content	Manufactured in the US? Yes* -OR- Waiver Requested (WR)	If "Yes" name and location of manufacturer (Please complete form CER 7.8 "Buy America Component Supplier Certification Form" for each Supplier identified below)	If Yes, Domestic Component Points Earned
<b>WINDOWS AND WINDOW ASSEMBLIES</b>						
46		Windows	1.00			
47		Frames	0.50			
48		Gaskets	0.50			
<b>COMMUNICATION EQUIPMENT</b>						
49		Radios	0.50			
50		Public Address system	0.50			
51		Speakers/Antenna	0.50			
52		Information and emergency	0.75			
53		Onboard Train Information System (OTIS)	1.25			
<b>LIGHTING</b>						
54		Exterior lighting including	1.25			
55		fixtures	1.25			
<b>SEATING AND TABLES</b>						
56		Seat Tracks	0.50			
57		Seat assemblies	1.25			
58		Tables	1.00			
59		Engineer seat	0.75			
<b>DOORS</b>						
60		Side entry doors	1.25			
61		End doors	1.25			
62		Cab doors	1.00			
63		Door actuators	1.25			
64		Door controls	1.25			
65		Door windows and seals	0.50			
<b>COUPLERS AND DRAFT GEAR</b>						
66		Couplers and Yokes	1.25			
67		Draft gear and Coupler Carrier	1.25			
68		Coupler CEM structure	1.25			
<b>TRUCKS</b>						
69		Truck frames-either fabricated or cast	1.25			
70		Truck suspension systems	1.25			
71		Shock Absorbers	1.00			
72		Truck mounts for propulsion systems	0.00	N/A	N/A	0.00
73		Wheels	1.25			
74		Axles	1.25			
75		Axle drivers	0.00	N/A	N/A	0.00
76		Journal bearings	1.00			
<b>THIRD RAIL PICK-UP EQUIPMENT</b>						
77		Paddles	0.00	N/A	N/A	0.00
78		Shoes	0.00	N/A	N/A	0.00
79		Bicycle racks	0.50			
80		Baggage Storage Racks and Towers	0.75			
<b>FLOORS</b>						
81		Composite floor panels	0.75			
82		Honeycomb floor panels	0.75			
83		Rubber floor coverings	0.75			
84		Carpet	0.75			
85		Event recorder	0.75			
86		Wiring harnesses	1.00			

\* If "Yes," add "Points Available for Domestic Content" into last column.

Note: While FRA uses some Federal Transit Administration (FTA) Buy America precedent as guidance for FRA grantees, the FTA Buy America requirements do not apply to this RFP.

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**Buy America Worksheet**

No	System/Group	Component	Points Available for Domestic Content	Manufactured in the US? Yes* -OR- Waiver Requested (WR)	If "Yes" name and location of manufacturer (Please complete form CER 7.8 "Buy America Component Supplier Certification Form" for each Supplier identified below)	If Yes, Domestic Component Points Earned
<b>ADA BOARDING DEVICES</b>						
87		Lifts	1.00			
88		Bridge plates	0.00	N/A	N/A	0.00
89		Ramps	0.00	N/A	N/A	0.00
90	Sanding system		0.00	N/A	N/A	0.00
<b>METAL FABRICATION</b>						
91		HVAC duct system	0.50			
92		Underfloor equipment lockers	0.50			
93		Internal equipment lockers	0.50			
<b>LAVATORY EQUIPMENT AND FACILITIES</b>						
94		Interior/exterior fiberglass reinforced polyester FRP	1.00			
95		Toilet Room Sliding Doors and Hardware	0.50			
96		Toilet Room Accessories	0.50			
97		Toilet Room Fixtures/Equipment	0.75			
98		Plumbing	0.50			
99		Water heater	0.50			
100		Water supply tank	0.50			
101		Waste water tank	0.50			
102		Toilet and seat	0.50			
<b>FOOD SERVICE EQUIPMENT</b>						
103		Café/lounge furnishings	1.25			
104		Refrigeration system – carts & chillers	1.25			
105		Galley appliances	1.25			
106		Elevator	1.25			
107	Business class service module		0.50			
<b>CAB EQUIPMENT</b>						
108		Engineer console	0.50			
109		Cabinets	0.50			
110		Overhead indicator panel	0.50			
111		All instrument panels	0.50			
<b>ENGINES' PRIME MOVER AND HEAD END POWER</b>						
112		Engines' Prime Mover	0.00	N/A	N/A	0.00
113		Head End Power	0.00	N/A	N/A	0.00
114		Car history books/as-built drawings	0.50			
115		Manuals – vehicle maintenance, operations, parts.	0.50			
<b>TOTAL POINTS AVAILABLE</b>			<b>80.00</b>			<b>0.00</b>

Domestic Component Points Earned	Evaluation Points
76-80 (95-100%)	10 points
71-75 (89-94%)	7 points
65-70 (81-88%)	3 points
64 or less (80% or less)	0 points

\* If "Yes," add "Points Available for Domestic Content" into last column.

Note: While FRA uses some Federal Transit Administration (FTA) Buy America precedent as guidance for FRA grantees, the FTA Buy America requirements do not apply to this RFP.

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**CER 7.8: Buy America Component Supplier Certification Form**

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

Component Supplier Company Name: \_\_\_\_\_

Component Supplier Address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

The above named supplier hereby certifies that all components listed in the table below are manufactured in the United States.<sup>1</sup>

<b>Component No. (Reference to Form CER 7.7)</b>	<b>Name of Component</b>	<b>U.S. Location of Manufacturing (Street Address, City, State)</b>

Authorizing Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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

<sup>1</sup> The FRA Buy America statute at 49 U.S.C. § 24405 (a) applies. See also applicable FRA Buy America Frequently Asked Questions Nos. 5 and 6, at: <http://www.fra.dot.gov/Pages/11.shtml> (A *component* is considered to be manufactured in the U.S. if there are sufficient activities taking place in the U.S. to advance the value or improve the condition of the subcomponents of that component; that is, if the subcomponents have been substantially transformed or merged into a new and functionally different article).

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**CER 8: Proposal Form**

Proposer shall complete the following form and include it in Package 1 Qualifications and Certifications.

**PROPOSAL**

By execution below by a duly authorized representative of the Proposer, the Proposer hereby offers to furnish equipment and services as specified in its Proposal submitted to Caltrans in response to Request for Proposal No. 75A0362 in its entirety and that the Proposal shall remain valid for a period of 120 days.

Proposer:

Street address:

City, state, ZIP:

Name and title of Authorized Signer:

Name and title of Authorized Signer:

Phone:

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

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**CER 9: Notice of Intent to Bid**

*{Please complete and submit to the address indicated in NR 3.}*

RFP Number: 75A0362

This is to notify you that it is our present intent to bid in response to the above referenced RFP. The individual to whom all information regarding this RFP should be transmitted is:

Name:

Address:

City, State, & Zip

Phone Number:

Fax Number:

Email address:

Sincerely,

\_\_\_\_\_  
Name (Signature)

\_\_\_\_\_  
Typed Name and Title

\_\_\_\_\_  
Company

( ) \_\_\_\_\_  
Phone Number

( ) \_\_\_\_\_  
Fax Number

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

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**CER 10: Previous Similar Experience/Customer References**

Contractor's (Proposer) Name:			
Agency Name (Proposer's Customer):			
Agency Contact Person Name and Title:			
Street Address:			
City, State, Zip Code			
Telephone Number:		Cell Phone Number	
Brief Description of Service Provided:			
Type (s) of Rail Car (s):			
Number of Cars:			
Contract Start/End Date:			
Service Value/Cost:			
Email address:			
Fax Number:			

Two (2) or more of your Customer references will be contacted and asked to respond to the Reference Questions. Answers will be ranked with the following scale.

- Exceptional (5) Contractor exceeded your requirements and expectations.
- Satisfactory (3) Contractor met your requirements and expectations.
- Unsatisfactory (1) Contractor did not meet your requirements and expectations.

The total points scored will be ranked using the following scale:

- (4) points total will be given to scores that receive above 61 points
- (3) points total will be given to scores that receive 56 to 61 points
- (2) points total will be given to scores that receive 49 to 55 points
- (1) points total will be given to scores that receive 42 to 48 points
- (0) points total will be given to scores that receive below 42 points

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**REFERENCE QUESTIONS**

**Each Customer reference that is contacted by the Evaluation Committee shall be required to return this form.**  
Please summarize the Contractor's performance and circle the number in the Rating column which best represents the performance rating for each question.

	<b>Questions</b>	<b>Rating</b>	<b>Comments</b>
1	How would you rate your overall satisfaction with the Contractor?	1 3 5	
2	Based on your experience with the Contractor, how likely is it you would purchase from the manufacturer again?	1 3 5	
3	How would you rate the Engineering team and Engineering products (i.e. design plans) on your project?	1 3 5	
4	How would you rate the Production Team and their capabilities on your project?	1 3 5	
5	How would you rate the Warranty Team and their capabilities on your project?	1 3 5	
6	How would you rate the Contractor's ability to absorb your project into their existing workload?	1 3 5	
7	How would you rate the adequacy of the Contractor's facility for your project?	1 3 5	
8	How would you rate the overall reliability of the product over time?	1 3 5	
9	How would you rate the timeliness of warranty response?	1 3 5	
10	Were disputes resolved to your satisfaction? (If there were no disputes, use the "5" rating)	1 3 5	
11	How would you rate your contact with the Contractor's primary contact person?	1 3 5	
12	How would you rate your overall satisfaction with the staff engaged on your project?	1 3 5	
13	How would you rate the Contractor's ability to complete work according to schedule?	1 3 5	
14	How would you rate the Contractor's ability to manage costs on the Contract?	1 3 5	

Name of Proposer being evaluated: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_

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

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

**Request for Proposal  
For the Purchase of  
New Bi-Level Passenger Railcars**

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**Section 3: General Conditions**

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## SECTION 3: GENERAL CONDITIONS

### GC 1. Definitions and Acronyms

See State of California General Provision number 1.

The following are definitions of special terms used in this document:

**Addenda/Addendum:** Written modifications issued by Caltrans to the Request for Proposals that modify the Contract Documents.

**Agency:** California Department of Transportation (Caltrans) or Department.

**Agency Furnished Material:** Material furnished by Caltrans/IDOT to the Contractor for use under the contract.

**Approved Equal or Equivalent:** An item, material, or method offered as a substitute for that designated in the Contract Documents, for which approval in writing has been obtained from Caltrans. The burden of proof that a substitute is in fact equal shall rest with the Contractor.

**Authorized Signer:** The person who is authorized to bind the Contractor in executing the Contract on behalf of the Contractor.

**Award:** Notification to the Contractor of acceptance by Caltrans of its Proposal.

**AWCR:** Amtrak Warranty Claim Request, the form used in the reporting and tracking of warranty claims. Use of this form does not imply any exclusive operational relationship with Amtrak related to this Procurement.

**Bi-Level Passenger Railcar:** Passenger railcars as specified in the PRIIA 305 Technical Specification for Bi-Level Passenger Railcars, also referred to as “railcar,” “car,” or “vehicle.”

**Buy America Component:** Any article, material, or supply, whether manufactured or unmanufactured, (CER 7.7: Buy America Worksheet) that is directly incorporated into the end product (Bi-Level Passenger Railcar) at its final assembly location. This definition should not be confused with the definition of “Component” which is defined separately – see below.

**Caltrans:** California Department of Transportation

**Caltrans Project Manager:** The Caltrans Project Manager shall be the day-to-day contact between Caltrans and the Contractor. The Caltrans Project Manager shall decide all questions which may arise as to the quality or acceptability of materials furnished and work performed and as to the manner of performance and rate of progress of the work

**Car:** See Bi-Level Passenger Railcar

**Component:** A Component of any vehicle or any other Equipment to be delivered under this Contract. It may also be referred to in this Contract as a unit, part, product, module, subcomponent, component, system, subsystem, assembly, subassembly, software, firmware, structure or other term indicating a part or portion of the Equipment. (This definition of “Component” should not be confused with “Buy America Component” which is defined separately – see above.).

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**Contract:** A written agreement executed by Caltrans, IDOT, and the Contractor that sets forth the rights and obligations of the parties in connection with the Work, and which includes the Contract Documents and all incorporated attachments and exhibits.

**Contract Administrator:** State of California's representative who is authorized and empowered to execute contracts, Change Orders, Amendments and other agreements and documents on behalf of Caltrans. The Contract Administrator may delegate authority in writing to one or more authorized representatives.

**Contract Deliverable Requirements List (CDRL):** All deliverables required by the contract documents compiled into one list.

**Contract Documents:** All documents included in the Contract and made a part hereof, including Attachments and Exhibits incorporated either by attachment or by reference.

**Contract Time:** The number of days, or portion thereof, allowed for completion of the Work, including all authorized time extensions. The date specified in the Notice to Proceed (NTP) shall be the date on which the Contract Time begins, and the Scheduled Completion Date shall be the date the Contract Time ends.

**Contractor:** The successful Proposer to whom a Contract is awarded.

**Contractor's Representative:** The person designated by the Contractor to act on its behalf.

**Critical Path Method (CPM) schedule:** A schedule that includes the planned sequence of activities that comprises the Project, including a breakdown of all of the elements of the Work into individual tasks, the number of days required to perform each task, and their logical relationship. The CPM schedule includes the entire Contract Time from Notice to Proceed to the Scheduled Completion Date.

**Cure Notice:** Written notice from Caltrans to the Contractor to cure a default or deficiency or to correct Work performed not in conformance with the Contract.

**Days:** Calendar days unless otherwise indicated.

**Delivery:** The time when a vehicle is turned over to Caltrans or its designee vehicle acceptance facility, having completed all pre-delivery inspections and tests and is ready for acceptance testing.

**Defect:** A patent or latent flaw in any of the Equipment, Work or Components; or any failure of the Equipment or Components to perform in accordance with the requirements of the Contract either prior to Final Acceptance of the Equipment or during the period of any Warranty as provided in the Contract.

**Designee:** Representatives from Caltrans or other states designated by the Caltrans Project Manager to make specific decisions or perform specific actions.

**Dispute:** A disagreement between the parties as to the merits, amount or remedy arising out of a Claim or asserted default.

**Draft Proposal:** The initial Proposal in response to the RFP not containing any price information.

**Drawings:** All drawings necessary or required for the completion of the Work.

**Due Date:** The time by which any milestone document or deliverable must be received by Caltrans or the Contractor, as applicable.

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**Equipment:** Any and all machinery, vehicles, systems, assemblies, sub-assemblies, products, material fittings, devices, appliances, fixtures, apparatus, supplies and parts used by the Contractor or provided by the Contractor to Caltrans pursuant to the Contract.

**Failure Free:** "Failure Free" is defined as the operation of a vehicle during which the vehicle has operated for a continuous 30-day period in revenue service, exhibiting no operational defects in parts or labor that required more than 24 hours to remedy. Caltrans reserves the right to modify these time constraints due to operational impacts.

**Final Proposal:** The last Proposal submitted by a Proposer which contains the Proposer's formal response to the Request for Proposals, including the price Proposal.

**First Article Inspection (FAI):** The comprehensive inspection and testing of the first production model of any component, system, subsystem, major assembly, subassembly, product, part, apparatus, article and other Material before it is assembled into a Vehicle.

**Fleet:** All vehicles furnished under the terms of this contract.

**FRA:** Federal Railroad Administration

**Goods:** All types of tangible personal property, including but not limited to materials, supplies, and equipment (including computer equipment and telecommunications)

**Government:** Any Federal, state or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than Caltrans.

**Joint:** Involving mutually the Contractor and Caltrans or designee.

**NGEC:** The Next Generation Equipment Committee, a committee comprised of representatives of Amtrak, the Federal Railroad Administration, host freight railroad companies, passenger railroad equipment manufacturers, interested States, and other passenger railroad operators.

**Notice:** Communication in writing, unless otherwise specified, to provide or issue any information, warning, announcement, instruction, consent, approval, certificate or determination by any party to the Contract.

**Notice of Award:** The notification to the selected vendor from Caltrans that the vendor has been selected to become the Contractor and will be provided a Notice to Proceed following the protest period and receipt of all required information and documentation.

**Notice of Intent to Claim:** A written notice of a potential claim submitted by the Contractor to Caltrans within the time limits and under the circumstances specified in the Contract Documents.

**Notice to Proceed (NTP):** Written authorization from Caltrans to the Contractor that establishes the date that the Contractor is authorized to start work and the Period of Performance begins.

**Notice of Termination:** A written notice delivered by Caltrans to the Contractor terminating the Contract, either for convenience or for cause.

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**Options:** A right of an agency in a written contract by which, for a specified time, the agency may elect to purchase additional goods and/or services called for by the contract, or may elect to extend the terms of the contract under the same or similar terms and conditions for an additional period, provided that the option was considered in the evaluation for award.

**Period of Performance:** The total time period as set forth in the schedule for the Contractor to complete all or a designated portion of the Work under the Contract.

**Proposal:** An offer submitted to Caltrans in response to Caltrans' Request for Proposal.

**Proposer:** The legal entity that responds to Caltrans' Request for Proposal.

**Railcar:** See Bi-Level Passenger Railcar

**Request for Proposal (RFP):** The Document issued by Caltrans and soliciting Proposals with respect to the Work to be performed under the Contract Documents.

**Rolling Stock:** Rolling stock comprises all the vehicles that move on a railway including powered and unpowered vehicles (e.g. locomotives and passenger railroad cars).

**Specifications:** All things described, stated or referenced in the Contract Documents entitled Technical Specifications, Statement of Work, Scope of Work, or any other description of the Work.

**Subcontractor:** Any person, firm, partnership, corporation or other entity, other than employees of the Contractor, that is hired by the Contractor to perform work and/or furnish labor and/or materials, directly on the vehicle under this Contract.

**Submittal:** Any written or graphic document or sample prepared by or for the Contractor that is required by the Contract Documents to be submitted to Caltrans by the Contractor.

**Sub-supplier:** Any manufacturer, company, or agency, providing components or parts to a Supplier for inclusion on the vehicle.

**Supplier:** Any person, firm, partnership, corporation or other entity that provides Components for the contract.

**Total Contract Price:** The total amount payable to the Contractor plus the price of any options exercised, and/or Change Orders during the contract period of performance.

**Vehicle:** See Bi-Level Passenger Railcar

**Warranty Manager:** The warranty manager is responsible for the management, tracking, and administration of the contractual warranty. The warranty manager is the point of contact to Caltrans and IDOT for all fleet and individual car warranty issues and functions the main interface to the warranty field offices.

**WDPS:** Warranty Database and Performance System, the system used to record and track progress on AWCRs.

**Work:** The furnishing of all labor, materials, equipment and other incidentals necessary for the successful completion of the project and the carrying out of the duties and obligations imposed by the Contract, including alterations, amendments or extensions thereto made by Change Order.

## GC 2. Materials and Workmanship

See State of California General Provision numbers 16 and 32.

The Contractor shall be responsible for all materials and workmanship in the construction of the vehicle and all accessories used, whether the same are manufactured by the Contractor, Subcontractor or purchased from a Supplier.

All materials and parts furnished by the Contractor shall be newly manufactured Goods and free from Defects. Used or reconditioned Goods are prohibited.

Articles or materials to be incorporated in the Work shall be stored in such a manner as to ensure the preservation of their quality and fitness for the Work and to facilitate inspection.

### GC 2.1 Standardization

The Next Generation Equipment Committee, led by Amtrak, US DOT and Member States is charged with supporting the development of specifications for the next generation of passenger rail equipment and establishing processes for stewardship of the fleet throughout its lifecycle. The Committee and its core membership has recognized the value of standardization within the next generation fleet for purposes of interoperability, interchangeability, management of lifecycle costs, improved safety and to help re-establish the domestic supply chain for passenger rail rolling stock.

To that end, each Proposer must submit a Standardization Plan for standardization of interfaces for high dollar vehicle systems and major high usage components. The Standardization Plan shall include the Standardization Table (Appendix 3) and all necessary supporting documentation, which shall be attached.

In developing the Plan, the Proposer's approach should utilize the current NGEC bi-level specification, program management and design review requirements to incorporate a modular approach to defining the volume or space requirements for major systems or components, including weight limitations. This process will also define the key interface definitions to provide for form, fit and function of all electrical, data, mechanical, pneumatic, fluid and other appropriate interfaces within the defined space/performance requirements.

The high usage components, procured independent of a system, can be readily identified to comply with industry standards and regulations, such as APTA, SAE, ANSI, ASHRAE, AWS, IEEE, and ISO. These components are in the category of consumables or items with high replacement rate due to normal wear and tear or damage potential. The Proposer's Standardization Plan should identify and include, but not be limited to, recommendations for standardization of such high usage items as listed in the Standardization Table (Appendix 3).

If a Proposer proposes not to recommend items contained in the Standardization Table (Appendix 3) for standardization, the rationale for not including them shall be documented in the space provided in the table.

The Proposer's Standardization Plan should cross reference details that apply from Technical Specification Section 3.1, Project Management Overview that requires component assemblies and subsystems provided on the first build lot of cars under this specification to be designed so as to facilitate

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the exchange and substitution of alternative components for form, fit and function. Final decisions on subsystem, assembly or component level for interchange will be determined by Caltrans and IDOT.

The Proposer’s Standardization Plan shall be consistent with all Technical Specification requirements, and shall be appropriately integrated into the engineering plan for accomplishing the engineering design functions and objectives as part of the Section 3.6 Design Review CDRL requirements. Safety, reliability, ease of maintenance and compatibility/interchangeability with other bi-level passenger rail equipment shall be a primary design consideration. The Standardization Plan shall be incorporated into the Project Management Plan and standardization candidate systems and components shall also be incorporated into the configuration management plan. **CDRL**

Caltrans and IDOT will be involved in the design review process as it relates to the development, evaluation and approval of the Proposer’s standardization plan during project execution. This will include, but not be limited to, the approval of systems and components for standardization both at the Conceptual Design Phase (10%) and at the Preliminary Engineering Design Phase (30%) design review.

Each step in the design phase, development, construction, delivery and acceptance of the first car shall include a review of the standardization plan and the progress made towards successful implementation. Documentation sufficient for the future application of each proposed standard, which is successfully progressed through to the approved final design, shall be delivered to Caltrans/IDOT per contract requirements along with written documentation of the right to use it in future acquisitions of vehicles, components of vehicles or spare parts by Caltrans, IDOT or their assignees for use in the United States. All updates and proposed revisions to the Proposer’s Standardization Plan are contract deliverables and shall be submitted for approval by Caltrans/IDOT at each stage of design review, and progress in implementing the Plan shall be reviewed and approved by Caltrans/IDOT following each phase of design review.

**Instructions for completing Standardization Table**

<b>Column</b>	<b>Instructions</b>
1	Please check “Yes” or “No” whether or not the Component or System/Interface is being proposed for Standardization.
2	Please check all boxes that apply regarding the reasoning for standardizing. Add and define any “Other” reasons for Standardization not included in the selections.
3	Please check “Yes” or “No” if more than one supplier is anticipated for the standardized component, system, or interface.
4	Please check “Yes” or “No” if Proposer agrees to allow the standardized component, system, or interface to be used in future bi-level railcar procurements?
5	Please describe at which points in the design review process that Proposer expects the Standardization Plan to be updated.
6	Please provide Proposer’s methodology for establishing standardization of the component, system, or interface during the design phases.
7	If the response to Column 1 was “No,” please explain the reasoning for not proposing Standardization of the component, system, or interface.

### **GC 3. Conformance with Specifications and Drawings**

Materials furnished and Work performed by the Contractor shall conform to the requirements of the Technical Specifications and all other Contract Documents. Notwithstanding the provision of drawings, technical specifications or other data by Caltrans, the Contractor shall have the responsibility for supplying all parts and designs required to make the vehicle complete and ready for service even though such details may not be specifically mentioned in the drawings and specifications.

Omissions from the Contract specifications, or the inaccurate description of details of Work that are manifestly necessary to carry out the intent of the Contract specifications, or that are customarily performed, shall not relieve the Contractor from performing such omitted Work or inaccurately described details of the Work, and they shall be performed as if fully and correctly set forth and described.

In the event of differences between small and large-scale drawings, the large-scale drawings shall govern. In the event of discrepancies between any drawing and a dimension written on it, the written dimension shall govern over scaled dimensions.

In the event of discrepancies between information on any drawing and the written specifications, the discrepancy shall be resolved in favor of the written specifications.

### **GC 4. Inspection, Testing and Acceptance**

#### **GC 4.1 General**

See State of California General Provision numbers 17 and 18.

Caltrans' Project Manager or designee (including IDOT and FRA representatives) shall at all times have access to the Work, the Contractor, and (through the Contractor) its Suppliers. The Contractor and its Suppliers shall furnish every reasonable facility for ascertaining that the materials and the workmanship are in accordance with the requirements of the Contract Documents. All Work done shall be in accordance with the Contract Documents and is subject to the Caltrans Project Manager's inspection and approval.

All Goods may be subject to inspection and test by Caltrans/IDOT or its authorized representatives. All Goods to be delivered hereunder may be subject to final inspection, test and acceptance by Caltrans or IDOT at destination, notwithstanding any payment or inspection at source.

The Contractor shall test and inspect all materials, supplies, and equipment that are to be used, or incorporated in the Work. In addition, the Contractor shall conduct a continuous quality control program satisfactory to the Caltrans Project Manager for all Work performed under this Contract. The Contractor shall keep written records evidencing testing and inspections and their results, and will make these records available to Caltrans and IDOT during Contract performance, and for three years after final payment. The Contractor shall have responsibility for inspecting the Work.

The Caltrans Project Manager and/or designees (including IDOT and FRA representatives) may review, inspect and evaluate the Contractor's and its Subcontractors' procedures, practices, processes and related documents to determine the acceptability of the Contractor's quality control system or other business practices related to performance of the Contract. Contractor or its Subcontractors shall provide all reasonable facilities for the safety and convenience of the Caltrans and designee inspectors at no additional cost to Caltrans or IDOT. Contractor and its Subcontractors shall furnish the Caltrans and designee inspectors all information and data as may be reasonably required to perform their inspections. All site visits and evaluations shall be performed in such a manner as will not unduly delay work being conducted by the Contractor or Subcontractors.

Any observation, verification, inspection, or acceptance of the Work by Caltrans shall not relieve the Contractor of any of its obligations to perform the Contract. Such inspection shall not relieve the Contractor of its liability for defective or non-conforming Work, as described in GC 4.2 "Non-Conforming Work." Work not meeting the requirements of the Contract shall be made acceptable, and non-conforming Work may be rejected and will not be accepted until corrected to the satisfaction of the Caltrans Project Manager.

## **GC 4.2 Non-Conforming Work**

See State of California General Provision number 26.

Work and materials shall conform to the dimensions and material requirements, including tolerances, indicated in the Contract Documents. Although measurement, sampling, and testing may be considered evidence of such conformity, Caltrans may require additional testing, sampling or measurement if results are inconclusive in order to ensure that the Work and materials conform to Contract requirements.

If Caltrans determines that material, equipment, or workmanship proposed for or incorporated in the Work is defective or non-conforming, Caltrans may reject such Work by giving the Contractor written notice with an explanation as to why the Work is defective or otherwise does not conform to the requirements of this Contract. Caltrans shall require the Contractor to either (1) promptly repair, replace or correct all Work not performed in accordance with the Contract at no cost to Caltrans; or (2) provide a suitable corrective action plan at no cost to Caltrans. Once accepted by the Caltrans Project Manager or designee, the Contractor shall implement the corrective action plan at no cost to Caltrans. If the corrective action plan as accepted by Caltrans Project Manager or designee does not remedy the defective or non-conforming Work, then the Contractor shall remain responsible for remedying the non-conforming Work to Caltrans' satisfaction and at no additional cost to Caltrans. The Contractor shall also be responsible for repairing all property and Work damaged by the Contractor at no cost to Caltrans. Under no circumstances shall the Contractor be entitled to additional time or money for the correction of defective or non-conforming work, or for the repair of damaged property.

Caltrans' inspection of the Work or right to reject non-conforming Work shall not relieve the Contractor of its full responsibility for performing the Work in full compliance with the Contract Documents. Caltrans failure to notify the Contractor of defective or non-conforming Work shall not relieve the Contractor of its responsibility to ensure that the Work is performed in accordance with the Contract Documents.

## **GC 4.3 Risk of Loss**

Risk of loss and property damage to the vehicle shall pass to Caltrans/IDOT or designee upon (1) arrival of the vehicle at Caltrans'/IDOT's or designee's specified location, as applicable, (2) joint receiving inspection by the Parties (see Appendix 1, Form 3), (3) completion and execution by the Parties of the Vehicle Delivery Notice and Receipt Form (see Appendix 1, Form 2), and (4) Vehicle Conditional Acceptance and Certificate of Title (see Appendix 1, Form 4).

However, Caltrans/IDOT shall not be responsible for, and the Contractor shall retain all risk of loss or damage due to, equipment failure or failure due to design or workmanship deficiencies, as well as all damage caused by the Contractor's negligence or willful misconduct.

## **GC 5. Certificate of Title**

Title to each Vehicle shall vest in Caltrans/IDOT or designee upon Conditional Acceptance (see Appendix 1, Form 4) and shall be evidence that Caltrans/IDOT or designee has acquired full title to such Vehicle free and clear of all liens, claims, security interests or encumbrances of any kind.

**CDRL**

## GC 6. Intellectual Property

### 1. Intellectual Property

A. Except as otherwise provided herein, all rights in copyrightable works and non-patentable works first created by the Contractor in the performance of the Scope of Work are the property of the Contractor. Unless restricted under Exhibit A, the Contractor grants to the States (Caltrans and IDOT) a fully paid-up, royalty-free, nonexclusive, sub-licensable, irrevocable license to use, reproduce, prepare derivative works, and distribute copies of the Deliverables identified in the Scope of Work (including without limitation "subject data" as defined herein) to fulfill State and Federal government and statutory purposes, and to reproduce, publish, and otherwise use any and all copyrightable works and non-patentable works (regardless when such works were created, and including Pre-Existing Works and Derivative Works) used by, contained in or constituting any of the Deliverables. Pursuant to the foregoing license, the Contractor grants to the States, its license under any copyrights and non-patent intellectual property rights owned by the Contractor, or with respect to which the Contractor has a right to grant such rights and licenses, to the extent required by the States to exploit the Deliverable(s) and exercise its full rights in the Deliverable(s), including (without limitation) the right to make, use, and sell products and services based on or incorporating such Deliverable(s). For purposes of this Agreement, statutory objectives include without limitation the operation, repair, maintenance, improvement and re-construction of any and all Deliverables produced under this Agreement. Contractor grants to States the right to sub-license any rights set forth in this section to the United States Federal government.

B. Notwithstanding the above, to the extent the purpose of the Scope of Work is specifically directed toward the creation of a copyrightable work for use by the States and that fact is indicated in Exhibit B, then all rights in such copyrightable work will be the property of the States, subject to a reserved right for the Contractor to use the copyrightable work to fulfill its duties and obligations under this Agreement.

C. Upon written request and subsequent amendment, the States may request delivery of computer software that is not identified in the Exhibit B, but which was first created in the performance of the Scope of Work. Contractor shall grant to States a fully paid-up, royalty-free, nonexclusive, sub-licensable, irrevocable license to use, reproduce, prepare derivative works of such software, and to distribute copies, in order to fulfill the States' statutory objectives, subject to the restrictions that are mutually agreed by the parties and set forth in Exhibit A.

D. Copyrightable works that may be patentable are also subject to the Patent Rights clause, which will take precedence in case of a conflict.

### 2. Patent Rights

A. All rights to any patentable Inventions or discoveries conceived and first actually reduced to practice in the performance of the Scope of Work are the property of the Contractor. Unless restricted under Exhibit A, the Contractor grants the States a nonexclusive, sub-licensable, irrevocable, paid-up license to practice or have practiced such invention to fulfill the States' statutory objectives, and to use any and all patentable works (regardless when such works were created, and including Pre-Existing Works and Derivative Works) used by, contained in or constituting any of the Deliverables for State and Federal government and statutory purposes. Pursuant to the foregoing license, the Contractor grants to States, its license under any patents owned by the Contractor, or with respect to which the Contractor has a right to grant such rights and licenses, to the extent required by the States to exploit the Deliverable(s) and exercise its full rights in the Deliverable(s), including (without limitation) the right to make, use, and sell products and services based on or incorporating such Deliverable(s). Without limiting the foregoing license, said license includes any invention, improvement, or discov-

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ery of Contractor or any of its third party contractors conceived or first actually reduced to practice in the course of or under this Project, if such invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country. For purposes of this Agreement, government and statutory objectives includes without limitation the operation, repair, maintenance, improvement and re-construction of any and all Deliverables produced under this Agreement. Contractor grants to States the right to sub-license any rights set forth in this section to the United States Federal government.

B. Notwithstanding the above, to the extent the purpose of the Scope of Work is specifically directed toward the creation of a patentable work for use by the States and that fact is indicated in Exhibit B, then all rights in such patentable work will be the property of the States, subject to a reserved right for the Contractor to use the patentable work to fulfill its duties and obligations under this Agreement.

C. If States notify Contractor of a need that is not being met by Contractor, Contractor will take steps to meet such need or will offer sufficient field-of-use rights to the States to address such unmet need.

D. Within eighteen months of disclosure of an invention to Contractor by an inventor working for on behalf of the Contractor, the Contractor shall file, prosecute and maintain a patent application claiming the invention and Contractor will diligently pursue a broad application of such invention. If Contractor does not to file a patent application within such eighteen month period, or it decides to abandon a patent or patent application claiming such invention, or it determines that it does not intend to pursue commercialization of such invention, then Contractor will provide written notice to the States of such facts. Upon receipt of such notice, States may provide notice to Contractor that the States desire to obtain title to such patentable invention, and Contractor agrees to then assign title of such invention to the States.

3. **Federal Clauses related to Intellectual Property.**

Notwithstanding the foregoing, Contractor and States agree to the terms, covenants and conditions set forth in Federal Clauses FC 18.7 "Patent Rights," and FC 18.8 "Rights in Data and Copyrights."

4. **General Provisions**

A. **Avoidance of Infringement.** In performing services under this Agreement, Contractor agrees to avoid designing or developing any items that infringe one or more copyrights, patents or other intellectual property rights of any third party. If Contractor becomes aware of any such possible infringement in the course of performing any Deliverable under this Agreement, Contractor shall immediately notify the States in writing.

B. **Subcontractors.** Contractor shall affirmatively bind by contract any of its subcontractors or service vendors (hereinafter "Contractor's Subcontractor") providing services under this Agreement. Contractor's Subcontractor shall then provide the signed contract to the Contractor, who shall provide it to the State's Contract Manager prior to the commencement of any work. In performing services under this Agreement, Contractor's Subcontractor agrees to avoid designing or developing any items that infringe one or more patents or other intellectual property rights of any third party. If Contractor's Subcontractor becomes aware of any such possible infringement in the course of performing any work under this Contract, Contractor's Subcontractor shall immediately notify the Contractor in writing, and Contractor will then immediately notify the States in writing.

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C. **Exhibits.** Exhibit A shall describe any restrictions upon the license grant made to the States under the Agreement. Exhibit B shall describe the new and unique works that are intended to be created under the Agreement. These Exhibits will be developed by Caltrans/IDOT and the Contractor after the Notice to Proceed.

D. **Definitions**

1) **Deliverable** shall mean work, including but not limited to, designs plans in electronic form or in hard copy, concept, improvement, as-builts, specifications, drawings, blueprints, Enhancements and any other materials developed, conceived or made or made hereafter conceived or made either solely or jointly with others or delivered to the Department by the Contractor during the terms under this Contract and under the Scope of Work, and during a period of six (6) months after the termination thereof, which relates to any work commissioned or performed under this Contract and Scope of Work.

2) **Scope of Work** shall mean the work statements delineated in this Agreement. In addition, Scope of Work shall mean any purchase offer of the Department, any proposals or contracts of the Contractor, or any other written instrument that at a minimum (i) includes substantially the following statement: “ This is the Scope of Work under the Agreement”; (ii) is signed on behalf of all parties by their authorized representatives; and (iii) contains a description and/or specifications of the services to be performed and the Deliverable(s) to be delivered to the Department and the completion and acceptance criteria for the Deliverable(s) under this Contract. In addition, when applicable, the Scope of Work may include provisions for written and /or oral progress reports by the Contractor, detailed functional and technical specifications and standards for all services and Deliverable(s), including quality standards, documentation standards, lists of special equipment to be procured by the Contractor or provided by the Department for use in performance of the work, test plans and scripts, and such other terms and conditions as may be mutually agreeable between parties.

3) **Derivative Work** shall mean a work that is based upon one or more Preexisting Works, such as a revision, modification, translation, abridgment, condensation, expansion, or any other form in which such Preexisting Work may be recast, transformed, or adapted, and that if prepared without authorization of the owner of the copyright in such Preexisting Work, would constitute a copyright infringement. For purposes hereof, a Derivative Work shall also include any compilation that incorporates such Preexisting Work.

4) **Enhancements** shall mean changes or additions, including but not limited to all new designs that improve functions, add new functions, or significantly improve performance by changes in design.

5) **Preexisting Work** shall mean the pre-existing intellectual property of Contractor.

6) **Invention** shall mean any idea, methodologies, design, concept, technique, invention, discovery, improvement or development regardless of patentability made solely by the Contractor or jointly with the Contractor’s Subcontractor and/or the Contractor’s Subcontractor’s employee’s with one or more employees of the, during the term of this Contract and in performance of any Work under this Contract, provided that either the conception or reduction to practice thereof occurs during the term of this Contract and in performance of Work issued under this Contract.

## GC 6.1 Intellectual Property Indemnification

See State of California General Provision number 36.

The Contractor shall indemnify, defend and hold harmless Caltrans, IDOT (and its officers, directors, agents, employees or designees) to the maximum extent permitted by law from and against any and all claims, liabilities, losses, damages or expenses (including attorneys' fees and related costs, whether or not litigation has commenced), whether direct or indirect, arising out of, relating to or in connection with any claim or allegation that the ownership, possession or use of any railcar design, software, equipment, devices, processes or other materials provided by the Contractor under the Contract infringe or violate the patent, copyright, trade-secret or other intellectual-property or proprietary rights of any third-party. In case any such railcar design, software, materials, equipment, devices, processes or other materials are held to constitute an infringement and their use enjoined, then the Contractor, at the Contractor's sole cost and expense, shall do one of the following:

- Secure for Caltrans and designees the right to continue using the software, materials, equipment, devices or processes by suspension of the injunction or by procuring a royalty-free license, or licenses.
- Replace such software, materials, equipment, devices or processes with non-infringing software, materials, equipment, devices or processes.
- Modify them so that they become non-infringing.

If the amount of time necessary to proceed with one of these options is deemed excessive by Caltrans, then Caltrans may direct the Contractor to select another option or risk default.

Caltrans shall advise the Contractor of any pending patent suit related to this Contract against Caltrans and provide all information available. The Contractor's obligations under this section are discharged and Caltrans shall hold the Contractor harmless with respect to the equipment or part if it was specified by Caltrans and all requests for substitutes were rejected, and the Contractor advised Caltrans under "Questions and Clarifications" of a potential infringement, in which case the Contractor shall be held harmless.

## GC 6.2 Intellectual Property Warranty

The Contractor represents and warrants that any use of the Work, or any part thereof, by Caltrans/IDOT (or its officers, directors, agents, employees, or designees) will not infringe or violate the patent, copyright, trade-secret or other intellectual-property or proprietary rights of any third-party.

The Contractor further represents and warrants that it has or will have all appropriate licenses, agreements or ownership rights pertaining to all patent, copyright, trade-secret or other intellectual-property or proprietary rights needed for the performance of its obligations under this Contract — including without limitation that it will have all necessary rights to use patentable or copyrightable materials, equipment, devices or processes not furnished by Caltrans used on or incorporated in the Work under this Contract. The Contractor assumes all risks arising from the use of any such patented or copyrighted materials, equipment, devices or processes.

## GC 6.3 Tooling Rights

Until expiration of the warranty period, the Contractor, its Subcontractors, Suppliers, and Manufacturers shall not sell, destroy or otherwise dispose of their rights to the use of, the unique castings, patterns, and forming or extrusion dies after their use in the production of the vehicles without first offering them to Caltrans/IDOT, with reasonable costs associated with the transfer to be borne by Caltrans/IDOT. After the expiration of the warranty, and for the remaining life of the vehicles, the Contractor shall make commercially reasonable efforts to cause its Subcontractors, Suppliers and Manufacturers to comply with Section SP 12.1 "Parts Availability Guarantee."

Commercial off-the-shelf products are excluded from these provisions.

For purposes of Section SP 12.1 “Parts Availability Guarantee,” the terms “sell” and “sale” shall not include transfer of these assets to a successor corporation or other entity that assumes the business and obligations of the Contractor, or any Subcontractor, Supplier or Manufacturer herein, including obligations arising under this Contract.

Upon Contractor’s offer of any of the materials described above and Caltrans’ or designee’s refusal, the Contractor’s obligation under SP 12.1 “Parts Availability Guarantee” as it relates to the specific materials offered and refused, shall cease.

## **GC 7. Data Rights**

### **GC 7.1 Proprietary Rights/Rights in Data**

The Contractor hereby grants to Caltrans on the Contractor’s behalf, and on behalf of its Subcontractors, Suppliers and Manufacturers (as to whom the Contractor represents and warrants that it has the power and authority to grant such sublicense), an irrevocable, perpetual, royalty-free, non-exclusive license and sublicense (“Technology License”) to use, itself or through its agents, for the approved purposes described in “Uses” below without recourse to the original Contractor, Subcontractor, Supplier, or Manufacturer all patented, copyrighted, and unpatented technology, know-how, trade secrets, and other proprietary rights, and documentation thereof (except manufacturing detailed drawings and software, which is separately defined at and licensed pursuant to Section 7.1.2 below), which is included in the Material and/or Equipment, including but not limited to all systems, subsystems, assemblies, subassemblies, components and interface systems and controls which are necessary for the operation, maintenance and repair, overhaul of the Material and/or Equipment, and for the manufacture of parts which are unavailable for purchase, as defined below, all of which shall be designated the “Licensed Technology.”

#### **GC 7.1.1. Uses**

Caltrans’ rights under this Technology License shall be limited to its use for the following:

1. Evaluation and qualification for the purposes of future Material and/or Equipment procurements of systems, subsystems and components of subsystems on the Material and/or Equipment to be delivered under this Contract;
2. Preparation of specifications for future vehicle RFPs employing some or all of the Licensed Technology;
3. Maintenance and repair of the Material and/or Equipment;
4. Overhaul of the Material and/or Equipment;
5. Manufacture of parts for the Material and/or Equipment that become unavailable for purchase. The term “unavailable for purchase” means that a part is no longer being manufactured; or an inventory of the part in sufficient quantities to meet Caltrans’ needs is not available for purchase; or no Supplier will sell a part to Caltrans or cannot supply the part according to a delivery schedule that meets Caltrans’ needs; or that no Supplier will offer the part at a commercially reasonable price.

#### **GC 7.1.2. Limits**

Caltrans shall not have the right under this Technology License either to use the Licensed Technology to manufacture itself, or to have manufactured for it by a third-party as a sub-licensee of Caltrans, either the Material and/or Equipment, systems, subsystems or components thereof, except as specified in Section 7.1.1, item 5 above.

## **GC 7.2 Software Escrow Account**

Prior to Conditional Acceptance of the first vehicle, the Contractor shall provide Caltrans a list of all software comprising proprietary works ("Proprietary Software"). Source code for the Proprietary Software and all related documentation required for the use and modification thereof, and any revisions or derivative works based on the Proprietary Software developed pursuant to the Contractor's performance of the Contract (collectively, "Escrow Materials") shall be deposited in an escrow account with a third-party, as set forth in the Software Escrow Agreement (TBD). The Contractor shall pay all initial and future costs related to the escrow account. The escrow materials shall immediately be obtainable and usable by Caltrans in the event that Contractor fails to support the continued use of the Proprietary Software by Caltrans or designees, or upon termination or expiration of the term of the escrow. Escrow Materials shall be released in accordance with the explicit terms for release set forth in the Software Escrow Agreement.

## **GC 8. Changes**

### **GC 8.1 Contractor Changes**

Any Change Order must be formalized in writing utilizing the Change Order Form (to be developed) approved by Caltrans. Change Orders will be paid upon completion of the Work as defined in each Change Order Form (i.e. per car, lump sum). Verbal Change Orders are not permitted.

To propose a change in the Work, the Contractor must submit a Proposed Change Order to Caltrans for approval prior to starting such proposed work. The notice should describe the proposed change, identifying the Work that it proposes to change and stating the reasons for the change, including relevant circumstances, impacts on the schedule, and estimated cost impacts.

Upon receipt of the Proposed Change Order, Caltrans may choose to either reject it, or request the Contractor to submit a detailed Change Order within a specified time period. If Caltrans requests a detailed Change Order, then the Contractor's Proposal shall set forth any changes to: the Total Contract Price, Contract Delivery Schedule or any technical requirements of the Contract.

The Contractor shall be liable for all costs resulting from, and/or for satisfactorily correcting, any specification change not properly ordered by written modification to the Contract and signed by the Contract Administrator.

### **GC 8.2 Caltrans Changes**

Caltrans may make changes to the Contract by notifying the Contractor in writing. The Contractor shall advise Caltrans on the practicability of the Proposed Change Order by Caltrans.

Caltrans may issue a Proposed Change Order. Upon receipt of the Proposed Change Order and as soon as possible but no later than thirty (30) days, or a date agreed to by the parties, the Contractor shall submit to Caltrans' Project Manager a detailed price and schedule Proposal for the Work to be performed. The Contractor's Proposal shall set forth any changes to the Total Contract Price, Contract Delivery Schedule, or any technical requirements of the Contract. This Proposal shall be accepted or modified by negotiations between the Contractor and the Caltrans Project Manager. At that time, a Change Order shall be executed in writing by both parties.

Verbal Change Orders are not permitted.

## GC 9. Legal Clauses

### GC 9.1 Indemnification

See State of California General Provision numbers 8 and 28.

Upon receipt of notice and if given authority, the Contractor shall, to the extent permitted by law, settle at its own expense or undertake at its own expense the defense of any such suit, action or proceeding, including appeals, against the Indemnitees, relating to such injury, death, loss or damage.

Each party shall promptly notify the other in writing of the notice or assertion of such claim, demand, lien, encumbrance, judgment, award, suit, action or other proceeding hereunder. The Contractor shall have sole charge and direction of the defense of such suit, action or proceeding. Caltrans or designees shall not make any admission that might be materially prejudicial to the Contractor unless the Contractor has failed to take over the conduct of any negotiations or defense within a reasonable time after receipt of the notice and authority above provided. Caltrans and designees shall at the request of the Contractor furnish to the Contractor all reasonable assistance that may be necessary for the purpose of defending such suit, action or proceeding, and shall be repaid all reasonable costs incurred in doing so. Caltrans or designees shall have the right to be represented therein by advisory counsel of its own selection at its own expense.

#### GC 9.1.1. Reserved

N/A

#### GC 9.2 Reserved

N/A

### GC 9.3 Suspension of Work

See State of California General Provision number 39.

Caltrans may at any time and for any reason issue a written order to the Contractor suspending, delaying or interrupting all or any part of the Work for a specified period of time.

The Contractor shall comply immediately with any such written order and shall take all reasonable steps to minimize costs allocable to the Work covered by the suspension during the period of Work stoppage. Contractor shall continue the Work that is not included in the suspension and shall continue such ancillary activities as are not suspended. The Contractor shall resume performance of the suspended Work upon expiration of the notice of suspension, or upon written direction from Caltrans' Project Manager.

The Contractor shall be allowed an equitable adjustment in the Contract price (excluding profit) and/or an extension of the Contract time, to the extent that cost or delays are shown by the Contractor to be directly attributable to any suspension. However, no adjustment shall be made under this section for any suspension, delay or interruption due to the fault or negligence of the Contractor. As soon as reasonably possible after receipt of the written Suspension of Work notice, the Contractor shall submit to Caltrans' Project Manager a detailed price and schedule Proposal for the suspension, delay or interruption.

### GC 9.4 Notice of Labor Dispute

Whenever the Contractor or Caltrans/IDOT has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the applicable party shall immediately give written notice thereof to the other party, including all relevant information.

In addition, the Contractor agrees to insert the substance of this clause in any subcontract in which a labor dispute may delay the timely performance of this Contract.

### GC 9.5 Force Majeure

See State of California General Provision number 25.

If the Contractor is delayed at any time during the progress of the Work by the neglect or failure of Caltrans or by a cause as described below, then the time for completion and/or affected delivery date(s) shall be extended by Caltrans subject to the following cumulative conditions:

1. The cause of the delay arises after the notice of award and neither was nor could have been anticipated by the Contractor by reasonable investigation before such award. Such cause may also include force majeure events including any event or circumstance beyond the reasonable control of the Contractor, including but not limited to acts of God; earthquake, flood and any other natural disaster; civil disturbance, and strikes; fires and explosions; war and other hostilities; or embargo;
2. The Contractor demonstrates that the completion of the Work and/or any affected deliveries will be actually and necessarily delayed;
3. The Contractor has taken measures to avoid and/or mitigate the delay by the exercise of all reasonable precautions, efforts and measures, whether before or after the occurrence of the cause of delay; and
4. The Contractor makes a written request and provides other information to Caltrans as described below.

None of the above shall relieve the Contractor of any liability for the payment of any liquidated damages owing from a failure to complete the Work by the time for completion that the Contractor is required to pay pursuant to "Liquidated Damages for Late Delivery of the vehicle" for delays occurring prior to, or subsequent to the occurrence of an excusable delay.

Caltrans reserves the right to rescind or shorten any extension previously granted, if subsequently Caltrans determines that any information provided by Contractor in support of a request for an extension of time was erroneous; provided, however, that such information or facts, if known, would have resulted in a denial of the request for an excusable delay. Notwithstanding the above, Caltrans will not rescind or shorten any extension previously granted if the Contractor acted in reliance upon the granting of such extension and such extension was based on information which, although later found to have been erroneous, was submitted in good faith by the Contractor.

No extension or adjustment of time shall be granted unless: (1) written notice of the delay is filed with Caltrans within fourteen (14) days after the commencement of the delay, and (2) a written application therefore, stating in reasonable detail the causes, the effect to date and the probable future effect on the performance of the Contractor under the Contract, and the portion or portions of the Work affected, is filed by the Contractor with Caltrans within thirty (30) days after the commencement of the delay. No such extension or adjustment shall be deemed a waiver of the rights of either party under this Contract. Caltrans shall make its determination within thirty (30) (or within a timeframe specified by regulation or law) days after receipt of the application.

## **GC 9.6 Termination**

### **GC 9.6.1. Termination for Convenience**

See State of California General Provision numbers 23 and 24.

The performance of Work under this Contract may be terminated by Caltrans/IDOT in accordance with this clause in whole, or in part, whenever Caltrans/IDOT shall determine that such termination is in the best interest of Caltrans/IDOT. Any such termination shall be effected by the delivery to the Contractor of a notice of termination specifying the extent to which the performance of Work under the Contract is terminated, and the date upon which such termination becomes effective.

After receiving a notice of termination and except as otherwise directed by Caltrans, the Contractor shall do the following (in addition to the actions described in the State of California General Provisions mentioned above):

- Transfer title to Caltrans and/or IDOT and deliver in the manner, at the times and to the extent, if any, directed by Caltrans the fabricated or unfabricated parts, Work in process, completed Work, supplies and other material produced as part of, or acquired in connection with the performance of, the Work terminated, and the completed or partially completed plans, drawings, information, and other property which, if the Contract had been completed, would have been required to be furnished to Caltrans and/or IDOT.
- Use its best efforts to sell, in the manner, at the times, to the extent, and at the price(s) directed or authorized by Caltrans, any property of the types referred to above, provided, however, that the Contractor shall not be required to extend credit to any purchaser, and may acquire any such property under the conditions prescribed by and at a price(s) approved by Caltrans, and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by Caltrans to the Contractor under this Contract or shall otherwise be credited to the price or cost of the Work covered by this Contract or paid in such other manner as Caltrans' Project Manager may direct.
- Complete performance of the part of the Work not terminated by the notice of termination.
- Take such action as may be necessary, or as Caltrans may direct, for the protection or preservation of the property related to this Contract that is in the possession of the Contractor and in which Caltrans has or may acquire an interest.

The Contractor shall be paid its costs, including Contract closeout costs, for Work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Caltrans to be paid the Contractor.

### **GC 9.6.2. Termination for Non-Appropriation of Funds**

See State of California General Provision number 22.

It is mutually agreed that if the United States Government, the California State Legislature, the Illinois General Assembly, other state legislatures, or other government agencies, as appropriate, do not appropriate sufficient funds for the Work, the Contract shall be amended to reflect any reduction in funds or terminated per the "Termination for the Convenience of the State" clause in section General Conditions 9.6.1.

### **GC 9.6.3. Termination for Default**

See State of California General Provision number 24.

Prior to termination, a Cure Notice shall be issued by Caltrans. The Cure Notice will identify the problems and deadlines that need to be met to remedy the problems to avoid termination for default. If the Contractor does not respond with an acceptable action plan to remedy the default or commence to remedy the default

within a period of fourteen (14) days (or such longer period as Caltrans may authorize in writing) after receipt of notice from Caltrans specifying such failure, Caltrans may issue termination for default. If the Contract is terminated in whole or in part for default, Caltrans may procure, upon such terms and in such manner as Caltrans may deem appropriate, supplies or services similar to those so terminated. The Contractor shall be liable to Caltrans for any excess costs for such similar supplies or services, and shall continue the performance of this Contract to the extent not fully terminated under the provisions of this clause.

Payment for completed supplies delivered to and accepted by Caltrans shall be at the Contract price. Caltrans may withhold from amounts otherwise due the Contractor for such completed supplies such sum as Caltrans determines to be necessary to protect Caltrans against loss because of outstanding liens or claims of former lien holders.

Subsequent to termination for default, should it be determined that there was no default, the termination for default shall automatically convert to a termination for convenience per section GC 9.6.1.

### **GC 9.7 Compliance with Laws and Regulations**

See State of California General Provision number 7.

The Contractor shall keep fully informed of all existing and future State and Federal laws and local ordinances and regulations which in any manner affect those engaged or employed in the Work, or the materials used in the Work, or which in any way affect the conduct of the Work, and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. The Contractor shall at all times observe and comply with, and shall cause all the Contractor's agents and employees to observe and comply with all existing and future laws, ordinances, regulations, orders and decrees of bodies or tribunals having any jurisdiction or authority over the Work; and shall protect and indemnify the State of California and the State of Illinois, and all officers and employees thereof connected with the Work, against any claim or liability arising from or based on the violation of any law, ordinance, regulation, order or decree, whether by the Contractor or the Contractor's employees. If any discrepancy or inconsistency is discovered in the plans, drawings, specifications or contracts relating to the Work in relation to any law, ordinance, regulation, order or decree, the Contractor shall immediately report the same to the Caltrans Contract Manager in writing.

Contractor shall at all times comply with all applicable laws, regulations, policies, procedures and directives, including those listed directly or by reference in all FRA grant agreements that fund any part of the Contract, as they may be amended or promulgated from time to time during the term of the Contract. Contractor's failure to so comply shall constitute a material breach of the Contract.

Prior to commencing any Work requiring a permit or similar authorization, the Contractor shall secure and pay for all necessary licenses, fees, inspections, permits, and similar authorizations from governmental authorities required to fulfill the Contract requirements and the Contractor's obligations. All such fees and charges shall be paid for by the Contractor.

### **GC 9.8 Changes of Law**

Changes of Law that become effective after the Proposal Due Date may result in changes that affect price and/or any terms and conditions. If a price adjustment is indicated, either upward or downward, and/or a change in any terms and conditions is indicated, it shall be negotiated between Caltrans and the Contractor and the total Contract price and/or the terms and conditions will be adjusted to reflect such changes in law. Such price adjustment and/or changes in terms and conditions may be audited, where required.

### **GC 9.9 Governing Law and Choice of Forum**

See State of California General Provision number 6.

## GC 9.10 Claims

### GC 9.10.1. Notice of Intent to Claim

The Contractor shall give to Caltrans a written Notice of Intent to Claim within fifteen (15) days after the parties have been unable to negotiate a pending change related to any act or event for which it intends to seek adjustment in the Contract Price, Contract Time, Terms, or Schedule. The notice shall set forth the basis of the Claim and an estimate of any costs and time impacts involved.

The written Notice of Intent to Claim shall set forth the following:

1. The reasons the Contractor believes additional compensation and/or allowance of additional time may be due;
2. The nature of the costs involved or time needed;
3. The Contractor's plan for mitigating such cost and delay; and
4. The Contractor's best estimate of the amount of potential claim and time extension, and basic facts supporting the amount and time claimed.

### GC 9.10.2. Claim Submittal

The Contractor shall submit its Claim within thirty (30) days after submitting the Notice of Intent to Claim. The following must be provided with the Claim:

1. Detailed factual statement of the Claim, with all necessary facts, events, locations, and affected Work.
2. Date of the event giving rise to the Claim; if there are continuing or multiple events, provide all dates necessary to support the Claim.
3. Names of all persons who made any statements with respect to, or are knowledgeable of the facts and events giving rise to the Claim.
4. Specific provisions of the Contract supporting the Claim, with a statement of supporting rationale.
5. Identification of all documents including meeting minutes, transcriptions of oral communications, photographs, videos, tapes and other evidence supporting the Claim.
6. Detailed analysis of a request for an extension of item.
7. Detailed breakdown of request for additional compensation.

Failure to submit sufficient detail to permit Caltrans to conduct a review of the Claim may result in rejection of the Claim.

Each Claim the Contractor submits for an adjustment that is related to a Delay for any cause shall include the following:

1. A time impact analysis and a revised schedule demonstrating how the Delay is incorporated into the schedule; and
2. Alternative Proposal(s) and a revised schedule that demonstrate how the Delay will be eliminated or mitigated.

The Contractor shall maintain cost records of all Work, which is the basis of any Claim, in the same manner as is required for Changed Work in Section GC 8 "Changes," above.

### **GC 9.10.3. Claims Process**

Within thirty (30) days after the receipt of the Claim, Caltrans shall either render a decision, provide an estimated date when a decision will be made, or request that the Contractor submit additional information and details to establish the facts and contentions involved in the Claim.

If Caltrans does not make a decision within thirty (30) days after it receives all information required to evaluate the Claim, or within any extended period mutually agreed to in writing by the parties, the Claim shall be deemed rejected, and the Contractor shall be notified in writing.

If the Contractor fails to comply with any provision of this Article in the time and manner specified, it shall waive any relief that might otherwise be due with respect to such Claim.

If a Claim from the Contractor is sufficiently substantiated, and Caltrans agrees to honor said Claim, Caltrans shall agree to an appropriate payment and/or an extension of time. If the Contractor agrees to a modified payment or extension of time related to a certain, described portion of its Claim, such agreements shall constitute an unconditional release of Caltrans from any further obligations related to that described portion of the Claim.

If Caltrans finds the Claim to have merit, in whole or in part, Caltrans and the Contractor will negotiate the terms of a Change Order in the Work in compliance with GC 8 "Changes," above. If the Contractor and Caltrans are unable to reach agreement on a Change Order, Caltrans may issue a unilateral Change Order. The unilateral change order shall constitute a final decision by Caltrans.

If any Claim or portion thereof remains in dispute following a final decision by Caltrans, the Contractor may pursue further resolution through GC 9.11 "Disputes," below.

Pending final resolution of a Claim, the Contractor shall proceed diligently with the performance of its obligations under the Contract in accordance with the written directions of Caltrans.

### **GC 9.10.4. No Claims After Final Payment**

In no event shall any claims be made after Final Payment. Failure by the Contractor to submit claims in a timely manner shall result in a waiver by the Contractor as to such claims.

### **GC 9.11 Disputes**

See State of California General Provision number 38.

### **GC 9.12 Maintenance of Records; Access by Caltrans; Right to Audit Records**

See State of California General Provision number 37.

Contractor agrees to keep satisfactory records with regards to the use of the property, equipment, and supplies, and to submit to Caltrans and IDOT, upon request, such information as may be required to assure compliance with this section.

During the course of the Project and for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated., Contractor agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials relating to the Project as Caltrans, IDOT, and/or FRA may require, except in the event of litigation or settlement of claims arising from the performance of the Contract, in which case Contractor agrees to maintain the same until Caltrans, IDOT, the FRA, the Comptroller General or any of their duly authorized representatives have disposed of all such litigation,

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appeals, claims or exceptions related thereto. Reporting and record-keeping requirements are set forth in 49 C.F.R. Part 18. Project closeout does not alter these requirements.

In addition, the Contractor also agrees to the following provisions regarding Accounting records:

1. **Project Accounts.** Contractor agrees to establish and maintain for the Project either a separate account or set of accounts within the framework of an established accounting system, in a manner consistent with 49 C.F.R. § 18.20, or 49 C.F.R. § 19.21, as amended, whichever is applicable.
2. **Documentation of Project Costs and Program Income.** All costs charged to the Project, including any approved services contributed by Contractor or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature and propriety of the charges. Contractor also agrees to maintain accurate records of all Program Income derived from Project implementation.
3. **Checks, Orders, and Vouchers.** Contractor agrees that all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the Project shall be clearly identified, readily accessible, and, to the extent feasible, kept separate from documents not pertaining to the Project.

The Contractor shall permit Caltrans, IDOT, FRA, the Comptroller General of the United States, the Secretary of the U.S. Department of Transportation, the State of California or any of their duly authorized representatives access to any books, documents, papers and records payroll and other data directly pertinent to or related to this Contract, Contract modifications, or Change Orders for this Contract for the purpose of making audits, examinations, excerpts and transcriptions, and conducting audits and inspections.

Contractor agrees to provide Caltrans and IDOT information necessary for audits required by 49 C.F.R. § 18.26, OMB Circular A-128, and OMB Circular A-133, and any revision or supplement thereto. Project closeout will not alter Contractor's audit responsibilities.

Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of Caltrans, IDOT, and the FRA to audit records and interview staff in any subcontract related to performance of this Contract.

The requirements of this section are in addition to other audit, inspection and record-keeping provisions specified elsewhere in the Contract Documents.

### **GC 9.13 Confidential Information**

- A. All financial, statistical, personal, technical, or other data and information relative to the Caltrans'/IDOT's operations, which is designated confidential by Caltrans/IDOT and made available to the Contractor in order to carry out this Agreement, shall be protected by the Contractor from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion or public hearing relating to this Agreement shall not authorize the Contractor to further disclose such information or disseminate the same on any other occasion.
- C. Any subagreement, entered into as a result of this Agreement, shall contain all of the provisions of this clause.

This Confidentiality section shall survive the termination or expiration of the Contract.

### **GC 9.14 Conflicts of Interest; Gratuities**

See State of California General Provision number 41.

The Contractor is prohibited from engaging in any practice that may be considered as a conflict of interest under existing Caltrans' policies and/or State law.

Contractor needs to be aware of the following provisions regarding current or former California state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Public Contract Code §10410):

- No officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Public Contract Code §10411):

- For the two (2) year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the twelve (12) month period prior to his or her leaving state service.

If the Contractor violates any provisions of the above paragraphs, such action by the Contractor shall render this Agreement void. (Public Contract Code §10420)

### **GC 9.15 General Nondiscrimination Clause**

See State of California General Provision number 42.

In connection with the performance of Work provided for under this Contract, the Contractor agrees that it will not, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, medical condition, marital status, sex, sexual orientation or age, discriminate or permit discrimination against any person or group of people in any manner prohibited by Federal, state or local laws.

The Contractor shall include the nondiscrimination and compliance provisions of this clause (including the State of California General Provisions number 42) in all subcontracts to perform work under the Contract.

### **GC 9.16 Amendment and Waiver**

#### **GC 9.16.1. Amendment**

See State of California General Provision number 33.

#### **GC 9.16.2. Waiver**

See State of California General Provision number 10.

### **GC 9.17 Remedies Not Exclusive**

The rights and remedies of Caltrans provided herein apply to the entire Contract, shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

### **GC 9.18 Counterparts**

This Contract may be executed in any number of counterparts. All such counterparts shall be deemed to constitute one and the same instrument, and each of said counterparts shall be deemed an original thereof.

### **GC 9.19 Severability**

See State of California General Provision number 4.

Whenever possible, each provision of the Contract shall be interpreted in a manner as to be effective and valid under applicable law. However, if any provision, or part of any provision, should be prohibited or invalid under applicable law, such provision, or part of such provision, shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of the Contract.

### **GC 9.20 Third-Party Beneficiaries**

No provisions of the Contract shall in any way inure to the benefit of any third-party, including the public at large, so as to constitute such person a third-party beneficiary of the Contract or of any one or more of the Terms and Conditions of the Contract or otherwise give rise to any cause of action in any person not a party to the Contract, except as expressly provided elsewhere in the Contract.

### **GC 9.21 Assignment of Contract**

See State of California General Provision number 9.

### **GC 9.22 Independent Parties**

See State of California General Provision number 5.

The Contractor is an independent contractor with respect to the performance of all Work hereunder, retaining control over the detail of its own operations, and the Contractor shall not be considered the agent, employee, partner, fiduciary, or trustee of Caltrans or IDOT.

## **GC 10. Survival**

The following sections shall survive the nominal expiration or discharge of other Contract obligations, and Caltrans/IDOT may obtain any remedy under law, Contract or equity to enforce the obligations of the Contractor that survive the manufacturing, warranty and final payment periods:

- “Data Rights”
- “Intellectual Property”
- “Governing Law and Choice of Forum”
- “Disputes”
- “Confidential Information”
- “Training”
- “Parts Guarantee”
- “Access to Records”
- “Superior Warranty” (i.e. a warranty offered by sub-suppliers that exceeds the required warranty – See WR 1.3.2)

## GC 11. Agency-Specific Provisions

### GC 11.1 Publicity

See State of California General Provision number 35.

The Contractor agrees not to allow project-related copy to be published without prior written approval from Caltrans, IDOT, and FRA. The Contractor agrees that published information on the project shall be factual and in no way implies endorsements the Contractor's firm, service, or product.

Contractor also agrees to the following:

1. An acknowledgment of Caltrans, IDOT, and the FRA support and a disclaimer must appear in any Contractor publication, whether copyrighted or not, based on or developed under the Contract, in the following terms:

“This material is based upon work supported by Caltrans and IDOT and the Federal Railroad Administration under grant/cooperative agreements, dated on or around April 22, 2011, July 26, 2011, and August 3, 2011.”

2. All Contractor publications must also contain the following: “Any opinions, findings, and conclusions or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the view of Caltrans, IDOT, the Federal Railroad Administration, and/or U.S.DOT.”
3. Contractor agrees to cause to be erected at the site of any construction, and maintain during construction, signs satisfactory to Caltrans, IDOT, and the FRA identifying the Project and indicating that Caltrans, IDOT, and the FRA are participating in the development of the Project.

At such time as any article resulting from work under the Contract is published in a scientific, technical, or professional journal or publication, four reprints of the publication should be sent to Caltrans and IDOT, clearly referenced with the appropriate identifying information.

### GC 11.2 Plastic Trash Bag Certification Violations

Public Resources Code Section 42290 et seq. prohibits the State of California from contracting with any supplier, manufacturer, or wholesaler, and any of its divisions, subsidiaries, or successors that have been determined to be noncompliant to the recycled content plastic trash bag certification requirements. This includes award of a State contract or subcontract, or renewal, extension, or modification of an existing contract or subcontract. Prior to award, Caltrans shall ascertain if the intended awardee or proposed subcontractor is a business identified on the current Department of Resources Recycling and Recovery (CalRecycle) noncompliant list(s). In the event of any doubt of the status or identity of the business in violation, Caltrans will notify CalRecycle of the proposed award and afford CalRecycle the opportunity to advise Caltrans. No award will be made when either the Proposer or a subcontractor has been identified either by published list or by advice from CalRecycle, to be in violation of certification requirements.

### GC 11.3 Air or Water Pollution Violations

Unless the contract is less than \$25,000 or with a non-competitively bid contractor, California Government Code Section 4477 prohibits the State from contracting with a person, including a corporation or other business association, who has been determined to be in violation of any state or federal air or water pollution control law.

Prior to an award, Caltrans shall ascertain if the intended awardee is a person included in notices from the air or water Boards. In the event of any doubt of the intended awardee's identity or status as a person who is in violation of any state or federal air or water pollution law, Caltrans will notify the appropriate Board of the

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proposed award and afford the Board the opportunity to advise the Department that the intended awardee is such a person.

No award will be made to a person who is identified either by the published notices or by advice, as a person in violation of state or federal air or water pollution control laws.

#### **GC 11.4 Seller's Permit**

This RFP is subject to all requirements set forth in Sections 6452, 6487, 7101 and 18510 of the California Revenue and Taxation Code, and Section 10295 of the California Public Contract Code, requiring suppliers to provide a copy of their retailer's seller's permit or certification of registration, and, if applicable, the permit or certification of all participating affiliates issued by the California State of California's Board of Equalization. Unless otherwise specified in this RFP, a copy of the retailer's seller's permit or certification of registration, and, if applicable, the permit or certification of all participating affiliates must be submitted within five (5) State business days of Caltrans' request. Failure of the supplier to comply by supplying the required documentation will cause the supplier's bid to be considered nonresponsive and the bid rejected.

#### **GC 11.5 Unfair Practices Act and Other Laws**

See State of California General Provision numbers 52 and 54.

Proposer warrants that its bid complies with the Unfair Practices Act (Business and Professions Code Section 17000 et seq.) and all applicable State and Federal laws and regulations.

#### **GC 11.6 False or Misleading Statements**

Bids which contain false or misleading statements, or which provide references which do not support an attribute or condition claimed by the Proposer, may be rejected. If, in the opinion of Caltrans, such information was intended to mislead Caltrans in its evaluation of the bid, and the attribute, condition, or capability is a requirement of this RFP, it will be the basis for rejection of the bid.

#### **GC 11.7 Subcontractors**

Any subcontractor that the Proposer chooses to use in fulfilling the requirements of this RFP, and which is expected to receive more than \$250,000 of the value of the contract, must also meet all Administrative and Technical Requirements of the RFP, as applicable.

#### **GC 11.8 Darfur Contracting Act**

Effective January 1, 2009, all Request for Proposals (RFPs) for goods or services must address the requirements of the Darfur Contracting Act of 2008 (the Act) (Public Contract Code Sections 10475, et. seq.: Statutes of 2008, Chapter 272). The Act was passed by the California Legislature and signed into law by the Governor to preclude State agencies generally from contracting with "scrutinized" companies that do business in the African nation of Sudan (of which the Darfur region is a part), for the reasons described in Public Contract Code Section 10475.

A scrutinized company is a company doing business in Sudan as defined in Public Contract Code Section 10476. Scrutinized companies are ineligible to, and cannot, bid on or submit a Proposal for a contract with a State agency for goods or services (Public Contract Code Section 10477(a)).

Therefore, Public Contract Code Section 10478(a) requires a company that currently has (or within the previous three (3) years has had) business activities or other operations outside of the United States to certify that it is not a "scrutinized" company when it submits a bid or Proposal to a State agency (refer to item #1 on Appendix C, Form C10, Darfur Contracting Act Certification).

A scrutinized company may still, however, submit a bid or Proposal for a contract with a State agency for goods or services if the company first obtains permission from the DGS according to the criteria set forth in Public Contract Code Section 10477(b).

### **GC 11.9 Order of Precedence**

This order of precedence substitutes for California General Provisions 11

In the event of any inconsistency between the articles, attachments, specifications, grant agreements, or provisions which constitute this Contract, the following order of precedence shall apply:

1. State of California General Provisions – Non-IT Commodities
2. Contract and all provisions, specifications, amendments and attachments thereto
3. FRA Grant Agreements
4. State of Illinois Standard Certifications

COPY

**Request for Proposal  
For the Purchase of  
New Bi-Level Passenger Railcars**

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**Section 4: Special Provisions**

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## **SECTION 4: SPECIAL PROVISIONS**

For definitions and acronyms please see Section 3: General Conditions (GC 1).

### **SP 1. General**

All documents pertaining to the contract, including but not limited to correspondence, working drawings, and data, shall be written in understandable English language, and all numerical data shall use the foot/pound/second system of units of measurement, with metric equivalents in parentheses.

#### **SP 1.1 Correspondence Control**

The contract will be assigned an identifying name and number by Caltrans. The Contractor will be required to include this contract identifier on all correspondence and invoices related to this contract.

All correspondence shall be addressed to the Caltrans Contract Administrator's attention at; P.O Box 942874 – MS 74, Sacramento, CA 94274-0001. All letters shall have the identifier and the sequential tracking number shown at the top of the letter. Letters from Caltrans to the Contractor will be identified as "CAL-XXX" letters, and letters from the Contractor to Caltrans shall be identified as "XXX-CAL."

Letters requiring a response shall be identified as "Reply Required: Y." Letters that do not require a response shall be identified as "Reply Required: N." Please note that all official correspondence shall be transmitted by way of a formal contract letter. Verbal communication between parties shall not be interpreted as official correspondence.

### **SP 2. Sustainability**

Caltrans recognizes that being sustainable (environmentally, economically and socially responsible) involves everyone, both internal and external to Caltrans. Caltrans expects its contractors to have their own sustainability policies and programs in place and to provide services in line with the principles established therein. Implementation of sustainable practices may include maximizing the use of environmentally and socially responsible materials and services, utilizing energy-efficient and non-polluting vehicles, equipment and processes, and ensuring employee awareness of sustainability initiatives.

Please see Sustainability requirements in Chapter 3, Section 3.4.2 of the Technical Specification.

### **SP 3. Schedule**

#### **SP 3.1 Period of Performance and Delivery Schedule**

##### **SP 3.1.1 Period of Performance**

See State of California General Provision numbers 14 and 15.

The period of performance, including warranty, is from the date of Notice to Proceed through Notice of Completion (as defined in SP 4.7 "Final Completion," below). Time is of the essence in this Contract.

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**New Bi-Level Passenger Railcar Procurement: Schedule and Mandatory Milestones**

#	Milestone	Completion Date
1.	Insurance Certification	No later than twenty-nine (29) days after Notice of Intent to Award
2.	Performance Bond	No later than twenty-nine (29) days after Notice of Intent to Award
3.	Project Kick Off Meeting	No later than thirty (30) days after Notice to Proceed (NTP)
4.	Preliminary Design Review	No later than seven (7) months after NTP
5.	Intermediate Design Review	No later than ten (10) months after NTP
6.	Mock-ups	No later than thirteen (13) months after NTP
7.	Carshell Structural Analysis	No later than fifteen (15) months after NTP
8.	Final Design Review	No later than sixteen (16) months after NTP
9.	First Subsystems First Article Inspection (FAI)	No later than eighteen (18) months after NTP
10.	First Carshell Completed	No later than twenty-four (24) months after NTP
11.	First pilot railcar (Cab Car) and FAI Completed	No later than twenty-eight (28) months after NTP
12.	Pilot railcar testing completed at manufacturer facility	No later than twenty-nine (29) months after NTP
13.	Conditional acceptance of first pilot railcar	No later than thirty-one (31) months after NTP
14.	Independent facility testing (Cab Car)	No later than thirty-five (35) months after NTP
15.	Pilot cars corridor-tested at agency	No later than thirty-six (36) months after NTP
16.	Final acceptance of pilot train (first 3 cars)	No later than thirty-six (36) months after NTP
17.	Contractual delivery of the last (130th) car (Approx. six (6) cars/month)	No later than sixty-six (66) months after NTP

### SP 3.2 Master Schedule and Progress Reports

Within thirty (30) days after NTP, the Contractor shall furnish to Caltrans for Caltrans' approval a detailed written Master Schedule. The Master Schedule shall include at a minimum, all phases of design and mock-up reviews, First-Article Inspections (FAI), delivery of each vehicle, Conditional Acceptance and Final Acceptance of each vehicle, warranty periods for each vehicle and other key milestones. The Master Schedule establishes the timeline by which vehicles are to be delivered and the basis by which liquidated damages for late delivery (see also SP 3.3) may be assessed by Caltrans. The Master Schedule shall include time for shipping, production, Conditional Acceptance, testing, Final Acceptance and warranty and must allow time for Caltrans or designee inspections, and Contractor corrections, as required in this specification. The Master Schedule will ONLY be modified if authorized in writing by the Caltrans Contract Manager. During the entire term of Contract performance, the Contractor shall report to Caltrans in writing at least monthly on the progress of performance (see also SP 3.2.1 and SP 3.2.2). If any of the Contractor's monthly progress reports indicates any potential delay in any of the critically dependent events identified on the schedule, the Contractor shall submit a detailed Corrective Action Plan it intends to take to avoid the delay.

### SP 3.2.1 Master Schedule – Critical Path Method (CPM)

The Master Schedule shall include a narrative introduction describing the approach to the project and schedule, fabrication, manufacturing and assembly plants and methods, shipping method, coding structure, other schedule systems used by the project and each item's relationship to the Critical Path Method (CPM) schedule. The CPM schedule report shall have a clearly marked critical path and include the following: activity identification number, activity description, original duration, remaining duration, percent complete, early and late start, total float, and activity area with bars, all shown on the appropriate timescale. If the Master Schedule shows that any portion of the project or a Work task is completed in less than contractual time the resulting positive float shall be shown.

The Master Schedule shall show the project milestones in calendar days, with NTP as the starting date and project activities with duration shown in calendar days. The project milestones and activities shall be logically connected with NTP as a start date and Final Completion as an end date. Conditional Acceptance milestones shall have a "finish no later than date" so that if delays occur the negative floats shall appear on the critical path.

Activities shall be discrete items of Work that must be accomplished under the Contract and that when complete, produce definable, recognizable entities or stages within the project. The Master Schedule shall have all critical paths indicated, showing all major Work tasks, including at a minimum the following:

- NTP
- Contractor and subcontractor/Supplier submittals including review cycles
- Design review meetings
- Mockup review
- Drawing packages requiring approval
- Major off-site inspections and acceptance tests
- Major steps of carbody fabrication
- Major subsystem deliveries
- Assembly milestones
- First Article Inspection (FAI)
- Pilot Vehicle/Pilot Train
  - Three (3) vehicles
  - Conditional Acceptance in Oakland, CA and/or Chicago, IL
- Finite Element Analysis (FEA)/Structural Analysis
- Proof of Design/Vehicle Performance Testing--including where testing occurs. (ie, at a manufacturer's facility, on-corridor at each agency, or at an independent test facility. Testing at the independent facility must include performance, ride, noise, and CEM at a minimum.) See Technical Specification, Chapter 19:
  - Carshell CEM Testing
  - Truck Testing
  - Door Reliability Testing
  - HVAC Testing
  - Ride Quality Testing
  - Noise/Vibration Testing
- Reliability Testing
- Production and Delivery of remaining cars
- Conditional Acceptance
- Final Acceptance
- Warranty Period
- End of Warranty Period
- Final Completion

### SP 3.2.2 Project Kick-Off Meeting

Within thirty (30) days after NTP at a time and location designated by Caltrans, the Contractor will hold a Project Kick-Off Meeting. During this meeting, the Contractor will present the project team, discuss the project approach and demonstrate an understanding of the contract. The Contractor will accept questions and feedback from Caltrans and adjust the project approach and progress schedule accordingly. At this meeting the Contractor shall submit the Master Schedule (including CPM), the Warranty Service Plan, Quality Assurance Plan, Preliminary Test Plan Outline, Project Organization Chart, Monthly Progress Report Format, and a sample invoicing format for Caltrans approval. In addition, the Contractor will submit the Warranty and Quality Assurance plans from all primary subcontractors. At this meeting the Contractor shall also introduce key personnel (and provide complete contact information for each), including subcontractors to Caltrans.

**CDRL**

### SP 3.2.3 Monthly Progress Report

The Contractor shall prepare a progress report each month for Caltrans, starting with the first full month after NTP. The Progress Report shall be due on the tenth (10<sup>th</sup>) of the following month. The Monthly Progress Report shall be based upon actual progress of the Work and shall include at a minimum:

- Project Schedule and Status
- A summary of Work accomplished during the month, including actual completion dates and start dates;
- An updated engineering change status report and description of any delays due to changes;
- Description of any late schedule activities and workarounds needed to recoup schedule losses;
- Major Work activities planned for the following month, including estimated remaining durations for activities in progress and estimated start dates;
- Date and location for the forthcoming inspection and testing activities for the next three (3) months, with the updates, if there are any, easily identifiable;
- Status of all Contractor and subcontractor drawings;
- Status of correspondence; and
- Updated status on required contract deliverables.
- Expenditures Subject to Claims for Reimbursement Made to Date (alternative – portion (% and \$\$) of Budget spent to date)

## SP 3.3 Liquidated Damages (LDs)

Caltrans and Designees will sustain significant damages as a result of the Contractor's failure to deliver vehicles within the time periods stated in the approved Master Schedule (See SP 3.2) and/or the Contractor's failure to complete warranty repairs per the terms of this Contract. These damages may include, but are not necessarily limited to, the following:

- Delays in rail service expansion due to lack of equipment
- Increased costs of Contract Administration
- Cost to lease equipment to provide revenue capacity in lieu of delivered cars
- Higher maintenance costs due to existing fleet in service longer than anticipated
- Loss of revenue

### SP 3.3.1 Liquidated Damages for Late Delivery

The Contract will provide an acknowledgement by the Contractor that Caltrans and designees shall incur actual damages should the Contractor fail to perform the Work as called out in the Contract and specification, consistent with the dates set forth in the Master Schedule. The Contract will provide that there is a late delivery charge in the amount of \$750.00 per vehicle per day.

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The Contractor will be assessed the sum of \$750.00 per vehicle per day for each day the vehicle remains undelivered to Caltrans or designee, provided that the total late delivery charges (combined with the charges for LD's associated with Warranty service delays – see SP 3.3.2 below) assessed against the Contractor shall in no event exceed ten percent (10%) of the total value of the Contract. Liquidated damages shall be deducted from any monies due or that may become due the Contractor.

Caltrans may waive the LDs for late delivery where circumstances causing the late completion are clearly beyond the control of the Contractor or where it is in the interest of Caltrans/IDOT to do so. In addition, Caltrans reserves the right to waive LDs due to delays caused by damages in transit which are of a significant enough nature to preclude a vehicle from either Conditional Acceptance or Final Acceptance. If the damage sustained is through no fault of the Contractor, then Caltrans may waive the LDs for a reasonable period of time to enable the Contractor to undertake the repairs.

### SP 3.3.2 Liquidated Damages: Warranty

The same assessment for damages (\$750.00 per vehicle per day) shall apply in the event that vehicles previously accepted by Caltrans/IDOT are out of service due to contractor-caused delays beyond the agreed upon timeline as described in Section 7 “Warranty.”

## SP 4. Payment

### SP 4.1 Payment Terms/Procedures

#### SP 4.1.1 General

See State of California General Provision numbers 29 and 30.

Caltrans/IDOT shall pay and the Contractor shall accept the amounts set forth in this contract in SP 4.2 “Milestone Payment Schedule” as full payment for furnishing all labor, materials, tools, equipment, applicable taxes, and incidentals necessary to the Work and for performing all work contemplated and embraced under the Contract; also for loss or damage arising from the nature of the Work, or from any unforeseen difficulties which may be encountered during the prosecution of the work until the acceptance by Caltrans/IDOT and for all risks of every description connected with the prosecution of the work, also for all expenses incurred in consequence of the suspension or discontinuance of the Work as provided in the contract; and for completing the Work according to the plans and specifications. Neither payment made nor any retained percentage shall relieve the Contractor of any obligation to make good any defective work or material.

No compensation will be made in any case for loss of anticipated profits.

The contract prices paid for the Work shall include full compensation for all taxes which the Contractor is required to pay, whether imposed by Federal, State or local government, including, without being limited to any excise taxes. No tax exemption certificate nor any document designed to exempt the Contract from payment of any tax will be furnished to the Contractor by the Department, as to any tax on labor, services, materials, transportation, or any other items furnished pursuant to the contract.

The Contractor shall submit invoices in arrears to Caltrans/IDOT according to the Milestone Payment Schedule set forth in SP 4.2 “Milestone Payment Schedule,” below. Caltrans/IDOT will make payments as the Work proceeds on the invoices submitted, and each invoice may include any number and combination of milestone payments that are payable during that period covered by the invoice. Invoices need not be based on sequential milestones. The Contractor shall certify on each invoice that the total costs invoiced do not exceed the total milestone payment allowed.

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Invoices can be submitted only after a milestone has been achieved and accepted by Caltrans. Each invoice shall be in a format approved by and in a quantity stipulated by Caltrans, and shall at the minimum include the following:

1. Contract number.
2. Type and unit number of the vehicle invoiced.
3. Milestone(s) invoiced.
4. State sales tax and/or use tax.
5. Total invoice amount, including the funds to be retained by Caltrans/IDOT.

Invoices shall be submitted to the following addresses:

Caltrans Division of Rail Equipment Procurement: P.O Box 942874 – MS 74, Sacramento, CA 94274-0001

Illinois Department of Transportation: 2300 S. Dirksen Parkway, Springfield, IL 62764

Each invoice shall be accompanied by Conditional and Final Acceptance forms, Contract Deliverable Requirements List (CDRL) approvals or other back up documents required by Caltrans. Incomplete or inaccurate invoices shall be returned unapproved to the Contractor for correction.

Information about Milestones, associated payments and CDRLs to be completed in conjunction with Milestones is found in SP 4.2.

#### SP 4.1.2 Advance Payment

Not Applicable.

#### SP 4.1.3 Retention

Caltrans/IDOT shall deduct and retain from each milestone payment an amount equal to five percent (5%) of the total amount payable under the invoice. Retention shall be held by Caltrans/IDOT to secure the Contractor's obligations to perform in accordance with Contract Requirements. At the Contractor's request, the retention amount shall be held in an interest-bearing escrow account. Costs of the escrow account will be borne by the Contractor. Retention for each Vehicle will be released at the successful end of the warranty period for each Vehicle unless any portion of the retention has been used for warranty repairs, correction of open items or other expenses under the terms of this Contract.

Change order work and Inspectors' travel claims are not subject to retention.

#### SP 4.1.4 Use of Retained Funds

Caltrans/IDOT shall have the right to deduct from retention held by Caltrans/IDOT (or draw upon any retention escrow account established by the Contractor), any amounts reasonably necessary to make Caltrans/IDOT whole if the Contractor fails to: (1) correct defective Work in accordance with the Contract Documents; or (2) correct the open items set forth in the notice of Conditional Acceptance.

In order to access retained funds as outlined above, Caltrans shall give the Contractor written notification and provide sufficient time for the Contractor to cure the items identified in the notification.

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**SP 4.2 Milestone Payment Schedule**

#	Description of Work	Percentage of Total Bid Price	Cumulative Percentage of Total Bid Price
A	Approved Master Schedule (including CPM), Quality Assurance (QA) Plan, Project Management Plan, Warranty Service Plans, Organizational Chart, Preliminary Test Plan Outline, Monthly Progress Report Format, and Sample Invoice Format, plus associated CDRLs	3.0%	3.0%
B	Approved Preliminary Design Review (PDR) plus associated CDRLs	3.0%	6.0%
C	Approved Intermediate Design Review (IDR) plus associated CDRLs	3.0%	9.0%
D	Approved Mockups plus associated CDRLs	1.0%	10.0%
E	Approved Final Design Review (FDR) plus associated CDRLs	3.0%	13.0%
F	Placement of Purchase Order(s) for Primary (major) subcontracts and Suppliers plus associated CDRLs — Major Systems: Carshell, Trucks, Brakes, Door Control, Air comfort, Lighting, Couplers and Draft Gear, and Communications.	3.0%	16.0%
G	Placement of Purchase Order(s) for Secondary (subsystem) subcontracts and Suppliers plus associated CDRLs — Subsystems: Windows, Doors, Flooring, Interiors including: Toilet Rooms, Seat Gangways, Water and Sanitary Systems, Cab Console, Battery, and LVPS	2.0%	18.0%
H	Approved Subsystem First Article Inspections	1.0%	19.0%
I	Approved Pilot Car First Article Inspection	2.0%	21.0%
J	Completion of Contract Conformance Testing	2.0%	23.0%
K	The establishment of a warranty field office(s) with staff, spare parts and manuals plus associated CDRLs	2.0%	25.0%
L	Delivery and Conditional Acceptance of Pilot Cars plus associated CDRLs and approved Change Orders Total number of pilot cars = 3	12.0%	37.0%
	Payment per pilot vehicle	4.0%	
M	Final Acceptance of Pilot Train set plus associated CDRLs	3.0%	40.0%
N	Conditional Acceptance of Production Cars plus associated CDRLs and approved Change Orders Total number of production cars = 127	27.5%	67.5%
	Conditional Acceptance payment per production vehicle	0.2165%	
O	Final Acceptance of Production Cars plus associated CDRLs	27.5%	95.0%
	Final Acceptance payment per production vehicle	0.2165%	
P	Delivery and acceptance of all the spare parts, special test equipment, training/manuals, and final associated CDRLs	5.0%	100.0%
Q	End of warranty period for each car and release of retention	Up to 100% of the retention collected for each vehicle	

Title to material included in any milestone payment request shall pass to Caltrans upon payment by Caltrans/IDOT. Said title shall be free of all encumbrances. However, such transfer of title shall not relieve the Contractor of its responsibility for the furnishing, installation, fabrication or inclusion of said materials as a deliverable element of vehicles procured in accordance with the requirements of the Contract.

### **SP 4.3 Prompt Payments**

#### **SP 4.3.1 Caltrans Prompt Payment**

Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires Caltrans to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of Goods or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.

#### **SP 4.3.2 IDOT Prompt Payment**

Payments for vehicles allocated and invoiced to IDOT/Midwest, including late payment charges, will be paid in accordance with the State Prompt Payment Act (30 ILCS 540) and rules (74 Ill. Adm. Code 900) when applicable. This shall be Contractor's sole remedy for late payments by the State of Illinois. Payment terms contained on Contractor's invoices shall have no force and effect.

#### **SP 4.3.3 Subcontractor Prompt Payment**

Not Applicable.

### **SP 4.4 Units of Currency**

All Contractor invoices for payment shall be computed in U.S. dollars, and all Caltrans payments to the Contractor shall be made in U.S. dollars.

There shall be no adjustments to Contract price for currency fluctuations through the term of this Contract.

### **SP 4.5 Economic Price Adjustment**

Not Applicable.

### **SP 4.6 Payment of Taxes**

See State of California General Provision number 31.

Contractor shall not bill for any taxes unless accompanied by proof that Caltrans/IDOT is subject to the tax. If necessary, Contractor may request the applicable Caltrans/IDOT tax exemption number and federal tax exemption information.

Taxes which are required should be itemized on each invoice. All non-taxable charges, including all labor and shipping costs, shall be clearly separated from other charges on all invoices presented by the Contractor for payment.

### **SP 4.7 Final Completion**

The Contractor shall complete and shall deliver to Caltrans/IDOT or Designees all designated portions of the Work and all parts and requirements within the number of days set forth in the Contract milestones as defined in SP 3.1.1 "Period of Performance," above.

Final Completion of the work shall occur when all of the vehicles have reached Final Acceptance, the full two-year general warranty period for each vehicle has come to successful conclusion, and when the Contractor has: (a) corrected any and all Fleet Defects; (b) completed previously identified warranty work; (c) delivered written releases of liens from all subcontractors and Suppliers; and (d) provided all training,

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technical support, spare parts, Special Tools, Vehicle History Books, manuals and other CDRLs required under the contract documents.

When all the Work has been performed and delivered in the quantities designated, the Work will be inspected by Caltrans' Project Manager. If the Work has been completed in all aspects and all documents have been submitted and all training has been completed, all in accordance with the approved Master Schedule, then Caltrans will issue a Notice of Completion.

#### **SP 4.8 Final Payment and Claims**

Before applying for final payment, the Contractor shall complete all Work as identified in SP 4.7, and shall correct any deficiencies in the Work, including any Work rejected by Caltrans/IDOT.

Within thirty (30) days after the date of Notice of Completion issued by Caltrans, the Contractor shall prepare and present to Caltrans' Project Manager a Proposed Final Invoice in writing. The Proposed Final Invoice shall show the proposed total amount of compensation due. It shall designate the prorated amounts to be paid by each Party, including an itemization of all deductions made or to be made for prior payments and amounts to be kept or retained under the provisions of the Contract, together with any and all potential claims that have not yet been resolved or a statement that no claims will be filed, which releases Caltrans and IDOT from any claims, including a statement waiving the provisions of California Civil Code Section 1542. All prior invoices and payments shall be subject to correction in the Proposed Final Invoice. No claim for which a Notice of Intent to Claim is required will be considered unless the Contractor has strictly complied with the notice provisions in GC 9.10.1 "Notice of Intent to Claim."

#### **SP 5. Performance Security/Insurance**

##### **SP 5.1 Performance Security Requirements**

The Contractor shall furnish, at its own expense, a performance guarantee in the form of a performance bond from a surety duly licensed to do business in the State of California having a financial rating from A.M. Best Company of "A VIII" or better, in the amount of fifty percent (50%) of the total Contract amount.

The security shall cover all of the Contractor's obligations under the Contract, except for the warranty, and shall remain in force until said obligations have been fulfilled. The security amount may be reduced as follows:

1. To thirty percent (30%) of the total Contract amount when fifty percent (50%) of the total number of vehicles have achieved final acceptance;
2. To twenty percent (20%) of the total Contract amount when seventy-five percent (75%) of the total number of vehicles have achieved final acceptance; and
3. To ten percent (10%) of the original amount when one-hundred percent (100%) of the total number of vehicles have achieved final acceptance.

When additional equipment is added to this procurement via option assignment the Contractor will provide a Performance Bond equal to the performance bond terms listed above. The performance bond may be reduced according to the schedule above.

In the case that a security guarantor becomes insolvent, its license is revoked or suspended, or its rating is downgraded, or in the case of a surety approved on the basis that it is listed as an approved federal surety and such federal approval is revoked or suspended, the Contractor shall notify Caltrans within five (5) days and shall substitute other and sufficient performance security. If the Contractor fails to do so, such failure may be deemed a default and the Contract may be terminated per Section GC 9.6.3 at the sole discretion of Caltrans.

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The Contractor shall deliver the Performance Bond to Caltrans within twenty-nine (29) days after Notice of Intent to Award.

If the cumulative value of Change Orders equals fifteen (15) percent of the original Contract value, then Contractor will adjust the value of the Performance Bond accordingly to match the increased value of the Change Orders.

Failure to provide a Performance Bond for Option orders will not result in Contractor default of the Base Contract.

## **SP 5.2 Insurance**

### **SP 5.2.1 Evidence of Coverage**

See State of California General Provision number 21.

When performing any and all work under this Contract, on property in the care, custody or control of the State, Contractor shall maintain all commercial general liability insurance, workers' compensation insurance, product liability insurance, and automobile liability insurance (see SP 5.2.3 Endorsements) for the duration of the Contract.

Contractor shall deliver to Caltrans, within thirty (30) days after receiving Notice of Award of this Contract, an ACORD form (Certificate of Liability Insurance) evidencing the required insurance coverage and appropriate endorsements as set forth below. A Notice to Proceed will not be issued until all required insurance documentation is in place. Failure to provide evidence of insurance or maintain insurance throughout the contract duration in a timely manner is grounds for withdrawal of the award of the Contract or termination of the Contract for default.

Deductible – Contractor is responsible for any deductible or self-insured retention contained within their insurance program.

Insurance Carrier Required Rating – All insurance companies must carry a rating acceptable to the California Department of General Services, Office of Risk and Insurance Management.

Inadequate Insurance – Inadequate or lack of insurance does not negate the Contractor's obligations under the Contract.

### **SP 5.2.2 Continuation or Change in Coverage**

Coverage Term – Coverage needs to be in force for the complete term of the Contract. If insurance expires during the term of the Contract, a new certificate must be received by Caltrans at least ten (10) days prior to the expiration of this insurance. Any new insurance must still comply with the original terms of the contract.

Policy Cancellation or Termination & Notice of Non-Renewal – Contractor shall provide to Caltrans and IDOT within five (5) business days following receipt by Contractor a copy of any cancellation or non-renewal of insurance required by this Contract. In the event Contractor fails to keep in effect at all times the specified insurance coverage, Caltrans and IDOT may, in addition to any other remedies it may have, terminate this Contract upon the occurrence of such event, subject to the provisions of this Contract.

### SP 5.2.3 Endorsements

Any required endorsements requested by Caltrans or IDOT must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.

The Contractor shall maintain in effect during the term of this contract, including any warranty period, at its own expense, at least the following coverage and limits of insurance:

- Commercial General Liability – Contractor shall maintain general liability on an occurrence form with limits not less than \$10,000,000 per occurrence/\$10,000,000 aggregate for bodily injury and property damage liability. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal & advertising injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Contractor’s limit of liability. The Commercial General Liability Insurance policy shall not contain “X, C and U” (explosion, collapse, and underground) exclusions.

The policy must include the State of California, Department of Transportation, its officers, agents, employees and servants are included as additional insureds, but only with respect to work performed under this contract. Also, the State of Illinois, Department of Transportation, its officers, agents, employees and servants are included as additional insureds, but only with respect to work performed under this contract.

This endorsement must be supplied under form acceptable to the California Department of General Services, Office of Risk and Insurance Management.

In the case of Contractor’s utilization of subcontractors to complete the contracted scope of work, Contractor shall include all subcontractors as insured’s under Contractor’s insurance or supply evidence of insurance to Caltrans equal to policies, coverages and limits required of Contractor.

- Automobile Liability – Contractor shall maintain motor vehicle liability with limits not less than \$1,000,000 combined single limit per accident. Such insurance shall cover liability arising out of a motor vehicle including owned, hired and non-owned motor vehicles. The same additional insured designation and endorsement required for general liability is to be provided for this coverage.
- Workers Compensation and Employers Liability – Contractor shall maintain statutory worker’s compensation and employer’s liability coverage for all its employees who will be engaged in the performance of the Contract. Employer’s liability limits of \$1,000,000 are required. When work is performed on Caltrans or IDOT owned or controlled property the workers’ compensation policy shall contain a waiver of subrogation in favor of Caltrans and IDOT. The waiver of subrogation endorsement shall be provided.

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. Primary Clause – Any required insurance contained in this Contract shall be primary, and not excess or contributory, to any other insurance carried by Caltrans or IDOT.

Stipulation that the Insurance is primary insurance and that no insurance or self-insurance of Caltrans or IDOT will be called upon to contribute to a loss. Any insurance or self-insurance maintained by Caltrans or IDOT shall be excess of the Contractor’s insurance and shall not contribute with it.

## SP 6. Shipping, Delivery and Acceptance

### SP 6.1 Shipment Authorization

Each vehicle shipped from the Contractor's plant to Caltrans or designee shall be complete and in compliance with all provisions of the Contract (See Technical Specification Chapter 21, Shipping Preparation), except as may be noted below. Prior to shipment of each vehicle, the Contractor shall obtain a shipping release (see Appendix, Form 1) signed by the Caltrans Project Manager or designee. The shipping release shall certify that the vehicle is complete, has passed all pre-shipment tests described in the Technical Specification Chapters 3 and 19, and complies with approved Contractor's drawings and samples, is accompanied by an up-to-date Vehicle History Book, and other agreed-upon conditions for shipping. To accommodate any and all tests that may be necessary, the Contractor shall provide a minimum of ten (10) days' notice to the Caltrans Project Manager prior to each shipment and give further notification of the actual shipment date, routing when established and estimated time of arrival. Caltrans Project Manager, at his or her sole discretion, may permit shipment of a vehicle with minor defects or open items approved by the Caltrans Project Manager that will not affect testing and can easily be corrected after shipment. All known defects and open items shall be included in an "Exception Report" and submitted by the Contractor with the request for shipping release. The shipping release shall not be construed nor inferred to constitute vehicle acceptance by Caltrans.

### SP 6.2 Shipment

See State of California General Provision number 12.

All shipments (see Technical Specification Chapter 21) shall be packaged and packed in a manner to ensure the integrity of product during transportation, handling and temporary storage. Due regard shall be given to protection from loss and pilferage, physical damage, and the effect of the elements and environmental conditions. Caltrans reserves the right to review and approve a shipping plan.

If shipped by sea, every effort will be made to provide below deck shipping and storage for all vehicles or vehicle components to provide enclosed protection against damage from handling and from exposure to the marine environment and adjacent shipments.

During shipment, each vehicle shall be equipped with an impact recorder provided by the Contractor and approved by Caltrans. The recorder shall record all handling impacts. All records shall become the property of Caltrans or designee and shall be appended to the Vehicle History Book.

The Contractor shall require shippers to log and record any incidents of damage or potential damage to the vehicles and vehicle components, and of interruption of shipments. The Contractor shall report such shipment incidents to Caltrans promptly upon the Contractor's receipt of such information, describing the nature of the shipment damage, potential damage or interruption, and the actions taken and to be taken to complete the shipment and repair any damage.

The Contractor shall assume full responsibility for determining the multiple haul routes to be utilized and confirming that the jurisdiction through which its haul routes will pass will permit the hauling operations with respect to laden weights, type of vehicle, frequency and dimension of loads, required traffic control, and hours of operation. All necessary permits, licenses or bonds shall be obtained and paid for by the Contractor.

Vehicles shall be fully prepared by the Contractor for railroad interchange movement, including bracing and component securement as required by the originating carrier. All vehicles shall be shipped via passenger train while in North America unless otherwise approved by Caltrans. All vehicles shall be supplied with potable water and with all systems fully functional to support an onboard escort during shipping. Units shipped separately shall be prepared in such manner as to protect them from damage in transit and at the delivery site. All components which will not be exposed to weather in normal operation shall be protected with weatherproof covering unless enclosed in the vehicle body. Heavy parts shall be crated or mounted on skids.

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Smaller parts shall be boxed or wired in bundles. If necessary for handling at a particular destination, provisions shall be made for the ready attachment of slings. Unless otherwise approved, no loose or boxed equipment shall be permitted to be shipped in the cars (See Form 1).

All shipments must include packing sheets identifying the State's Contract number; item number; quantity and unit of measure; part number and description of items shipped; and appropriate evidence of inspection, if required.

### **SP 6.3 Evidence of Delivery and Shipping Destination (FOB point)**

See State of California General Provision numbers 13 and 15.

Delivery of the vehicles shall be FOB destination as specified by Caltrans. Contractor is responsible for all delivery costs, including risk of loss, to Caltrans' or designees' final destination on board the carrier's conveyance to the location specified below.

Delivery of vehicle(s) shall be evidenced by signed receipt by Caltrans' Project Manager or designee (see Form 2) at the following points of delivery:

- Oakland, California and Chicago, Illinois

A receipt signed by the Caltrans Project Manager upon delivery of the vehicle does not constitute Caltrans' acceptance of either the condition of the vehicle or its conformance with the terms of the Contract.

Delivery of all other contract deliverables shall be FOB destination. Contractor is responsible for all delivery costs, including risk of loss, to Caltrans' or designees' final destination on board the carrier's conveyance to the locations specified below.

The quantities specified herein are the only quantities required. If Contractor delivers in excess of the quantities specified herein, Caltrans or designee shall not be required to make any payment for the excess goods, and may return them to Contractor at Contractor's expense or utilize any other rights available to Caltrans or designee at law or in equity.

Delivery of other contract deliverables shall be evidenced by signed receipt by the Caltrans Project Manager or designee at the following points of delivery:

- Sacramento, California and Chicago, Illinois

Hours of delivery shall be 8:00 AM to 5:00 PM Pacific Time (for deliveries to California) or Central Time (for deliveries to Illinois) on the following days of the week: Monday through Friday, excluding California or Illinois state holidays and furlough days.

### **SP 6.4 Unloading**

The Contractor shall be responsible for the delivery and unloading of vehicles, test equipment, and spare parts at the designated delivery point(s) as instructed by Caltrans or designees.

After arrival at Caltrans' or designee's designated facility, each vehicle shall be examined jointly by Caltrans or designee, and the Contractor for shipping damage. Caltrans or designee then will issue a receiving notice (see Form 2, "Evidence of Vehicle Delivery") to the Contractor, which will acknowledge receipt of the vehicle test equipment and spare parts and describe any missing parts or visible damage that may have occurred during shipment.

### **SP 6.5 Acceptance Testing**

Caltrans or designee will conduct acceptance tests on each delivered vehicle at the delivery site as specified in SP 6.3, above. These tests shall be completed within fifteen (15) days after delivery and shall be conducted in accordance with approved written test plans consistent with the Technical Specifications. The purpose of these tests is to identify defects that have become apparent between the time of vehicle release and delivery to Caltrans or designee. The acceptance tests shall include visual inspection and vehicle operations. No acceptance test shall apply criteria that are different from the criteria consistent with the Technical Specifications.

Caltrans or designee shall record details of all defects on the appropriate test forms and shall notify the Contractor of acceptance or non-acceptance of each vehicle after completion of the tests. The defects detected during these tests shall be repaired according to procedures defined in Section SP 6.7.3 “Non-Acceptance and Repairs after Non-Acceptance”.

### **SP 6.6 Delivery of Special Tools, Diagnostic Equipment, Spare Parts and Manuals**

Spare parts shall be of production configuration and successfully tested. Delivery shall be completed in accordance with the Milestone Payment Schedule (See SP 4.2).

Acceptance of spare parts will be deemed to have occurred after delivery, successful completion of Caltrans/IDOT receiving inspection, and written notification of Acceptance by Caltrans Project Manager or designee.

Delivery of special tools and diagnostic equipment shall be completed in accordance with the Milestone Payment Schedule.

Delivery of manuals shall be made in two stages to ensure that manuals remain up-to-date with vehicle production and delivery. The initial delivery of draft manuals is shown in the Milestone Payment Schedule and shall consist of full sets of all manuals in the quantities indicated. The final delivery shall consist of the complete updated manuals and the electronic media in the quantities indicated. Acceptance of the manuals will be deemed to have occurred upon written notification of acceptance by Caltrans Project Manager or designee.

Caltrans reserves the right to delay delivery of vehicles if spare parts, special tools, test equipment or manuals are not delivered in accordance with the Milestone Payment Schedule.

The Contractor shall notify the Caltrans Project Manager at least five (5) days in advance of delivery of all spare parts, special tools, test equipment, and manuals.

Shipping documents shall accompany delivery of all materials. The shipping documents shall identify all spare parts, special tools, or test equipment by part number, serial number, and the applicable schedule number (from the contractual Pricing Schedules).

Caltrans or designee will inspect all materials to confirm the accuracy of the shipping documents and to check for damage to or defects in the materials. Caltrans will then issue a delivery receipt if the documentation and materials are in order, and no materials will be considered delivered or eligible for payment until delivery receipts have been issued by Caltrans or designee.

Caltrans reserves the right to make adjustments to the quantities of individual spare parts and/or special tools and/or test equipment and/or mock-ups.

## SP 6.7 Conditional Acceptance, Final Acceptance and Non-Acceptance

### SP 6.7.1 Conditional Acceptance

Conditional Acceptance of a vehicle is defined as a completely assembled vehicle on Caltrans or designee property subject to the provisions outlined below. The vehicle shall have successfully completed all tests in accordance with Technical Specifications Chapter 19, and be ready-to-run in revenue service except for minor defects that require corrective action but will not materially affect revenue service operations. Conditional Acceptance requires that all completed documentation for the vehicle, including the Vehicle History Book, per Technical Specifications Chapter 22, has been delivered to and accepted by Caltrans or designee.

Caltrans or designee shall conditionally accept pilot and production vehicles for consist and performance testing. In order to achieve Conditional Acceptance, the Contractor must have achieved and demonstrated all of the following:

- All post-production and pre-delivery testing has been successfully completed and documented.
- Any damage occurring while in transit has been corrected, except as stated in the open items list.
- The Contractor has provided documentation identifying all known defects, open items, engineering changes and/or other required work items, and has submitted a Caltrans-approved Corrective Action Plan and schedule to complete the identified work. If the Contractor fails to complete the work as identified herein, Final Acceptance of the vehicle will be delayed.
- The Contractor has inspected and certified that the vehicle is ready for its thirty (30) consecutive day “failure-free” period in revenue service.
- All systems operate as specified and have been verified in a joint inspection, documented on Vehicle Conditional Acceptance and Certificate of Title form, (see Appendix, Form 3), jointly developed and signed by the Caltrans Project Manager or designee and the Contractor. **CDRL**

Caltrans will issue a Vehicle Conditional Acceptance and Certificate of Title form to the Contractor for each vehicle when the vehicle meets the conditions specified in this section.

The Warranty for each vehicle shall commence upon Conditional Acceptance of that vehicle.

### SP 6.7.2 Final Acceptance

Caltrans or designee will issue a Vehicle Final Acceptance Form to the Contractor for each vehicle when the following have been achieved: (See Appendix, Form 4).

- The parties jointly verify completion of all items documented on a Final Acceptance Checklist jointly developed and signed by a Caltrans Project Manager or designee and the Contractor. **CDRL**
- The vehicle has run “failure-free” in revenue service for thirty (30) consecutive days from the date of Conditional Acceptance and has exhibiting no operational defects in parts or labor that required more than 24 hours to remedy. Caltrans reserves the right to modify these time constraints due to operational impacts.
- The Contractor has provided to Caltrans or designee, when presenting the vehicle for Final Acceptance, documentation indicating that all defects, open items, inspections, engineering changes and other items identified at or since Conditional Acceptance have been completed, and are signed off and closed by Caltrans or designee.

- All required documentation for the vehicle has been received and approved by Caltrans.

The vehicle Final Acceptance Form shall be attached to the Contractor's invoice for the Final Acceptance payment for each vehicle. In addition, final payment for the last vehicle shall not be made until all contractual deliverables are delivered to and accepted by Caltrans.

#### **SP 6.7.3 Non-Acceptance and Repairs after Non-Acceptance**

Not applicable.

### **SP 7. Project Management**

#### **SP 7.1 Contractor's Personnel**

##### **SP 7.1.1 Contractor's Representative**

The Contractor shall assign a qualified and experienced Contractor's Representative who shall have full authority to act on behalf of the Contractor and all of the Contractor's subcontractors at all tiers in all matters pertaining to the Contract. The Contractor's Representative shall have experience acceptable to Caltrans and must be thoroughly familiar with all procedures involved in vehicle production.

With Notice to Proceed, the individual identified in the Contractor's Proposal as the Contractor's Representative shall become the Contractor's Representative. If for any reason, and at any time, the candidate submitted by the Contractor is not acceptable to Caltrans, or becomes unacceptable, the Contractor must provide a new qualified and experienced Contractor's Representative subject to Caltrans' approval. If the Contractor wishes to replace its Representative at any time during the performance of this Contract, it first shall submit the resume of its new candidate to Caltrans for Caltrans approval and shall not make the substitution without Caltrans' advance written approval.

##### **SP 7.1.2 Other Key Personnel**

Other key personnel will be subject to the same requirements and restrictions as set forth above for the Contractor's Representative.

#### **SP 7.2 Subcontractors and Suppliers**

Nothing contained in this Contract or otherwise, shall create any contractual relationship between Caltrans or IDOT and any subcontractors or suppliers, and no subcontract shall relieve the Contractor of its responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to Caltrans and IDOT for the acts and omissions of its subcontractors and suppliers and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from Caltrans' and IDOT's obligation to make payments to the Contractor.

The Contractor shall perform the Work contemplated with resources available within its own organization and no portion of the work shall be subcontracted except for subcontractors listed on the Bidder Declaration, GSPD-05-105, Appendix 5.

Any subcontract in excess of \$250,000, entered into as a result of this contract shall contain all the provisions identified in this contract to be applicable to subcontractors.

The Contractor shall be fully responsible and liable for the products, services and actions of all subcontractors and Suppliers at any tier.

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Any new, additional or substituted major subsystem suppliers proposed to be used by the Contractor after the award shall be subject to Caltrans' prior written approval. No increase in the Contract Price(s) shall be allowed for any such substitution, unless agreed to by Caltrans.

The Contractor shall not make any substitution for any major subsystem supplier or for any person or for any organization which has been previously accepted by Caltrans as part of the Contract unless and until requested to do so by Caltrans and/or unless such substitution is expressly approved by Caltrans in writing. A major subsystem supplier is defined as an individual or organization that supplies the major subsystems of the vehicle as defined in the Technical Specifications.

### **SP 7.3 Caltrans Project Manager**

Caltrans' Project Manager shall be the day-to-day contact between Caltrans and the Contractor.

The Caltrans Project Manager shall decide all questions which may arise as to the quality or acceptability of materials furnished and work performed and as to the manner of performance and rate of progress of the work.

### **SP 7.4 Project Meetings**

The Caltrans Project Manager will schedule and preside over pre-production, periodic and special meetings throughout the progress of the Work. Agendas for the meetings may include, but are not necessarily limited to, discussions of in-plant observations, problems, conflicts, production schedules, delivery schedules, Supplier fabrication, quality standards, design review, Contract modifications, and any other topics that the Caltrans Project Manager determines to be relevant to the project. The location for project meetings will be mutually agreed upon by Caltrans and Contractor.

### **SP 7.5 Pre-Award and Post-Delivery Buy America Certification**

See Federal requirements related to Buy America in the Federal Clauses Section.

### **SP 7.6 Ownership and Use of Caltrans Documents**

All drawings, specifications, and copies furnished by Caltrans shall remain the property of Caltrans. They are to be used only with respect to this Contract. With the exception of one Contract set for each party, those documents are to be returned (or suitably accounted for) to Caltrans upon request at the completion of the Work.

### **SP 7.7 Review of Drawings, Data, and Designs**

All reviews of drawings, data and designs outlined in Chapter 3 of the Technical Specifications shall be completed by the Contractor and Caltrans/IDOT per the approved Master Schedule.

It is expressly understood that approval of the Contractor's working drawings or other submittals shall not relieve the Contractor of any of its responsibility under the contract for the successful completion of the work in conformity with the requirements of the contract documents. Such approval shall not operate to waive any of the requirements of the contract documents or relieve the contractor of any obligation there under, and defective work, materials and equipment may be rejected notwithstanding such approval.

Neither review nor approval of any aspect of the Contractor's working methods or progress on the work shall in any way relieve the Contractor of any of its obligations with respect to the performance of work under the contract.

### **SP 7.8 Partnering**

Not applicable.

### **SP 7.9 Value Engineering**

Not applicable.

### **SP 8. Options**

#### **SP 8.1 Options for Additional New Bi-Level Passenger Railcars**

The Contractor hereby grants Caltrans and designee Options to purchase up to two-hundred (200) additional vehicles of any of the four (4) vehicle configurations provided for in the base order. The Options shall be valid until the end of the two (2) year warranty period on the last car of the base order. Prior to delivery of the mid-point vehicle of the production run in the base order, a minimum order of ten (10) vehicles will be required unless consecutive production can be guaranteed. Any option exercised after delivery of the middle car in the base order shall be subject to a minimum order quantity agreed to by the Contractor and Caltrans or designee. Caltrans or designee and the Contractor will mutually establish the delivery schedule for vehicles and other deliverables under the Option assignments.

#### **SP 8.2 Prices of Optional Vehicles**

Prices of Optional Vehicles will be priced per the Contractor's Cost Proposal, Section 2: Instructions to Proposers, CER 6, of the Contract.

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**SP 8.3 Milestone Payments for Optional Vehicles**

Milestone payments for the option vehicles and associated deliverables will be made upon satisfactory completion and acceptance of each milestone in accordance with the milestone allocation percentages listed below:

#	Description of Work	Percentage of Total Bid Price	Cumulative Percentage of Total Bid Price
A	Approved Master Schedule (including CPM), Quality Assurance (QA) Plan, Project Management Plan, Warranty Service Plans, Organizational Chart, Preliminary Test Plan Outline, Monthly Progress Report Format, and Sample Invoice Format, plus associated CDRLs	3.0%	3.0%
B	Placement of Purchase Order(s) for Primary (major) subcontracts and Suppliers plus associated CDRLs — Major Systems: Carshell, Trucks, Brakes, Door Control, Air comfort, Lighting, Couplers and Draft Gear, and Communications.	3.0%	6.0%
C	Placement of Purchase Order(s) for Secondary (subsystem) subcontracts and Suppliers plus associated CDRLs — Subsystems: Windows, Doors, Flooring, Interiors including: Toilet Rooms, Seat Gangways, Water and Sanitary Systems, Cab Console, Battery, and LVPS	2.0%	8.0%
D	The establishment (if necessary) of a warranty field office(s) with staff, spare parts and manuals plus associated CDRLs	2.0%	10.0%
E	Delivery and Conditional Acceptance of all production cars plus associated CDRLs and approved Change Orders (at a % rate per vehicle to be determined)	40.0%	50.0%
F	Final Acceptance of the production car plus associated CDRLs (at a % rate per vehicle to be determined)	40.0%	90.0%
G	Delivery and acceptance of all the spare parts, special test equipment, training/manuals, and final associated CDRLs	10.0%	100.0%
H	End of warranty period and retention	Up to 100% of the retention collected for each vehicle	

**SP 8.4 Options for Additional Spare Parts, Tools and Materials**

At the option of Caltrans/IDOT, the Contractor shall provide additional spare parts, special tools, diagnostic test equipment and manuals, drawings, training and training materials, illustrated parts catalog and publications to be used for any Option orders and shall be as set forth in the Schedule of Prices. The Contractor shall provide a listing of the additional recommended spare parts, special tools and diagnostic test equipment when the design of the first vehicle is completed.

Caltrans or designee shall order additional quantities of these items by written notice to the Contractor. An Option to order additional items to be delivered with the base vehicle order may be exercised at any time by Caltrans up to the end of the two-year warranty of the last vehicle purchased under this Contract. The notice shall specify the quantity of additional materials being ordered. Caltrans may place one or more such orders for additional materials, or none.

### **SP 8.5 Prices for Additional Spare Parts, Tools and Materials**

Pricing for any additional spare parts, tools, and materials developed beyond those included in the Contract will be based on the Contractor's current price list without markup and shall be at lowest cost provided to other government agencies.

### **SP 8.6 Milestone Payments for Additional Spare Parts, Tools and Materials**

Milestone Payments for additional spare parts, tools, and materials will be per the table in Section 8.3 above and in accordance with the original contract terms.

### **SP 8.7 Assignment of Options**

Caltrans reserves the right to assign options to other public agencies. Assignment(s) will be subject to the Contract terms and conditions, absent mutual agreement between Contractor and assignee.

## **SP 9. Testing**

### **SP 9.1 General**

The Contractor shall prepare an Inspection and Test Plan ("Test Plan") consistent with Technical Specifications, Chapter 19.

### **SP 9.2 Use of Caltrans or Designee Facilities**

The Contractor shall furnish all personnel, supplies and tools for vehicle commissioning at Caltrans' or designee's facilities. The contractor shall also furnish all equipment and other requirements for the vehicle prior to the delivery of the vehicle.

The Contractor shall provide the Caltrans Project Manager or IDOT, as appropriate with a minimum of three (3) days' notice of the scheduled date and time of each post-shipment vehicle test, so that the Caltrans Project Manager, IDOT, or designee may witness each such test.

The Contractor shall cooperate with Caltrans or IDOT, as appropriate, in scheduling and coordinating the Contractor's Work on Caltrans', IDOT's, or designee's property with the Work and operations of Caltrans, IDOT, designee, contracted service and maintenance providers, or host railroads.

#### **SP 9.2.1 Care of Premises**

Whenever the Contractor is working on premises owned by Caltrans, IDOT, Designees, service providers, maintenance providers or host railroads the Contractor agrees to leave such properties in a neat and orderly condition. Upon completion of the entire project, the Contractor shall remove all temporary buildings, structures, fences, scaffolding, surplus materials, and rubbish of every kind from the site of the Contractor's Work on Caltrans', designee's, contracted service and maintenance provider's, or host railroad's property, who will provide written verification that the premises were adequately restored.

## **SP 10. Safety and Security Requirements**

See State of California General Provision number 27.

### **SP 10.1 Contractor Safety Training**

All Contractor and subcontractor personnel and/or their technical representatives or assistants performing onsite Work, inspection or testing shall have successfully completed all required safety training courses administered by Caltrans, designee, contracted service and maintenance provider, oversight agencies, and host railroads.

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It is incumbent upon the Contractor and its employees to work in a safe manner at all times due to the nature of rail service. The Contractor while performing work around rail facilities shall be alert for train movement through the facility to ensure a safe operation.

### **SP 10.2 Safety Compliance**

See State of California General Provision number 20.

The Contractor shall be responsible for ensuring compliance with the most stringent safety provisions of all applicable statutes and regulations related to state, federal and local safety requirements, including any Federal regulations, laws, or policy and other guidance that FRA or U.S. DOT may issue pertaining to safety oversight in general, and in the performance of the Contract, in particular.. The Contractor shall include these requirements in all subcontractor and Supplier contracts for Work under the Contract.

Upon the failure of the Contractor to comply with any of these requirements, Caltrans shall have the authority to stop any and all operations of the Contractor affected by such failure until such failure is remedied. No part of the time lost due to any such stop orders shall be made subject to a claim or extension of time or increase in compensation. Failure to comply with these requirements may result in termination for default per section GC 9.6.3. "Termination for Default."

The Contractor shall be fully liable for all fines, penalties, claims, and repairs incurred by Caltrans and its contractors resulting from failure by the Contractor, its subcontractors or Suppliers to comply with this section.

### **SP 10.3 Pre-Employment Background Requirements**

See State of California General Provisions number 45 (regarding Drug-Free Workplace).

### **SP 11. Disadvantaged Business Enterprises (DBE)**

See IP 8 and FC 8.

### **SP 12. Service and Parts**

#### **SP 12.1 Parts Availability Guarantee**

The Contractor agrees to cooperate in good faith with Caltrans or designee to provide spare parts and all equipment necessary to maintain and repair the vehicles supplied under this Contract during the life of the vehicles. Parts shall meet form, fit and function of the original equipment.

If the Contractor is unable to provide requested parts or any equipment necessary to maintain and repair the vehicles, then the Contractor shall provide Caltrans with sufficient detail that would allow Caltrans to have these parts specially manufactured, including any drawings, design and material information, and proprietary documentation.

#### **SP 12.2 Interchangeability**

Unless otherwise agreed, all units and components procured under this Contract, whether provided by Suppliers or manufactured by the Contractor, shall be duplicates in design, manufacture and installation to ensure interchangeability among vehicles in this procurement.

In the event that the Contractor is unable to comply with the interchangeability requirement, the Contractor must notify Caltrans and obtain Caltrans' prior written approval, including any change in pricing.

Caltrans shall review proposed product changes on a case-by-case basis and shall have the right to ensure that product changes perform at least as well as the originally supplied products.

**SP 12.3 Agency-Furnished Property**

Not applicable.

**SP 12.4 Agency-Specific Provisions**

See Appendix 6 and Appendix 7.

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**Section 5: Federal Clauses**

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## SECTION 5: FEDERAL CLAUSES

### FC 1. Access to Records

See GC 9.12. "Maintenance of Records; Access by Caltrans; Right to Audit Records" for more information.

### FC 2. Federal Funding, Incorporation of FRA and State Terms and Changes

a) Federal Laws and Regulations. Contractor understands that Federal laws and regulations related to the Contract on the date the Contract is executed may be modified from time to time. Contractor agrees that the most recent of such Federal requirements will govern the administration of the Contract at any particular time, so long as it is consistent with the terms of the Contract. Likewise, new Federal laws and regulations may be established after the date the Contract has been executed and may apply, to the extent they are consistent with the terms of the Contract. To achieve compliance with changing Federal requirements, Contractor agrees to include in all Subcontractor contracts, specific notice that Federal requirements may change and the changed requirements will apply to the Project to the extent they are consistent with the terms of the Contract. All limits or standards set forth in the Contract to be observed in the performance of the Project are minimum requirements.

b) State and Local Laws and Regulations. Except to the extent that a Federal statute or regulation preempts State law, nothing in the Contract shall require Contractor to observe or enforce compliance with any provision thereof, perform any other act, or do any other thing in contravention of any applicable State or local law; however, if any of the provisions of the Contract violate any applicable State or local law, or if compliance with the provisions of the Contract would require Contractor to violate any applicable State or local law, Contractor agrees to notify Caltrans immediately in writing so that Caltrans and IDOT, in consultation with FRA, and Contractor may make appropriate arrangements to proceed with the Project as soon as possible.

### FC 3. Reserved

Not applicable

### FC 4. Civil Rights Requirements

Contractor agrees to comply with all civil rights laws and regulations, in accordance with applicable Federal directives, except to the extent that FRA determines otherwise in writing. These include, but are not limited to, the following:

- a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) (as implemented by 49 C.F.R. Part 21), which prohibits discrimination on the basis of race, color or national origin;
- b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681 - 1683, and 1685 - 1686, which prohibits discrimination on the basis of sex;
- c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps;

- d) The Age Discrimination Act of 1975, as amended 42 U.S.C. §§ 1601–1607, which prohibits discrimination on the basis of age;
- e) The Drug Abuse Office and Treatment Act of 1972 (P.L., 92-255), as amended, relating to nondiscrimination on the basis of drug abuse;
- f) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
- g) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
- h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or finance housing;
- i) The requirements of any other nondiscrimination statutes which may apply to Contractor.

### **FC 5. No Government Obligation to Third Parties**

Caltrans, IDOT and Contractor acknowledge and agree that, notwithstanding any concurrence by the FRA in or approval of the Solicitation, that the FRA is not a party to the Contract and shall not be subject to any obligations or liabilities to Caltrans, IDOT or Contractor, or any other party (whether or not a party to the Contract) pertaining to any matter resulting from the Contract.

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

### **FC 6. Program Fraud and False or Fraudulent Statements or Related Acts**

Contractor shall promptly refer to the U.S. Department of Transportation Inspector General any credible evidence that a principal, employee, agency, Subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds provided through the Contract.

### **FC 7. Suspension and Debarment**

Contractor agrees to comply with U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 C.F.R. Part 1200, and "Government wide Requirements for Drug-Free Workplace (Grants)," 49 C.F.R. Part 32.

### **FC 8. Disadvantaged Business Enterprise (DBE)**

Contractor agrees to use small businesses owned and controlled by socially and economically disadvantaged individuals (as that term is defined for other DOT agencies in 49 C.F.R. Part 26), including veteran-owned small businesses and service disabled veteran-owned small businesses, and to achieve any DBE goal for the Contract, in accordance with the respective plans developed by the States for this Project. (See IP 8)

## **FC 9. Reserved**

Not applicable

## **FC 10. Clean Air, Water, and Other Environmental Protection Requirements**

All facilities that will be used to perform work under the Contract shall not be so used unless the facilities are designed and equipped to limit water and air pollution in accordance with all applicable local, State, and Federal standards.

Contractor will conduct work under the Contract, and will require that work conducted as a result of the Contract be in compliance with the following provisions, as modified from time to time, all of which are incorporated herein by reference: section 114 of the Clean Air Act, 42 U.S.C. 7414, and section 308 of the Federal Water Pollution Control Act, 33 U.S.C. 1318, and all regulations issued there under. Contractor certifies that no facilities that will be used to perform work under the Contract are listed on the List of Violating Facilities maintained by the Environmental Protection Agency ("EPA").

Contractor will notify Caltrans as soon as it or any Subcontractor receives any communication from the EPA indicating that any facility which will be used to perform work pursuant to the Contract is under consideration to be listed on the EPA's List of Violating Facilities; provided, however, that Contractor's duty of notification hereunder shall extend only to those communications of which it is aware, or should reasonably have been aware. Contractor will include or cause to be included in each subcontract entered into, which subcontract exceeds Fifty Thousand Dollars (\$50,000.00) in connection with work performed pursuant to the Contract, the criteria and requirements of this section and an affirmative covenant requiring such Subcontractor to immediately inform Contractor upon the receipt of a communication from the EPA concerning the matters set forth herein.

## **FC 11. Reserved**

Not applicable.

## **FC 12. Buy America**

Contractor agrees to comply with the Buy America provisions set forth in 49 U.S.C. § 24405(a) and any FRA Guidance on Buy America (available at <http://www.fra.dot.gov/Pages/251.shtml>), with respect to the use of steel, iron, and manufactured goods produced in the United States, subject to the conditions set forth therein. See IP 9. "Buy America Certification," for additional information.

## **FC 13. Pre-Award and Post-Delivery Audits**

See IP 9.1. "Buy America Pre-Award and Post-Delivery Audits" and See GC 9.12. "Maintenance of Records; Access by Caltrans; Right to Audit Records" for more information.

## **FC 14. Cargo Preference**

Pursuant to 46 C.F.R. Part 381, Contractor shall insert the following clauses in contracts entered into by Contractor in which equipment, materials or commodities may be transported by ocean vessel in carrying out the Project:

As required by 46 C.F.R. Part 381, Contractor agrees:

- 1) To utilize privately owned United States-flag commercial vessels to ship at least 50% 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 for United States-flag commercial vessels.
- 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 shipment 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 (1) above to the Caltrans Contract Manager (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, D.C. 20590, marked with appropriate identification of the Project.
- 3) Contractor agrees to include the above clause in each Subcontract financed in whole or in part with Federal assistance provided by FRA.

#### **FC 15. Reserved**

Not applicable

#### **FC 16. Reserved**

Not applicable

#### **FC 17. ADA Access**

Contractor agrees to utilize funds provided under the Contract in a manner consistent with the requirements of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. § 12101 et seq.).

#### **FC 18. Other Agency-Specific Provisions**

##### **FC 18.1 American Recovery & Reinvestment Act (ARRA) Whistleblower Protection**

An employee of Contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of employee's duties, to the Recovery Accountability and Transparency Board, an Inspector General, the Comptroller General of the United States, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct), a court or grand jury, the head of a federal agency, or their representatives, information that the employee reasonably believes is evidence of:

1. Gross mismanagement of an agency contract or grant relating to ARRA funds;
2. A gross waste of ARRA funds;
3. A substantial and specific danger to public health or safety related to the implementation or use of ARRA funds;
4. An abuse of authority related to the implementation or use of ARRA funds; or
5. A violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant awarded or issued relating to ARRA funds.

## FC 18.2 ARRA Funding Announcement

Contractor is strongly encouraged to post a sign at all fixed project locations at the most publicly accessible location and a plaque in all purchased or rehabilitated railcars announcing that the Project or equipment was funded by the U.S. Department of Transportation, Federal Railroad Administration, with funds provided through ARRA. The configuration of the signs or plaques will be consistent with guidance issued by the Office of Management and Budget (OMB) and/or the U.S. Department of Transportation and approved by the FRA.

## FC 18.3 Reporting Requirements

Jobs Accountability Reports.

1. As required by section 1512(c) of ARRA, and consistent with OMB Guidance, dated June 22, 2009 and found at [http://www.whitehouse.gov/omb/assets/memoranda\\_fy2009/m09-21.pdf](http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-21.pdf), Contractor shall submit a jobs accountability report to Caltrans and IDOT, not later than ten (10) days after the end of each quarter. The report shall contain:

- (i) the name of the project or activity;
- (ii) a description of the project or activity;
- (iii) an evaluation of the completion status of the project or activity;
- (iv) an estimate of the number of jobs created and the number of jobs retained the project or activity; and
- (v) detailed information on any subcontracts awarded by Contractor to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282), allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the Director of OMB.
- (vi) funds expended during reporting period
- (vii) funds expended to date

2. Information from these reports will be made available to the public. The reporting responsibility should be passed down from Contractor to any Subcontractor or vendor, in order to ensure that the necessary information is provided to Caltrans/IDOT, which is ultimately responsible for reporting the required elements to the FRA. OMB may issue additional guidance on the preparation and submission of jobs accountability reports. Contractor must also register with the Central Contractor Registration database (<http://www.ccr.gov>) or complete other registration requirements as determined by the Director of OMB. A DUNS Number (<http://www.dnb.com>) is one of the requirements for registration on the Central Contractor Registration.

## FC 18.4 Deadline for ARRA Reimbursement

Contractor acknowledges that pursuant to 31 U.S.C. 1552 and as described in the High-Speed Intercity Passenger Rail (HSIPR) interim guidance published in the Federal Register on June 23, 2009 (74 FR 29900), the fixed appropriation account for funds made available to Caltrans and IDOT under ARRA closes on September 30, 2017 and any remaining balance (whether obligated or unobligated) in that account shall be cancelled and thereafter shall not be available for obligation or expenditure for any purpose.

### **FC 18.5 Davis-Bacon Act Provisions**

To the extent applicable, as required by section 1606 of ARRA, all laborers and mechanics employed by Contractor and any Subcontractor(s) on the Project shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

### **FC 18.6 Flow Down Provisions**

The Contractor acknowledges that provisions of this Contract shall be flowed down to Subcontractors as required herein.

### **FC 18.7 Patent Rights**

Notwithstanding GC 6:

- a. If any invention, improvement, or discovery of Contractor or any of its third party contractors is conceived or first actually reduced to practice in the course of or under this Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country. Contractor agrees to notify FRA immediately and provide a detailed report. The rights and responsibilities of Contractor, third party contractors and FRA with respect to such, invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, policies, and any waiver thereof.
- b. If Contractor secures a patent with respect to any invention, improvement, or discovery of Contractor or any of its third party contractors conceived or first actually reduced to practice in the course of or under this Project, Contractor agrees to grant to FRA a royalty-free, nonexclusive, and irrevocable license to use and to authorize others to use the patented device or process for Federal Government purposes.

### **FC 18.8 Rights in Data and Copyrights**

Notwithstanding GC 6 and GC 7:

- a. The term "subject data" used in this section means recorded information, whether or not copyrighted, that is developed, delivered, or specified to be delivered under the Contract. The term includes graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term does not include financial reports, cost analyses, and similar information incidental to Project administration.
- b. The following restrictions apply to all subject data first produced in the performance of the Contract:
  1. Except for its own internal use, Contractor may not publish or reproduce such data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of FRA, until such time as FRA may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to grant agreements with academic institutions.

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2. As authorized by 49 C.F.R. § 18.34, FRA 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:
  - i. Any work developed under a grant, cooperative agreement, sub-grant, sub-agreement, or third party contract, irrespective of whether or not a copyright has been obtained; and
  - ii. Any rights of copyright to which Contractor, its sub-grantee, or a third party contractor purchases ownership with Federal assistance.
- c. When FRA provides assistance to a grantee for a Project involving planning, research, or development, it is generally FRA's intent to increase the body of knowledge, rather than to limit the benefits of the Project to those parties that have participated therein. Therefore, unless FRA determines otherwise, Contractor understands and agrees that, in addition to the rights set forth in preceding portions of this section, FRA may make available to any FRA grantee, sub-grantee, third party contractor, or third party subcontractor, either FRA's license in the copyright to the "subject data" derived under the Contract or a copy of the "subject data" first produced under the Contract. In the event that the Project is not completed, for any reason whatsoever, all data developed under the Project shall become subject data as defined herein and shall be delivered as FRA may direct.
- d. Unless prohibited by State law, Contractor agrees to indemnify, save and hold harmless FRA, 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 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 the Contract. Contractor shall not be required to indemnify FRA for any such liability arising out of the wrongful acts of employees or agents of FRA.
- e. Nothing contained in this section on rights in data, shall imply a license to FRA under any patent or be construed as affecting the scope of any license or other right otherwise granted to FRA under any patent.
- f. The requirements of this section do not apply to material furnished to Contractor by FRA and incorporated in the work carried out under the Contract, provided that such incorporated material is identified by Contractor at the time of delivery of such work.
- g. Unless FRA determines otherwise, Contractor agrees to include the requirements of this section in its third party contracts for planning, research, development, or demonstration under the Project.

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**Section 7: Warranty**

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## SECTION 7: WARRANTY

For definitions and acronyms please see Section 3: General Conditions (GC1).

### WR 1. Basic Warranty Provisions

#### WR 1.1 Warranty Requirements

##### WR 1.1.1 Contractor Warranty

Warranties in this document are in addition to any statutory remedies or warranties imposed on the Contractor. Consistent with this requirement, the Contractor warrants and guarantees, to Caltrans and designee, each complete vehicle, subsystems, and all components, parts and materials, including special test equipment and spare parts.

##### WR 1.1.2 General Warranty

See State of California General Provision number 19.

The complete vehicle shall be warranted to be free from defects and related defects for two (2) years unless specified throughout WR 1.1 "Warranty Requirements" below. The warranty period shall begin at Conditional Acceptance except for parts and systems on the vehicle which require corrective action on the open items list (see Appendix, Form 3: Vehicle Conditional Acceptance and Certificate of Title). For any parts and systems requiring corrective action, the two-year warranty period shall begin once corrections have been made. Acceptance of each vehicle for revenue service does not relieve the Contractor of the responsibility to correct defects as required by the Contract. The warranty is based on regular operation of the vehicle under normal operating conditions (see Amtrak Environmental Conditions defined in the Technical Specification).

##### WR 1.1.3 Contractor Obligations/Contractual Requirements

The Contractor must provide equipment that meets the reliability and performance requirements of the Contract, all applicable technical specifications and referenced documents, and the maintenance and operational requirements as specified by the Supplier. The Contractor shall bear all costs of corrective Work which shall include, but not be limited to, necessary disassembly, transportation, reassembly, repair or replacement and testing of the defective components, materials, goods, supplies, subsystems, parts and equipment.

The Contractor shall submit to Caltrans/IDOT for approval a Warranty Service Plan that is compliant with all contractual and technical specifications. **CDRL**

The Warranty Service Plan shall:

1. Establish a warranty response team with a Warranty Manager.
2. Establish warranty field offices for warranty support at locations where repairs are to be conducted and parts can be stored, as specified by Caltrans and designee.
3. Establish warranty and Fleet Defect repair response process and timelines.
4. Setup a dedicated warranty email address, telephone number, voicemail system and address for U.S. Postal Service and courier mail.
5. Establish a disposition procedure to track failed parts to ensure that they are not reused without proper authorization from Caltrans and designees.
6. Prepare for and participate in bi-weekly warranty status/resolution meetings.

During the warranty period, the Contractor shall maintain qualified warranty repair representatives at each designated warranty field-site to be available to perform corrective work under the warranty. The Contractor's

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Representative shall be qualified and knowledgeable in the repair and maintenance of the cars. The warranty repair staff shall be available to perform repairs at any time, including but not limited to nights and weekends.

The Contractor will provide Caltrans/IDOT and designees with a complete description of the repair work that was conducted, written on the Amtrak Warranty Claim Request (AWCR) (See Appendix 1: Forms) and entered into the Warranty Database and Performance System (WDPS), in order for Caltrans/IDOT and designees to close an AWCR. This description is to include name and title of the employee who completed the Work, date of repair, method of repair, and the old and new serial numbers of any major components that have been replaced, and disposition of replaced materials.

If any warranty or engineering items are unresolved and open at the conclusion of the basic warranty period, Caltrans, designees, and the Contractor (in mutual agreement) have the option to negotiate an extended warranty on those items, and to delay the release of applicable retention payments.

Caltrans or designee reserves the right at the end of any warranty period to take corrective action to resolve open warranty and engineering issues at the Contractor's expense.

#### **WR 1.1.4 Field Service**

The Contractor shall provide for field support facilities and personnel during the periods of acceptance and performance testing, training, warranty, and retrofit programs (if any). Where manufacturers' systems require specialist support, the Contractor shall arrange with the manufacturer for qualified personnel.

An approved Warranty Service Plan shall be part of the product support program and approval required prior to the release for shipment of the first vehicle.

#### **WR 1.1.5 Field Service Office, Related Facilities and Inventory**

Requirements for payment are identified as Items 1-8 below:

1. The warranty field offices must be established prior to the release for shipment of the first vehicle.
2. The field offices shall be established at locations as approved by Caltrans/IDOT and designee.
3. The field offices shall be staffed with the Contractor's designated warranty representatives and any additional staff, as required.
4. The warranty staff shall be sufficiently trained and qualified to perform all required duties to administer the warranty on all cars delivered under the contract, and in accordance with the Contractor's Warranty Service Plan.
5. The field offices shall be sufficiently equipped with all necessary equipment, tools, documents, manuals, drawings, spare parts and communication systems to effectively administer the warranty and meet the requirements of the Contractor's Warranty Service Plan and all contract provisions.
6. An email address, voicemail system and U.S Postal Service and courier mail delivery facilities shall be established at the field offices.
7. The Contractor shall provide Caltrans the contact names, phone numbers, email addresses, and street address for the Warranty Manager, including the means for contacting the Warranty Manager during evenings, weekends and holidays to respond to urgent warranty claims.
8. The Contractor shall certify in writing that the warranty field offices shall remain staffed for the duration of the two (2) year warranty period, including all warranty extensions if applicable (see WR 1.1.12 "Extension of Warranty.")

**CDRL**

The Contractor shall make provisions for onsite storage of material routinely needed to support its warranty and shall obtain storage nearby for large warranty spare parts. Material storage shall include secure facilities for storing nonconforming, rejected, or condemned materials.

The Contractor shall provide for all necessary tools, cranes, pits, jacks, gauges, rerailling equipment, motor vehicles, office equipment and furnishings, and supplies. Caltrans or designee shall cooperate in making available yard space to carry out the Contractor's acceptance work, and shall provide (through its Contractor) switching within yard limits as motive power and crews are otherwise available.

#### **WR 1.1.6 Field Service Personnel**

The Contractor shall provide adequate Field Service Personnel until the last vehicle's warranty expires. The Contractor shall arrange for its subcontractor's Field Service Personnel to be available as needed. All of these shall be employees experienced in field service and thoroughly familiar with the product supplied. The field service effort shall be supervised and managed by only one Warranty Manager, who shall have full and immediate authority to act for the Contractor in field service and acceptance matters.

The Contractor, its subcontractors, commercial representative, agents, consultants, and guests shall at all times wear proper clothing and identification, including safety apparel, while on railroad property and operating territory. Personnel working on or about cars shall wear a distinctive, safe, clean work uniform, and identification clearly identifying their employer.

The Contractor, its subcontractors, commercial representatives, agents, consultants, and guests shall promptly remove from the field any person whose conduct or personal protective equipment is not appropriate for railroad field service work.

#### **WR 1.1.7 Detection of defects**

Field inspectors, Amtrak employees, Caltrans and designee, and other staff may note defects during routine inspections, in normal operation, or maintenance of the equipment. Defects will be reported on the Caltrans Amtrak Warranty Claim Request (AWCR) form, submitted to the Caltrans Warranty Database and Performance System (WDPS) database, and will be distributed to the Contractor.

#### **WR 1.1.8 Department Rights and Obligations**

During the warranty period, Caltrans or designee will make every reasonable effort to make facilities and vehicles available to the Contractor for warranty and related work as permitted by operational requirements.

Caltrans will provide its designees and the Contractor access to the WDPS Database for the purpose of reviewing defect claims and entering Contractor's resolution of open AWCRs.

#### **WR 1.1.9 Minimum Warranty Parts Inventory**

The Contractor shall establish minimum warranty parts inventory to be approved by Caltrans/IDOT and in place before Conditional Acceptance of the first pilot vehicle. The minimum warranty parts inventory will include three types of inventory:

- Strategic parts that are safety critical for train operation;
- Strategic parts that have high failure rates or that are known to be replaced frequently; and
- Strategic parts that are long-lead-time items.

The minimum warranty parts inventory list will include a complete listing of each part, the number to be stocked, and a parts replacement schedule to ensure that adequate quantities of warranty parts are stocked while cars are in service and under warranty.

**CDRL**

#### **WR 1.1.10 Carbody Structure**

The vehicle body structure as defined in Chapter 4 of the Technical Specifications is warranted to be free from defects and related defects for ten (10) years.

### WR 1.1.11 Major Subsystems

The following major subsystems shall be warranted to be free from defects and related defects for a longer period than the two-year warranty mandated under WR 1.1.2 or as otherwise set forth in WR 1.1: The subsystems with longer mandated warranties include:

- Truck structural parts (frame and bolster) and suspension: five (5) years
- Carshell including Crash Energy Management (CEM): 10 (ten) years

All other subsystems are covered by the General Warranty provision.

### WR 1.1.12 Extension of Warranty

If, during the warranty period, repairs or modifications on any vehicle are necessary due to defective design, materials or workmanship, Caltrans/IDOT or designees will give written notice to the Contractor. If repairs are not completed within ten (10) days of the notice or an agreed upon timeline documented in writing between Caltrans/IDOT and the Contractor, the warranty period will be suspended until such time that the repairs are fully completed and the warranty will be extended for that component on a day-for-day basis. Once repairs are completed, the warranty timeline begins again and the remaining warranty will continue to be in effect. If the repairs are not completed within the agreed upon timeline, resulting in the vehicle being unavailable for revenue service, liquidated damages will commence in accordance with SP 3.3.2 "Liquidated Damages: Warranty" and will accrue on a day-to-day basis starting at the end of the agreed upon timeline.

### WR 1.2 Reserved

N/A

### WR 1.3 Exceptions and Additions to Warranty

The warranty shall not apply to the following items:

- Scheduled maintenance items
- Consumable items
- Items furnished by Caltrans, IDOT or designees
- Modifications made without Contractor approval, except as provided herein

#### WR 1.3.1 Pass-Through Warranty

Should the Contractor elect to not administer warranty claims on certain components and wish to transfer this responsibility to the Sub-Suppliers or others, the Contractor shall submit a written request to Caltrans or designee that the Contractor plans to assign warranty work to a specified subcontractor or supplier. The Contractor shall state in writing that Caltrans' warranty reimbursements will not be impacted in accordance with WR 2.3.5 "Reimbursement for Labor and Other Related Costs," WR 2.3.6 "Reimbursement for Parts" and WR 2.3.7 "Reimbursement Requirements". Otherwise, the Contractor shall be solely responsible for the administration of the warranty as specified.

If the Contractor makes such a request, then the Contractor also shall state in writing any exceptions as it relates to the costs incurred in the transport of vehicles and/or components associated with such a Pass-Through Warranty. Approval of the request shall be at the discretion of Caltrans and designees.

#### WR 1.3.2 Superior Warranty

The Contractor shall pass onto Caltrans and designees any warranty offered by a Supplier that is superior to that required herein. The Contractor shall provide a list to Caltrans and designees noting the conditions and limitations of the Superior Warranty no later than the start of production. The Contractor shall not be required to administer the Superior Warranty except through a mutual agreement between the parties.

The Superior Warranty shall be administered by the Supplier after the completion of the base warranty period.

At the request of Caltrans/IDOT the Contractor shall convey the Superior Warranty to Caltrans and designees through a multi-party agreement, signed by the Contractor, the Supplier, Caltrans and designees, specifying the terms and procedures for the administration of the Superior Warranty.

Superior warranty terms and conditions may not conflict with any provisions of this agreement or in any way increase liability for Caltrans or its designees.

### **WR 1.3.3 Extended Warranty**

Not applicable.

## **WR 1.4 Fleet Defects**

### **WR 1.4.1 Occurrence and Remedy**

A Fleet Defect is defined as cumulative failures of ten percent (10%) or more of any part, system, or component in the same or similar applications with a minimum of three (3) failures of the same component where such items are covered by warranty. Similar components are defined as components that perform the same function or purpose regardless of specific orientation (e.g. left-hand vs. right-hand).

In the event that failures reach the threshold as defined for a Fleet Defect, Caltrans shall provide the Contractor written notification of the assessment of the Fleet Defect. This notification shall include the description of the failure and the dates, vehicle numbers, and warranty claim numbers for the failures. Within five (5) business days of this notification, the Contractor shall present to Caltrans its corrective action plan for an engineering analysis of the Fleet Defect. The plan shall include an estimated timeline for a failure analysis to determine the cause, and extent of the failure, and the corrective actions needed to resolve the failure on all affected cars. The results of the failure analysis and corrective actions shall be presented to Caltrans/IDOT for review and approval within thirty (30) days after notification of the Fleet Defect. Caltrans/IDOT shall have the authority to assess the effectiveness and appropriateness of the proposed solution and require that the Contractor propose alternate solutions, if necessary.

Once the corrective action plan has been approved by Caltrans, the Contractor shall provide a Field Modification Instruction (FMI) within thirty (30) days that will resolve the failure on all affected cars that have been delivered. This FMI shall include all components requiring repair or replacement, all diagnostic, removal, and installation instructions, and the applicability to the vehicles in the fleet to which the FMI applies. An FMI shall apply to all vehicles in the fleet that meet the criteria for corrective action to resolve the Fleet Defect, regardless of whether the vehicle is within its warranty period or not. The Contractor shall also implement engineering changes, as necessary, to modify the design, material, or installation procedures for all cars in production or not yet delivered. All drawings, manuals, parts lists, test procedures, vehicle history books, and other documentation shall be revised and updated, as necessary, to reflect any changes to design, parts, installation, procedures, or maintenance requirements, as a result of the FMI or engineering change.

No payment, for any vehicle, its associated components, parts, work, or for any other purpose, shall relieve the Contractor of any obligation to correct Fleet Defects as provided herein.

If the Contractor fails to resolve Fleet Defects or complete FMIs as set forth herein, Caltrans or designee reserves the right to resolve open FMIs at the Contractor's expense, utilizing funds in any or all of the following: deduction from amounts due or remaining milestones, the performance bond, other Contractor funds, or legal action.

### WR 1.4.2 Recurring Defect

A Recurring Defect is when the same component or system on the same rail vehicle fails in a similar manner three (3) or more times. Once the component or system fails for the third (3<sup>rd</sup>) time, Caltrans shall notify the Contractor to perform an engineering investigation as to the cause and nature of the failure. This notification shall include the description of the failure and the dates, vehicle numbers, and warranty claim numbers for the failures. Within thirty (30) days of notification, Contractor shall provide for Caltrans review and approval a report of the investigation and a recommendation as to how the Recurring Defect will be properly and permanently corrected. If the component or system fails again after the corrective action is completed, the Contractor shall perform another analysis as to why the corrective action did not solve the problem, and make another recommendation as to the method by which the failure will be corrected. Once the Recurring Defect is corrected, the item(s) shall have the longer of one (1) year additional warranty from the correction of the Recurring Defect or the remainder of the unexpired warranty period.

### WR 1.4.3 Failure Analysis

The Contractor shall provide a failure analysis of Fleet Defects, Recurring Defects, safety-related parts, or major components removed from vehicles under the terms of the warranty that could affect fleet operation. Such reports shall be delivered within thirty (30) days, or an agreed upon timeline, after notification of the Fleet Defect or Recurring Defect.

## WR 2. Repair Procedures

### WR 2.1 Repair Performance

The Contractor is responsible for all warranty-covered repair-work. Under normal circumstances, Caltrans and designees will allow the Contractor to perform such Work. At its discretion, Caltrans or designees may perform such Work if it determines it needs to do so. The cost of such Work performed by Caltrans or its designees shall be reimbursed by the Contractor.

#### WR 2.1.1 Urgent Repairs by Contractor; Safety Issue

If Caltrans or designee identifies a defect that is a safety issue, Caltrans or designee shall notify the Contractor per the urgent AWCRC and warranty process (the urgent AWCRC and warranty process will be defined during design review). Components, systems, and subsystems that are included for urgent repair include:

- Side doors
- Wheelchair lifts
- HVAC
- Brakes systems
- Trucks and suspension
- Safety appliances
- Vehicle shell structure and CEM
- Train control

Within twenty-four (24) hours of receiving a notification of an urgent defect from Caltrans or the designee, the Contractor's Representative shall begin work on warranty-covered repairs. If the Contractor does not begin work on the warranty-covered repair within twenty-four (24) hours after receiving an urgent notification, liquidated damages may accrue.

Caltrans or designee reserves the right to resolve urgent repairs at the Contractor's expense, utilizing funds in any or all of the following: deduction from amounts due or remaining milestones, the performance bond, other Contractor funds, or legal action.

Caltrans or designee shall make the vehicle available to the Contractor, within restrictions imposed by Amtrak's operational requirements, to allow for completion of repairs in a timely manner.

The Contractor shall provide at its own expense all spare parts, tools, and space required to complete repairs. At Caltrans' or designee's option, the Contractor may be required to remove the vehicle from Caltrans' or designee's property while repairs are being performed. If the vehicle is removed from Caltrans' or designee's property, repair procedures must be diligently pursued by the Contractor's Representative and the Contractor shall be liable for the vehicle while off Caltrans' or the designee's premises.

## **WR 2.2 Non-Urgent Repairs by the Contractor**

The Contractor's Representative shall begin Work on non-urgent warranty-covered repairs within three (3) days after: 1) receiving notification of a defect, and; 2) the vehicle being made available from Caltrans or designee, or at a time agreed upon by Caltrans or designee. Caltrans or designee shall make the vehicle available to the Contractor to complete repairs.

The Contractor shall provide, at its own expense, all labor parts and tools required to complete repairs.

## **WR 2.3 Repairs by Caltrans/Designee**

### **WR 2.3.1 Parts Used**

If Caltrans/IDOT, designees or their representatives perform the warranty-covered repairs, it shall correct or repair the defect and any related defects utilizing parts supplied by the Contractor specifically for the repair. Caltrans or designee may use Contractor-specified parts available from Contractor's stock if deemed in its best interests.

### **WR 2.3.2 Contractor-Supplied Parts**

Caltrans or designee may require that the Contractor supply parts for warranty-covered repairs being performed by Caltrans or its representatives. The parts shall be shipped prepaid to Caltrans or designee within ten (10) days of receipt of the request for said parts and shall not be subject to Caltrans or designee handling charge.

### **WR 2.3.3 Defective Component Return**

The Contractor may request that defective parts discovered during warranty repairs be returned to the parts manufacturer. The freight costs for this action shall be paid by the Contractor. Materials should be returned in accordance with the procedures outlined in WR 2.6 "Return of Parts."

All serialized components that fail and are exchanged will be tracked by the AWCR form. Serialized components that have failed will not be used as spare parts and the Contractor will provide new serial numbers for exchanged components.

Caltrans or designee may request that any failed part be made available for inspection, analysis, or documentation.

### **WR 2.3.4 Reserved**

Failure Analysis moved to WR 1.4.3,

### **WR 2.3.5 Reimbursement for Labor and Other Related Costs**

When Caltrans or designee or agents perform warranty repairs, the Contractor shall reimburse them for labor and other related costs. The amount shall be determined by Caltrans or designee for a qualified mechanic at the hourly and/or overtime wage rates, including fringe benefits and overhead adjusted for Caltrans' or designee's most recently published rate in effect at the time the Work is performed, plus the cost of retrieving the vehicle if such action was necessary. These wage and fringe benefit rates shall not exceed the rates in effect at the time the defect correction is made.

### WR 2.3.6 Reimbursement for Parts

When Caltrans or its designee or agents perform warranty repairs, the Contractor shall reimburse Caltrans or designee for replacement parts used to correct the defect at the actual price paid by Caltrans or designee, including applicable taxes.

### WR 2.3.7 Reimbursement Requirements

The Contractor shall respond to Caltrans' or designee's request for warranty parts, labor, and other related costs reimbursement with an accept/reject decision, including necessary failure analysis, no later than thirty (30) days after Caltrans or designee submits the request and defective part(s), when requested. Reimbursement for all accepted requests shall occur no later than sixty (60) days from the date of the acceptance of a valid request. Caltrans may dispute rejected requests or requests for which the Contractor did not reimburse the full amount. The parties agree to review disputed warranty requests during the following ninety (90) day period to reach an equitable decision to permit the disputed request to be resolved and closed. The parties also agree to review all requests at least once every ninety (90) days throughout the entire warranty period to ensure that open requests are being tracked and properly addressed. At its discretion, Caltrans or IDOT may deduct disputed cost reimbursements from current or future monies owed to the Contractor.

### WR 2.4 Warranty after Replacement/Repairs

During the warranty period, if any component, unit, or subsystem is rebuilt or replaced, then the component, unit, or subsystem shall have the longer of a one (1) year additional warranty from the rebuild or replacement of the component, unit, or subsystem, or the remainder of the unexpired warranty period of the original item. This includes work done by the Contractor or by Caltrans/IDOT or Designees with Contractor's concurrence.

If an item is declared to be a Fleet Defect, the warranty is suspended with the declaration of the Fleet Defect. Once the Fleet Defect is corrected, the item(s) shall have the longer of one (1) year additional warranty from the correction of the Fleet Defect or the remainder of the unexpired warranty period.

#### WR 2.4.1 Warranty Processing Procedures

The following list represents information Caltrans or designee will provide to the Contractor for processing requests for warranty reimbursements. This information will be documented on an AWCR form. Only one failure per vehicle should be entered into each AWCR request. Specific details regarding the warranty processing procedures will be resolved during project management meetings with the Contractor.

- Vehicle number
- Location of defect on vehicle
- Date of failure/repair
- Acceptance/in-service date
- Repair order number
- Contractor part number and description
- Description of failure
- All costs associated with each failure/repair (invoices may be required for third-party costs):
  - Vehicle retrieval
  - Road calls
  - Labor
  - Materials
  - Rented equipment
  - Parts
  - Handling
  - Troubleshooting time

## **WR 2.5 Forms**

AWCR will be accepted by the Contractor if all of the above information is included. Electronic submittals will be used between the Contractor and Caltrans or designee.

## **WR 2.6 Return of Parts**

Defective and tagged parts removed for warranty purposes by Caltrans or designee will be returned with shipping prepaid by the Contractor, as appropriate. Defective parts should be segregated by the Contractor or designee, and each defective part shall be tagged with the following:

- Name of Contractor (company name)
- Vehicle number
- AWCR number
- Part number
- Contractor Part number
- Manufacturer's name and Part number
- Part Name or Description
- Serial number (if so equipped)
- Name and phone number of the person removing the part
- Current date
- Location of facility where part was removed

## **WR 2.7 Timeframe for Warranty Reimbursement Requests**

Each warranty reimbursement request must be submitted no more than ninety (90) days from the date of failure and/or repair, whichever is later. All defective parts must be returned to the Contractor, when requested, no more than forty-five (45) days from the date of repair.

## **WR 2.8 Warranty Reimbursement**

How Warranty Reimbursements will be credited to the Contract shall be determined by Caltrans/IDOT. Specific details for the reimbursement process will be resolved during project management meetings with the Contractor.

**Request for Proposal  
For the Purchase of  
Bi-Level Passenger Railcars**

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**Section 8: Quality Assurance**

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## **SECTION 8: QUALITY ASSURANCE**

The Contractor shall establish and maintain a Quality Assurance Program as specified in Chapter 3 of the Technical Specifications. The Contractor's Quality Assurance Program shall ensure compliance with the requirements of the Contract, and should any portion of the Work be subcontracted, shall include provisions ensuring compliance by Subcontractors and Sub-suppliers.

The Contractor, the Contractor's manufacturing plant and its organization shall be certified to the appropriate QS 9000/ISO 9000 series of standards. Contractor shall ensure that all Subcontractors and Sub-suppliers maintain a formal, documented Quality Assurance Program.

Caltrans/IDOT and Designees reserves the right to verify the Quality Assurance Program of either the Contractor or any Subcontractor or Sub-supplier through the use of random, periodic inspections of the Work and facilities of the Contractor or any Subcontractor or Sub-supplier.

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**Request for Proposal  
For the Purchase of  
New Bi-Level Passenger Railcars**

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**Appendix 1: Forms**

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**Request for Proposal  
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A1-1

**Form 1. Shipment Authorization**

[Contract Number]

Vehicle #: \_\_\_\_\_

I, duly appointed Inspector and authorized representative of Caltrans or designee, do hereby certify that the vehicle is in conformity with the requirements of Contract XXXXXX, except as noted on the attached Exception Report, and except for completion of such post-shipment tests as required under said Contract. It is further understood that contractor will correct any defects revealed as a result of such tests.

I verify that the vehicle has been weighed, and scale weight and adjusted weight are as indicated in the attached Weight Certificate.

**NOTES:**

- This Shipment Authorization is signed subject to correction or completion of the items on the attached Exception Report which were deemed non-compliant at the time the vehicle was shipped.
- Serialized equipment lists and vehicle test records are included in the Vehicle History Book.
- Loose equipment or materials are shown on the attached list that will ship separately inside this vehicle. This equipment or materials will be applied by Contractor upon arrival or after the completion of testing as required.

COPY

\_\_\_\_\_  
For [Caltrans or designee]

\_\_\_\_\_  
Date

\_\_\_\_\_  
For [Contractor]

\_\_\_\_\_  
Date

**NOTE: Contractor will develop, and Caltrans or designee will approve, the above-mentioned Exception Report, Loose Equipment List, and Weight Certificate during the development of contractor's Quality Assurance Plan.**

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A1-2

**Form 2. Evidence of Vehicle Delivery**

[Contract Number]

Vehicle #: \_\_\_\_\_

Pursuant to Section 4, Special Provision 6, notice is hereby given that the above-referenced vehicle arrived at the following Caltrans or designee location: \_\_\_\_\_ on the following date: \_\_\_\_\_.

The following observations were made concerning the condition of the above-referenced vehicle upon its arrival at Caltrans or designee location.

Item No.	LOC A/B	LOC Left, Right	LOC Up, Low	Description	Action Code	Observed		Corrected	
						By	Date	By	Date

**Key**  
 Loc = End A/B, Left/Right (L/R) side, Upper/Lower (UL/LL) level  
 Action = "R" - repaired, "U" - use as is

Caltrans or designee, and Contractor verify that the observed non-compliant conditions have been corrected.

\_\_\_\_\_  
 For [Caltrans or designee]

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 For [Contractor]

\_\_\_\_\_  
 Date

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A1-3

**Form 3. Vehicle Conditional Acceptance and Certificate of Title**

[Contract Number]

Vehicle #: \_\_\_\_\_

Contractor hereby makes the following representations and warranties regarding the above-referenced vehicle: that such vehicle conforms to all requirements of Contract XXXXXX except for those items set out in attached Exhibit A, which is incorporated herein by this reference.

Contractor warrants and represents that the above-referenced vehicle is free and clear of any and all liens, mortgages, encumbrances, financing statements, security agreements claims and demand of any character and that title to said vehicle is vested in Caltrans or designee. Caltrans or designee hereby accepts title to the above-referenced vehicle.

The person signing below on behalf of Contractor represent that s/he is authorized to make the foregoing representations and warranties on behalf of Contractor.

\_\_\_\_\_  
For [Contractor]

\_\_\_\_\_  
Date

Caltrans or designee finds that the above-referenced vehicle is conditionally accepted under a reservation of rights as to failure free testing and the non-conforming items listed in attached Exhibit A (See next page).

\_\_\_\_\_  
For [Caltrans or designee]

\_\_\_\_\_  
Date



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A1-5

**Form 4. Vehicle Final Acceptance**

[Contract Number]

Vehicle #: \_\_\_\_\_

Contractor hereby makes the following representations and warranties regarding the above-referenced vehicle: (i) that all phases testing, including failure free testing, have been properly completed pursuant to the terms of Contract XXXXXX, and (ii) that all of the items listed in the Vehicle Conditional Acceptance and Certificate of Title Form have been satisfactorily completed or resolved.

The person signing below on behalf of Contractor represents that s/he is authorized to make the foregoing representations and warranties on behalf of Contractor.

\_\_\_\_\_  
For [Contractor]

\_\_\_\_\_  
Date

Caltrans or designee finds that the above-referenced vehicle is acceptable and that all exceptions noted on the Vehicle Conditional Acceptance and Certificate of Title Form have been completed or resolved in accordance with the Contract requirements.

\_\_\_\_\_  
For [Caltrans or designee]

\_\_\_\_\_  
Date

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A1-6

Form 5: Amtrak Warranty Claim Request (AWCR) Form

**AWCR/ARO**    **Warranty Repair**    **Other Repair**

**Repair Tag**

<input type="checkbox"/> Amtrak has Performed Work	<input type="checkbox"/> Part Removed and Tagged	
<input type="checkbox"/> Part Needed for this Repair	<input type="checkbox"/> Amtrak Requests Technical Assistance	
<b>Builder</b> <input type="checkbox"/> EMD <input type="checkbox"/> General Electric <input type="checkbox"/> Alstom <input type="checkbox"/> Bombardier <input type="checkbox"/> Talgo <input type="checkbox"/> Other		
Failure Date _____	Car/Loco Number _____	<input type="checkbox"/> OAK
Tag Number _____	Mileage _____	<input type="checkbox"/> LAX
Part Position _____	Manufacturer _____	<input type="checkbox"/> SAN
Part Name/Description _____		<input type="checkbox"/> SEA
Removed Part Serial Number _____		<input type="checkbox"/> Other _____
Description of Problem/Failure _____		
Print _____	Sign _____	
<i>Amtrak Worker</i>		

**Approval**

Description of Action Taken _____		
Replacement Part Serial Number _____		
<input type="checkbox"/> Manufacturer Notified	Date Notified _____	
Total Manhours _____	Craft _____	
Date of Failure _____	Date Released to Service _____	
Print _____	Sign _____	Date _____
<i>Amtrak Supervisor Approval</i>		

**Material Control**

BPO Number <input type="checkbox"/> - <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> No Part in Stock
Mfg. Part Number _____	<input type="checkbox"/> BAM Part
AMMPS Number <input type="checkbox"/> <input type="checkbox"/> - <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> - <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	BAM Date _____
<input type="checkbox"/> Part Furnished by Amtrak	<input type="checkbox"/> Part Furnished by Caltrans Stores
<input type="checkbox"/> Part Furnished by Builder on Site	<input type="checkbox"/> Part taken from Unit Number _____
<input type="checkbox"/> Part Ordered    Quantity _____	Shipping Number _____
Part Order Date/Time _____ / _____	Part Ship Date/Time _____ / _____
Print _____	Sign _____    Date _____
<i>Material Control Approval</i>	

**Disposition**

Builder/Manufacturer Claim Number _____	
Part Disposition	<input type="checkbox"/> Scrap <input type="checkbox"/> Rebuild / Unit Exchange
<input type="checkbox"/> Part Furnished by Builder Stores	
Ship Part / Assembly To: _____	
Warranty Claim Approved	<input type="checkbox"/> Yes <input type="checkbox"/> No
If No Explain Why _____	
Print _____	Sign _____    Date _____
<i>Amtrak/Builder/Caltrans Representative</i>	

**Request for Proposal  
For the Purchase of  
New Bi-Level Passenger Railcars**

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**Appendix 2: Protest Process for  
Recommended Award Protest**

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## **Procedures for Protest over the Recommended Award of Procurement of Railcars**

### **Article 1. General Provisions**

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#### **§100. Purpose; Scope of Chapter.**

Protests under the Railcar RFP shall be resolved by arbitration as defined and established by this Protest Procedure.

#### **§102. Definitions.**

- (a) "Arbitration," as used in this chapter, means a dispute resolution procedure in which the Department of General Services, Office of Administrative Hearings provides a neutral Administrative Law Judge who decides the merits of a protest and issues a binding decision to the Parties.
- (b) "Awardee" includes Proposed Awardee and means the person or entity that was a successful proposer to the Railcar RFP and has been, or is intended to be, awarded the contract.
- (c) "Close of Business," as used in this chapter, means 5:00 p.m. Pacific Standard Time (PST) or Pacific Daylight Time (PDT), as applicable.
- (d) "Caltrans" means the California Department of Transportation
- (e) "Coordinator" means the person designated as the Protest Coordinator by Caltrans to coordinate all aspects of the Solicitation under this Protest Procedure.
- (f) "Estimated Contract Value" means the value of Protestant's proposal.
- (g) "Frivolous" means a protest with any or all of the following characteristics:
  - (1) It is wholly without merit.
  - (2) It is insufficient on its face.
  - (3) The Protestant has not submitted a rational argument based upon the evidence or law which supports the protest.
  - (4) The protest is based on grounds other than those specified in section 110.
- (h) "OAH" means the California Department of General Services, Office of Administrative Hearings.
- (j) "Party" means Caltrans, the Awardee, and Protestant(s).
- (k) "Protestant" means a person or entity that was an unsuccessful proposer that filed a final proposal under the Railcar RFP and that protests the award of the contract.
- (l) "Railcar RFP" or "Solicitation" means the document that describes the goods and services to be purchased, details the contract terms and conditions under which the goods and services are to be purchased, and establishes the method of evaluation and selection.
- (o) "Solicitation File" means the Solicitation and the documents used by Caltrans in the Solicitation process, including documents used to evaluate bidders and select a Proposed Awardee. The Solicitation File shall remain available to the public.
- (p) "Working Days" means business days.

**§104. Notice of Intent to Award Contract.**

Caltrans shall post a Notice of Intent to Award Contract in a public place specified in the Solicitation, send rejection facsimiles to rejected proposers, and send Notice of Intent to Award Contract facsimiles to any proposer who made a written request for notice and provided a facsimile number. Caltrans shall indicate that the Solicitation File is available for inspection. Caltrans has the discretion to award a contract immediately, upon approval by the Director of Caltrans.

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**Article 2. Protest Procedure**

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**§106. Notice of Intent to Protest; Service List.**

- (a) An unsuccessful proposer who intends to protest the awarded contract pursuant to this **Protest Procedure** must inform the Coordinator. The Notice of Intent to Protest must be in writing and must reach the Coordinator within the number of days specified in the Solicitation, which shall be three (3) working days after the posting of the Notice of Intent to Award Contract, as specified in the Solicitation. Failure to give written notice by Close of Business on that day shall waive the right to protest.
- (b) On the day after the final day to submit a Notice of Intent to Protest, the Coordinator shall make a service list consisting of those proposers who did submit a Notice of Intent to Protest, the Awardee, and Caltrans. The Coordinator shall include addresses and facsimile numbers on this list and shall forward this service list to those proposers who submitted a Notice of Intent to Protest.

**§108. Filing a Protest.**

- (a) A protest is filed by the submission of: the Detailed Written Statement of Protest and any exhibits specified in section 112; a check or money order made payable to the Office of Administrative Hearings for the OAH filing fee of \$50; and the arbitration deposit as specified in subsection (c) to the Coordinator by the Close of Business on the seventh (7th) working day after the time specified in the Solicitation for written Notice of Intent to Protest under section 106. A copy of the Detailed Written Statement of Protest and exhibits must also be served on all Parties named in the service list as specified in section 106. A Protestant who fails to comply with this subsection waives Protestant's right to protest.
- (b) Protestant(s) must provide a FAX (facsimile) number. Notification by facsimile is sufficient for service. If the Detailed Written Statement of Protest is sent to the Coordinator by facsimile, Protestant must:
  - (1) Verify that the pages sent were all received by the Coordinator; and
  - (2) Remit the required deposit and filing fee to Coordinator by any reasonable means. If sending via carrier, the postmark date or equivalent shall be used to determine timeliness.

- (c) Each Protestant shall make a deposit of the estimated arbitration costs, by check or money order made payable to the Office of Administrative Hearings, as determined by the Estimated Contract Value.
  - (1) For contracts up to \$100,000.00, the deposit shall be \$1500.00.
  - (2) For contracts of \$100,000.00 up to \$250,000.00, the deposit shall be \$3,000.00.
  - (3) For contracts of \$250,000.00 up to \$500,000.00, the deposit shall be \$5,000.00.
  - (4) For contracts of \$500,000.00 and above, the deposit shall be \$7,000.00.
  - (5) Failure to remit a timely required deposit waives the right of protest.
  - (6) Any refund to Protestant(s) shall be made per section 137.

**§110. Grounds for Protest.**

- (a) Any protest filed pursuant to this Protest Procedure shall be based on the ground that the proposal should have been selected in accordance with selection criteria in the Solicitation document.
- (b) The burden of proof for protests filed pursuant to this Protest Procedure is preponderance of the evidence, and Protestant(s) bear this burden.

**§112. Detailed Written Statement of Protest.**

- (a) The Detailed Written Statement of Protest must include the grounds upon which the protest is made, as specified in **section 110(a)**.
- (b) The Detailed Written Statement of Protest shall contain reasons why Protestant should have been awarded the contract.
  - (1) The Detailed Written Statement of Protest must specify each and every selection criterion on which Protestant bases the protest by specific references to the parts of the Solicitation attached as exhibits.
  - (2) The Protestant must specify each and every reason that all other bidders who may be in line for the contract award should not be awarded the contract.
- (c) The Detailed Written Statement of Protest shall be no more than 50 typewritten or computer generated pages, excluding exhibits, at a font of no less than 12 point or pica (10 characters per inch), on 8 1/2 inch by 11-inch paper of customary weight and quality. The color of the type shall be blue-black or black. In addition to a paper copy, the arbitrator may request that a Protestant submit such information on computer compatible diskette or by other electronic means if the Protestant has the ability to do so.
- (d) Any exhibits submitted shall be paginated and the pertinent text highlighted or referred to in the Detailed Written Statement of Protest referenced by page number, section and/or paragraph and line number, as appropriate.
- (e) The Detailed Written Statement of Protest may not be amended.
- (f) Protestant(s) may not raise issues in hearing which were not addressed in the Detailed Written Statement of Protest.
- (g) A Protestant who fails to comply with this subsection waives Protestant's right to protest.

**§114. Review by Coordinator.**

- (a) Within two (2) working days after receipt of the Detailed Written Statement of Protest, the Coordinator shall notify Caltrans and the Awardee of a potential protest hearing.
- (b) The Coordinator shall review the Detailed Written Statement of Protest within five (5) working days after receipt to preliminarily determine if the protest is Frivolous and notify Protestant of the option to withdraw or proceed to arbitration.
  - (1) If Protestant withdraws the protest within two (2) working days after the notification by the Coordinator of a preliminary determination of Frivolousness, the Coordinator shall withdraw the preliminary finding of Frivolousness and refund Protestant's deposit and filing fee.

**§116. Review and Response by Caltrans and Awardee.**

- (a) The Awardee shall have 10 working days after notification by the Coordinator to submit to the Coordinator and Protestant a response to the Detailed Written Statement of Protest.
- (b) Caltrans, in conjunction with the Coordinator, shall have 10 working days after notification by the Coordinator to send a response to Protestant and Awardee.
- (c) Responses shall follow the standards set forth in section 112(c) and (d).

**§118. Bond Requirement.**

- (a) If the Coordinator has determined that a protest is Frivolous and the Protestant does not withdraw the protest, the Protestant shall post a bond in the amount of one percent (1%) of the Estimated Contract Value.
- (b) Protestant shall post the bond, pursuant to Chapter 2 (commencing with section 995.010) of Title 14 of Part 2 of the Code of Civil Procedure, within 15 working days of the filing of the Detailed Written Statement of Protest or shall be deemed to have waived the right to protest.
  - (1) If the arbitrator determines that the protest is Frivolous, the bond shall be forfeited to the Coordinator.
  - (2) If the arbitrator determines that the protest is not Frivolous, the bond will be returned to the Protestant.

### Article 3. Arbitration Procedure

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#### §120. Arbitration Process.

Within (five) 5 working days after filing of Caltrans' response to the Detailed Statement of Protest, the Coordinator shall consolidate all remaining protests under the Solicitation, and send to OAH:

- (a) a copy of all Detailed Written Statements of Protest;
- (b) OAH filing fees;
- (c) arbitration deposits,
- (d) Awardee responses;
- (e) Coordinator/Caltrans responses;
- (f) the Solicitation File; and
- (g) notice to OAH whether interpreter services will be needed for any Protestant or Awardee. OAH shall arrange interpreter services which shall be paid by Caltrans.

#### §122. Selection of Arbitrator.

- (a) Within seven (7) working days after receipt of the protest from the Coordinator, OAH will furnish the names of ten (10) arbitrators to Protestant(s), the Awardee, and the Coordinator. The arbitrator list shall include administrative law judges who are employees of OAH. Protestant(s), the Awardee, and the Coordinator may each strike two of the ten (10) names and notify OAH within two (2) working days. OAH may then select as arbitrator any name not stricken and will notify Protestant(s), the Awardee, and the Coordinator within seven (7) working days. If all names are stricken, the Director of OAH shall appoint an arbitrator.
- (b) A proposed arbitrator shall be disqualified on any of the grounds specified in Section 170.1 of the Code of Civil Procedure for the disqualification of a judge.

#### §124. Authority of Arbitrator.

- (a) Arbitrators are authorized to
  - (1) Administer oaths and affirmations;
  - (2) Make rulings and orders as are necessary to the fair, impartial, and efficient conduct of the hearing; and
  - (3) Order additional deposits from Protestant(s) to cover additional estimated costs. If OAH does not receive the required deposit(s) in the time specified, the right to protest will be deemed waived.
- (b) The arbitrator shall have exclusive discretion to determine whether the protest will be determined based upon the written submissions of the parties, or whether a hearing will be conducted to take oral testimony and receive additional evidence. If the arbitrator decides that a hearing will be conducted, the arbitrator, in his or her sole discretion, will determine whether to conduct a prehearing conference in accordance with section 128.
- (c) It shall be in the arbitrator's exclusive discretion to determine whether additional responses and rebuttals are to be submitted, and the timelines and page limits to be applied.

**§126. Decision Based in Whole or in Part on Documents Alone.**

Any Party may request that the arbitrator base the arbitrator's decision on the written submissions of the parties. It shall be the arbitrator's exclusive discretion to do so.

**§128. Prehearing Conference.**

- (a) If the arbitrator determines that a prehearing conference is necessary, OAH shall set the time and place and notify Protestant(s), the Awardee, and Caltrans at least five (5) working days prior to the prehearing conference.
- (b) The prehearing conference shall be held to identify and define issues in dispute and expedite the arbitration. The parties should be prepared to discuss, and the arbitrator may consider and rule on, any of the following matters applicable to the protest:
  - (1) Clarification of factual and legal issues in dispute as set forth in the Detailed Written Statement of Protest.
  - (2) The extent to which testimony shall be permitted and the extent to which cross-examination will be allowed.
  - (3) Identity of and limitations on number of witnesses, need for interpreters, scheduling and order of witnesses, etc.
  - (4) Any other matters as shall promote the orderly and efficient conduct of the hearing.
- (c) At the prehearing conference, Protestant(s), the Awardee, and Caltrans shall deliver a written prehearing conference statement which contains the name of each witness a party wishes to call at hearing along with a brief written statement of the subject matter of the witness's expected testimony. If the arbitrator, in his or her exclusive discretion, allows an expert witness to be called, the party calling the witness shall provide the name and address of the expert along with a brief statement of the opinion the expert is expected to give. The party shall also attach a statement of qualifications for the expert witness.

**§130. Scheduling the Hearing.**

The arbitrator will schedule the date, time, and place of hearing and notify all Parties.

**§132. Discovery.**

The arbitrator has exclusive discretion to issue subpoenas and/or subpoena duces tecum. There shall be no right to take depositions, issue interrogatories, or subpoena persons or documents.

**§134. Attendance at Hearings.**

The Arbitration hearings shall be open to the public unless the arbitrator, in his or her exclusive discretion, determines that the attendance of individuals or groups of individuals would disrupt or delay the orderly conduct or timely completion of the proceedings.

**§136. Arbitrator's Decision.**

- (a) The final decision shall be in writing and signed by the arbitrator. It shall include a Statement of the Factual and Legal Basis for the decision, addressing the issues raised in the Detailed Written Statement(s) of Protest, and shall include an order upholding or denying the protest(s). The arbitrator's order shall not award a contract.
- (b) A copy of the decision shall be sent by regular mail to the Caltrans, the Awardee, and Protestant(s) within 45 working days after the filing of the Caltrans' response to the Detailed Written Statement(s) of Protest. In the arbitrator's exclusive discretion, this timeline may be extended for an additional 15 working days. The arbitrator's failure to issue a decision within the time specified by this section shall not be a ground for vacating the decision.

**§137. Costs.**

- (a) For protests not determined Frivolous by the Coordinator:
  - (1) If the arbitrator denies the protest, Protestant(s) will be liable for all costs of the arbitration.
  - (2) If the arbitrator upholds the protest, Caltrans shall pay for all costs of the arbitration and Protestant(s) will be refunded the deposit by OAH.
- (b) If the Coordinator determined that the protest was Frivolous and the arbitrator affirms that the protest is Frivolous, the bond shall be forfeited to Caltrans, the protest will be denied, and Protestant(s) will be liable for all costs of the arbitration.
- (c) If the Coordinator determined that the protest was Frivolous and the arbitrator determines that the protest is not Frivolous, any bond(s) posted by Protestant(s) shall be returned.
  - (1) If the arbitrator denies the protest, Protestant(s) shall be liable for half of the costs of the arbitration. Caltrans shall pay the remaining half of the arbitration costs.
  - (2) If the arbitrator upholds the protest, Caltrans shall pay for all costs of the arbitration and Protestant(s) will be refunded the deposit by OAH.
- (d) A Protestant who withdraws his or her protest before the arbitrator's decision has been issued will remain liable for all arbitration costs up to the time of withdrawal. These costs include, but are not limited to, the arbitrator's time in preparation, prehearing conferences, and hearing the protest. If the Coordinator deemed the protest Frivolous, any bond posted shall be forfeited to Caltrans.
- (e) If any costs are determined to be payable by Protestant(s), that amount shall be subtracted from deposit(s) of Protestant(s) as ordered by the arbitrator. Any additional costs shall be billed to Protestant(s) and any refunds shall be sent to Protestant(s) by OAH.

**§138. Judicial Review.**

The grounds for judicial review shall be as set forth in Chapter 4 of Title 9 of Part III of the Code of Civil Procedure (commencing with section 1285).

**§140. Transcripts.**

- (a) A party desiring a transcript of the proceedings shall contact the OAH Transcript Clerk to make arrangements to pay for preparation of the transcript. Prior to preparation of the transcript, a deposit equal to the estimated cost of the transcript shall be paid. Preparation of the transcript will be arranged by the OAH Transcript Clerk. The deposit shall be applied to the actual cost and any excess shall be returned to the party that submitted the request. Any balance due shall be paid by the party or a representative on behalf of the party requesting the transcript before the transcript is released to the requesting party.
- (b) Unless a record of a proceeding or any portion thereof was sealed, any person may request a transcript or a recording of the proceeding. If a record of a proceeding or any portion thereof was sealed, only parties to the proceeding may request a transcript of the sealed portions, and the sealed portions shall not be disclosed to anyone except in accordance with the order sealing the proceeding or subsequent order.

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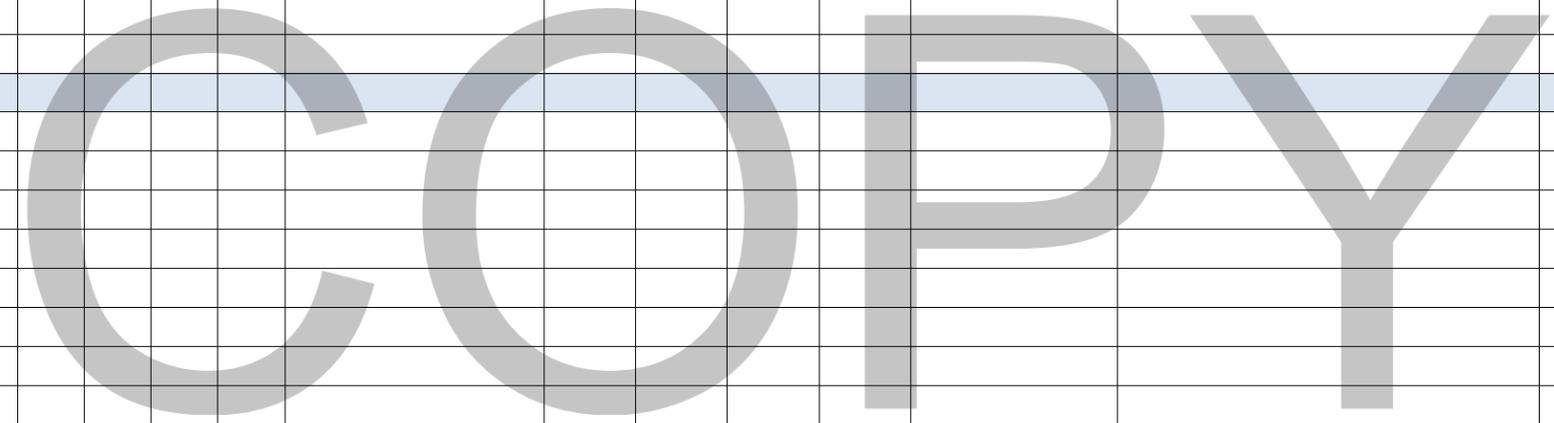
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**Appendix 3: Standardization Table**

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Item No.	1		2					3		4		5	6	7
	Proposed for standardization?		Reasoning for standardizing					Does proposer anticipate more than one supplier being able to supply standardized component, system, or interface?	Does proposer agree to allow this standardized component, system, or interface to be used in future bi-level railcar procurements?	At what point in the design revisions does the Proposer expect to update the Standardization Plan? (Prelim, Intermediate, Final, or all)		Please provide your process/methodology for establishing standardization of this component, system, and interface during the design phases	If your response to #1 was "No," please explain the reasoning for not proposing this component, system, or interface for standardization.	
	Yes	No	Proven reliability	Ease of replacement	Multiple sources	Low cost	Other (define)	Yes	No	Yes	No			
	<b>Components</b>													
1														
2														
3														
4														
5														
6														
7														
8														
9														
	<b>Systems/Interfaces</b>													
10														
11														
12														
13														
14														
15														
16														
17														
18														
19														
20														
21														
22														
23														
24														
25														
26														
27														



Number of Items Proposed for Standardization	Evaluation Points
27	5
23-26	4
19-22	3
15-18	2
11-14	1
10 or less	0

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**Appendix 4: Contract Deliverable  
Requirements List (CDRL)**

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## New Bi-Level Passenger Railcar Contract Deliverable Requirements List (CDRL) Table

#	CDRL/DR	Section	Description	When to Submit	How to Submit	Milestone
1	CDRL	GC 2	Standardization Plan	Response to RFP	1 hardcopy 1 electronic	A
2	CDRL	GC 4.2	Corrective Action Plan	As needed (each event)	1 hardcopy 1 electronic	
3	CDRL	GC 4.3	Joint Receiving Inspection		1 hardcopy for each car	N
4	CDRL	GC 4.3	Vehicle Delivery Notice		1 hardcopy for each car	N
5	CDRL	GC 4.3	Vehicle Conditional Acceptance		1 hardcopy for each car	L/N
6	CDRL	GC 5	Vehicle Certificate of Title	Upon Conditional Acceptance	1 hardcopy for each car	L/N
7	CDRL	GC 7.2	Proprietary Software list	Prior to Conditional Acceptance	1 hardcopy 1 electronic	K
8	CDRL	SP 3.2	Master Schedule	30 days after NTP	1 hardcopy 1 electronic	A
9	CDRL	SP 3.2	Monthly Progress Performance	Monthly, entire term of contract	1 hardcopy for each car	A
10	CDRL	SP 3.2.2	Warranty Service Plan	Within 30 days after NTP	1 hardcopy 1 electronic	A
11	CDRL	SP 3.2.2	Quality Assurance Plan	Within 30 days after NTP	1 hardcopy 1 electronic	A
12	CDRL	SP 3.2.2	Preliminary Test Plan outline	Within 30 days after NTP	1 hardcopy 1 electronic	A
13	CDRL	SP 3.2.2	Project Organization Chart	Within 30 days after NTP	1 hardcopy 1 electronic	A
14	CDRL	SP 3.2.2	Monthly Progress Report format	Within 30 days after NTP	1 hardcopy 1 electronic	A
15	CDRL	SP 3.2.2	Sample invoicing	Within 30 days after NTP	1 hardcopy 1 electronic	A
16	CDRL	SP 3.2.2	Warranty plans from all primary subcontractors	Within 30 days after NTP	1 hardcopy & 1 electronic for each primary subcontractors	A
17	CDRL	SP 3.2.2	Quality Assurance plans from all primary subcontractors	Within 30 days after NTP	1 hardcopy & 1 electronic for each primary subcontractors	A
18	CDRL	SP 3.2.3	Monthly Progress Report	Monthly, entire term of contract, starting the first full month after NTP	1 hardcopy & 1 electronic per month	A
19	CDRL	SP 4.8	Proposed Final Invoice in writing	Within 30 days after date Notice of Completion is issued	1 hardcopy 1 electronic	Q
20	CDRL	SP 5.1	Performance Bond	Within 30 days after Notice of Award	1 hardcopy	A
21	CDRL	SP 5.2.1	ACORD form (Certificate of Liability Insurance)	Within 30 days after Notice of Award	1 hardcopy	A

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#	CDRL/DR	Section	Description	When to Submit	How to Submit	Milestone
22	CDRL	SP 6.1	Shipping Release	Prior to shipment of each vehicle	1 hardcopy for each car	L/N
23	CDRL	SP 6.1	Vehicle History Book	Prior to shipment of each vehicle	1 hardcopy for each car	L/N
24	CDRL	SP 6.1	Exception Report	With Request for Shipping Release	1 hardcopy for each car	L/N
25	CDRL	SP 6.2	Shipping Incident Log	Appended to Vehicle History Book	1 hardcopy for each car	L/N
26	CDRL	SP 6.3	Signed "Delivery of Vehicle" receipt	Points of Delivery: Oakland, California and Chicago, Illinois	1 hardcopy for each car	N
27	CDRL	SP 6.4	Evidence of Vehicle Delivery form	After arrival at Caltrans' or designee's designated facility	1 hardcopy for each car	N
28	CDRL	SP 6.5	Acceptance Testing documents	Within 15 days after delivery	1 hardcopy 1 electronic	N
29	CDRL	SP 6.6	Special Tools, Spare Parts, Diagnostic Equipment, Manuals	In accordance with Milestone Payment Schedule	1 hardcopy 1 electronic	P
30	CDRL	SP 6.6	Draft Manuals	In accordance with Milestone Payment Schedule	1 hardcopy 1 electronic	P
31	CDRL	SP 6.6	Completed Updated Manuals		1 hardcopy 1 electronic	P
32	CDRL	SP 6.7.1	Signed Vehicle Conditional Acceptance and Certificate of Title form	When vehicle meets the conditions specified	1 hardcopy for each car	L/N
33	CDRL	SP 6.7.2	Signed Final Acceptance Checklist	Prior to Final Acceptance	1 hardcopy for each car	M/O
34	CDRL	SP 6.7.2	Signed Vehicle Final Acceptance form	Attached to invoice for Final Acceptance payment	1 hardcopy for each car	M/O
35	CDRL	SP 7.2	Bidder Declaration	At NTP	1 hardcopy 1 electronic	A
36	CDRL	SP 9.1	Inspection and Test Plan		1 hardcopy 1 electronic	A
37	CDRL	TS 3.3	Program Management Plan	45 days of NTP	1 hardcopy 1 electronic	A
38	CDRL	TS 3.3	Progress Status Report	Monthly	1 hardcopy 1 electronic	A
39	CDRL	TS 3.4.1	QA Plan	90 days of NTP	1 hardcopy 1 electronic	A
40	CDRL	TS 3.4.1.3	Records of Compliance for the QA Program Plan	Life of the Contract	1 hardcopy 1 electronic	A
41	CDRL	TS 3.5.4.2	System Safety Program	Prior to acceptance of first car	1 hardcopy 1 electronic	K
42	CDRL	TS 3.6	Engineering Plan	30 days of NTP	1 hardcopy 1 electronic	A
43	CDRL	TS 3.6.2	Approval List of Suppliers	30 days of NTP	1 hardcopy 1 electronic	A

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#	CDRL/DR	Section	Description	When to Submit	How to Submit	Milestone
44	CDRL	TS 3.6.6.1	List of assemblies and sub-assemblies subject to FAI	90 days of NTP	1 hardcopy 1 electronic	H
45	CDRL	TS 3.6.6.3	Digital Color Photographs	30 days of FAI	1 hardcopy 1 electronic	H
46	CDRL	TS 3.6.6.3	Color Photographs Album	Delivery of first car	1 hardcopy	K
47	CDRL	TS 4.10.1	FRA inspection of safety appliance applications with FRA "No Exceptions Taken" Letter	Prior to release of first car of each type	1 hardcopy 1 electronic	K
48	CDRL	TS 4.20	Crash Energy Management (CEM) and Collision Survivability Plan	Preliminary Design Review	1 hardcopy 1 electronic	B
49	DR	TS 9.4	Coach car interior colors, design, patterns and finishes	Intermediate Design Review	1 hardcopy 1 electronic	C
50	DR	TS 10.2	Heating and Cooling Load Analysis	Intermediate Design Review	1 hardcopy 1 electronic	C
51	DR	TS 11.3	Lighting Plan Design	Intermediate Design Review	1 hardcopy 1 electronic	C
52	DR	TS 11.4.1	Light Color Plan	Intermediate Design Review	1 hardcopy 1 electronic	C
53	DR	TS 11.3	Drawings of the lighting arrangement of each car type	Intermediate Design Review	1 hardcopy 1 electronic	C
54	DR	TS 11.5.4	Emergency Lighting Plan and written certification of compliance	Intermediate Design Review	1 hardcopy 1 electronic	C
55	DR	TS 11.6.3.2	Toilet Room Occupied/Out of Service Artwork	Final Design Review	1 hardcopy 1 electronic	E
56	DR	TS 12.5	Carborne equipment connectors	Final Design Review	1 hardcopy 1 electronic	E
57	DR	TS 12.6.5	GPS antenna evaluation	Intermediate Design Review	1 hardcopy 1 electronic	C
58	DR	TS 12.7	Portable Test Unit Software and its functions	Final Design Review	1 hardcopy 1 electronic	E
59	CDRL	TS 12.7	Schematic (part of the Running Maintenance Manual and Integrated Schematic Manual)	Final Design Review	1 hardcopy 1 electronic	E
60	DR	TS 12.9	Electromagnetic Compatibility (EMC) Control Plan	Preliminary Design Review	1 hardcopy 1 electronic	B
61	CDRL	TS 13.3.3	Trainline receptacles and jumper cables	Intermediate Design Review	1 hardcopy 1 electronic	C
62	DR	TS 13.8.2	DC Load Budget	Intermediate Design Review	1 hardcopy 1 electronic	C
63	DR	TS 14.8.8.1	Elevator door designs	Final Design Review	1 hardcopy 1 electronic	E
64	DR	TS 14.10.1	Physical dimensions, design and operation of the backup power supply	Intermediate Design Review	1 hardcopy 1 electronic	C
65	DR	TS 14.14	Types and styles of light fixtures	Final Design Review	1 hardcopy 1 electronic	E
66	CDRL	TS 15.2.3	FDA inspection of water and waste system w/ compliance documentation	In Vehicle's History Book	1 hardcopy	L/N
67	CDRL	TS 16.15.1.4	3 copies of required event software, 1 memory module, and 10 downloaded cables	Prior to acceptance of the first cab/baggage car	1 hardcopy	K
68	DR	TS 16.15.2	Event recorder system and alert specifications	Intermediate Design Review	1 hardcopy 1 electronic	C

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#	CDRL/DR	Section	Description	When to Submit	How to Submit	Milestone
69	DR	TS 16.16	PTC System Design evaluation	Intermediate Design Review	1 hardcopy 1 electronic	C
70	DR	TS 16.19	Seating details in the cab area mockup	Intermediate Design Review	1 hardcopy	C
71	DR	TS 16.20.9	Cup holder details in the cab area mockup	Intermediate Design Review	1 hardcopy	C
72	DR	TS 16.22.1	Cab lighting arrangement in the cab area mockup	Intermediate Design Review	1 hardcopy	C
73	DR	TS 16.26.2.1	Climate control arrangement in the cab area mockup	Intermediate Design Review	1 hardcopy	C
74	DR	16.27	Cab area interior mockup	Intermediate Design Review	1 hardcopy	C
75	CDRL	TS 17.5	Electronic artwork	Prior to delivery of the first vehicle	1 hardcopy 1 electronic	K
76	CDRL	TS 17.5	Printing and delivery of 5000 copies of the seat back safety card	Prior to delivery of the first vehicle	1 hardcopy	K
77	CDRL	TS 18.6.1	Design stress value sources (or fatigue test results)	Review and approval	1 hardcopy 1 electronic	C
78	CDRL	TS 18.12.4	Honeycomb panels tests	Review and approval	1 hardcopy 1 electronic	J
79	CDRL	TS 18.12.4	Honeycomb panels meet relevant flammability and smoke emission requirements	Final Design Review	1 hardcopy 1 electronic	E
80	CDRL	TS 18.19	Flammability and Smoke Emission Tests	Final Design Review	1 hardcopy 1 electronic	E
81	CDRL	TS 18.21	Fiberglass-Reinforced Plastic structural analysis	Intermediate Design Review	1 hardcopy 1 electronic	C
82	CDRL	TS 18.25.1	Permanent marking strip on each terminal board	Final Design Review	1 hardcopy 1 electronic	E
83	CDRL	TS 18.26.3	Conduit arrangement and installation	Intermediate Design Review	1 hardcopy 1 electronic	C
84	CDRL	TS 18.26.3	Conduit fittings and junction boxes with gasket covers	Final Design Review	1 hardcopy 1 electronic	E
85	CDRL	TS 19.3.1	Master test plan	180 days of NTP, monthly	1 hardcopy 1 electronic	A
86	CDRL	TS 19.3.4	Reports on all certification, proof of design and acceptance tests	Prior to acceptance of first car of each type	1 hardcopy 1 electronic	J
87	CDRL	TS 20.2	Specialized tools and equipment	Prior to acceptance of first car	1 hardcopy	K
88	DR	TS 20.2	List of specialized tools and equipment	Final Design Review	1 hardcopy 1 electronic	E
89	DR	TS 20.3	List of service consumables	Final Design Review	1 hardcopy 1 electronic	E
90	DR	TS 20.4	List of strategic spare parts	Final Design Review	1 hardcopy 1 electronic	E
91	CDRL	TS 22.3.1	Preliminary drawings	Prior to delivery of first car of each type	1 hardcopy 1 electronic	K
92	CDRL	TS 22.3.1	As-is built drawings	30 days after delivery of first car of each type	1 hardcopy 1 electronic	M
93	CDRL	TS 22.3.1	Bill of material	30 days after completion of last car on base order	1 hardcopy 1 electronic	P

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#	CDRL/DR	Section	Description	When to Submit	How to Submit	Milestone
94	CDRL	TS 22.3.3	4 sets of CDs of all drawings, 3-D CAD models, finite element models, bill of material, as-is built materials, and operations and maintenance manuals	30 days after delivery of last car on base order	1 hardcopy 1 electronic	P
95	CDRL	TS 22.3.4	2 bound volumes of >50 color photographs in digital format	30 days after delivery of first car of each type	1 hardcopy	M
96	CDRL	TS 22.3.5	10 sets of un-mounted color and 10 sets black/white photographs of completed cars	30 days after delivery of first car of each type	1 hardcopy 1 electronic	M
97	CDRL	TS 22.4	Revised Conformed Specification	30 days after completion of first pilot car	1 hardcopy 1 electronic	L
98	CDRL	TS 22.5.1	Master Plan and Schedule	180 days after NTP	1 hardcopy 1 electronic	A
99	CDRL	TS 22.5.1	Set of draft manuals	90 days prior to release of first car	1 hardcopy	I
100	CDRL	TS 22.5.1	10 full sets of approved manuals	Prior to acceptance of first car	1 hardcopy 1 electronic	K
101	CDRL	TS 22.5.2	Revised manuals	Car changes	1 hardcopy 1 electronic	P
102	CDRL	TS 22.5.2	10 sets finalized manuals	Completion of Warranty Period	1 hardcopy 1 electronic	P
103	CDRL	TS 22.6	Vehicle History Book	Prior to car release	1 hardcopy	L/N
104	CDRL	TS 22.7	Outline for the Training Program and Schedule	60 days prior to completion of the first pilot car	1 hardcopy 1 electronic	P
105	CDRL	TS 22.7	Training Plan and Instructional Training Materials	Before delivery of the first pilot car	1 hardcopy 1 electronic	P
106	CDRL	TS 22.7.3.3	Training Action Plan and Schedule	90 days of NTP and with meeting minutes	1 hardcopy 1 electronic	A

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**Appendix 5: Bidder Declaration**

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**Request for Proposal  
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State of California—Department of General Services, Procurement Division  
GSPD-05-105 (EST 8/05)

Solicitation Number \_\_\_\_\_

**BIDDER DECLARATION**

**1. Prime bidder information (Review attached Bidder Declaration Instructions prior to completion of this form):**

- a.** Identify current California certification(s) (MB, SB, SB/NVSA, DVBE): \_\_\_\_\_ or None \_\_\_\_ (If "None," go to Item #2)
- b.** Will subcontractors be used for this contract? **Yes** \_\_\_ **No** \_\_\_ (If yes, indicate the distinct element of work your firm will perform in this contract e.g., list the proposed products produced by your firm, state if your firm owns the transportation vehicles that will deliver the products to the State, identify which solicited services your firm will perform, etc.). Use additional sheets, as necessary.
- \_\_\_\_\_
- \_\_\_\_\_

- c.** If you are a California certified DVBE: (1) Are you a broker or agent? **Yes** \_\_\_ **No** \_\_\_  
(2) If the contract includes equipment rental, does your company own at least 51% of the equipment provided in this contract (quantity and value)? **Yes** \_\_\_ **No** \_\_\_ **N/A** \_\_\_

**2. If no subcontractors will be used, skip to certification below. Otherwise, list all subcontractors for this contract. (Attach additional pages if necessary):**

Subcontractor Name, Contact Person, Phone Number & Fax Number	Subcontractor Address & Email Address	CA Certification (MB, SB, DVBE or None)	Work performed or goods provided for this contract	Corresponding % of bid price	Good Standing?	51% Rental?

**CERTIFICATION: By signing the bid response, I certify under penalty of perjury that the information provided is true and correct.**

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State of California—Department of General Services, Procurement Division  
GSPD-05-105 (EST 8/05) Instructions

**BIDDER DECLARATION Instructions**

**All prime bidders (the firm submitting the bid) must complete the Bidder Declaration.**

**1.a.** Identify all current certifications issued by the State of California. If the prime bidder has no California certification(s), check the line labeled "None" and proceed to Item #2. If the prime bidder possesses one or more of the following certifications, enter the applicable certification(s) on the line:

- Microbusiness (MB)
- Small Business (SB)
- Small Business Nonprofit Veteran Service Agency (SB/NVSA)
- Disabled Veteran Business Enterprise (DVBE)

**1.b.** Mark either "Yes" or "No" to identify whether subcontractors will be used for the contract. If the response is "No", proceed to Item #1.c. If "Yes", enter on the line the distinct element of work contained in the contract to be performed or the goods to be provided by the prime bidder. Do not include goods or services to be provided by subcontractors.

Bidders certified as MB, SB, SB/NVSA, and/or DVBE must provide a commercially useful function as defined in Military and Veterans Code Section 999(e)(2)(A) for DVBEs and Government Code Section 14837(d)(4)(A) for small/microbusinesses. For questions regarding commercially useful function determinations made in conjunction with certification approval, contact the Department of General Services, Procurement Division, Office of Small Business and DVBE Certification (OSDC), OSDC Certification and Compliance Unit via email at: [osdchelp@dgs.ca.gov](mailto:osdchelp@dgs.ca.gov)

Bids must propose that certified bidders provide a commercially useful function for the resulting contract or the bid will be deemed non-responsive and rejected by the State. For questions regarding the solicitation, contact the procurement official identified in the solicitation.

Note: A subcontractor is any person, firm, corporation, or organization contracting to perform part of the prime's contract.

**1.c.** This item is only to be completed by businesses certified by California as a DVBE.

- (1) Declare whether the prime bidder is a broker or agent by marking either "Yes" or "No". The Military and Veterans Code Section 999.2 (b) defines "broker" or "agent" as a certified DVBE contractor or subcontractor that does not have title, possession, control, and risk of loss of materials, supplies, services, or equipment provided to an awarding department, unless one or more of the disabled veteran owners has at least 51-percent ownership of the quantity and value of the materials, supplies, services, and of each piece of equipment provided under the contract.
- (2) If bidding rental equipment, mark either "Yes" or "No" to identify if the prime bidder owns at least 51% of the equipment provided (quantity and value). If **not** bidding rental equipment, mark "N/A" for "not applicable."

**2.** If no subcontractors are proposed, do not complete the table. Read the certification at the bottom of the form and complete "Page \_\_\_ of \_\_\_" on the form.

If subcontractors will be used, complete the table listing all subcontractors. If necessary, attach additional pages and complete the "Page \_\_\_ of \_\_\_" accordingly.

**2. (continued) Column Labels**

**Subcontractor Name, Contact Person, Phone Number & Fax Number**—List each element for all subcontractors.

**Subcontractor Address & Email Address**—Enter the address and if available, an Email address.

**CA Certification (MB, SB, DVBE or None)**—If the subcontractor possesses a current State of California certification(s), verify on the OSDC website ([www.pd.dgs.ca.gov/smbus](http://www.pd.dgs.ca.gov/smbus)) that it is still valid and list all current certifications here. Otherwise, enter "None". [Note: A SB/NVSA should not be participating as a subcontractor]

**Work performed or goods provided for this contract**—Identify the distinct element of work contained in the contract to be performed or the goods to be provided by each subcontractor. Certified subcontractors must provide a commercially useful function for the contract. (See paragraph 1.b above for code citations regarding the definition of commercially useful function.) If a certified subcontractor is further subcontracting a greater portion of the work or goods provided for the resulting contract than would be expected by normal industry practices, attach a separate sheet of paper explaining the situation.

**Corresponding % of bid price**—Enter the corresponding percentage of the total bid price for the goods and/or services to be provided by each subcontractor. Do not enter a dollar amount.

**Good Standing?**—Provide a response for each subcontractor listed. Enter either "Yes" or "No" to indicate that the prime bidder has verified that the subcontractor(s) is in good standing for all of the following:

- Possesses valid license(s) for any license(s) or permits required by the solicitation or by law
- If a corporation, the company is qualified to do business in California and designated by the State of California Secretary of State to be in good standing
- Possesses valid State of California certification(s) if claiming MB, SB, and/or DVBE status
- Is **not** listed on the OSDC website as ineligible to transact business with the State

**51% Rental?**—This pertains to the applicability of rental equipment. Based on the following parameters, enter either "N/A" (not applicable), "Yes" or "No" for each subcontractor listed.

Enter "N/A" if the:

- Subcontractor is NOT a DVBE (regardless of whether or not rental equipment is provided by the subcontractor) or
- Subcontractor is NOT providing rental equipment (regardless of whether or not subcontractor is a DVBE)

Enter "Yes" if the subcontractor is a California certified DVBE providing rental equipment and the subcontractor owns at least 51% of the rental equipment (quantity and value) it will be providing for the contract.

Enter "No" if the subcontractor is a California certified DVBE providing rental equipment but the subcontractor does NOT own at least 51% of the rental equipment (quantity and value) it will be providing.

**Read the certification at the bottom of the page and complete the "Page \_\_\_ of \_\_\_" accordingly.**

**Request for Proposal  
For the Purchase of  
New Bi-Level Passenger Railcars**

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**Appendix 6: California General Provisions**

COPY

**Request for Proposal  
April 20, 2012  
75A0362**

A6-1

GSPD-401Non-IT Commodities

(REVISED AND EFFECTIVE 06/08/2010)

**GENERAL PROVISIONS**

1. **DEFINITIONS:** The following terms shall be given the meaning shown, unless context requires otherwise or a unique meaning is otherwise specified.
  - a) **"Business entity"** means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability corporation, limited liability partnership, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.
  - b) **"Buyer"** means the State's authorized contracting official.
  - c) **"Contract"** means this Contract or agreement (including any purchase order), by whatever name known or in whatever format used.
  - d) **"Contractor"** means the Business Entity with whom the State enters into this Contract. Contractor shall be synonymous with "supplier", "vendor" or other similar term.
  - e) **"Goods"** (commodities) means all types of tangible personal property, including but not limited to materials, supplies, and equipment (including computer equipment and telecommunications).
  - f) **"State"** means the government of the State of California, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the State of California.
2. **CONTRACT FORMATION:**
  - a) If this Contract results from a sealed bid offered in response to a solicitation conducted pursuant to Chapters 2 (commencing with Section 10290), 3 (commencing with Section 12100), and 3.6 (commencing with Section 12125) of Part 2 of Division 2 of the Public Contract Code (PCC), then Contractor's bid is a firm offer to the State which is accepted by the issuance of this Contract and no further action is required by either party.
  - b) If this Contract results from a solicitation other than described in paragraph a), above, Contractor's quotation or proposal is deemed a firm offer and this Contract document is the State's acceptance of that offer.
  - c) If this Contract resulted from a joint bid, it shall be deemed one indivisible Contract. Each such joint Contractor will be jointly and severally liable for the performance of the entire Contract. The State assumes no responsibility or obligation for the division of orders or purchases among joint Contractor's.
3. **COMPLETE INTEGRATION:** This Contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the Contract.
4. **SEVERABILITY:** The Contractor and the State agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.
5. **INDEPENDENT CONTRACTOR:** Contractor and the agents and employees of contractor, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State.
6. **APPLICABLE LAW:** This Contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this Contract shall be in Sacramento County, Sacramento, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.
7. **COMPLIANCE WITH STATUTES AND REGULATIONS:**
  - a) Contractor warrants and certifies that in the performance of this Contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California and agrees to indemnify the State against any loss, cost, damage or liability by reason of Contractor's violation of this provision.
  - b) If this Contract is in excess of \$554,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).
8. **CONTRACTOR'S POWER AND AUTHORITY:** The Contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this Contract.
  - a) The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
  - b) Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
9. **ASSIGNMENT:** This Contract shall not be assignable by the Contractor in whole or in part without the written consent of the State. For the purpose of this paragraph, State will not unreasonably prohibit Contractor from freely assigning its right to payment, provided that Contractor remains responsible for its obligations hereunder.
10. **WAIVER OF RIGHTS:** Any action or inaction by the State or the failure of the State on any occasion, to enforce any right or provision of the Contract, shall not be construed to be a waiver by the State of its rights hereunder and shall not prevent the State from enforcing such provision or right on any future occasion. The rights and remedies of the State herein are cumulative and are in addition to any other rights or remedies that the State may have at law or in equity.
11. **ORDER OF PRECEDENCE:** In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this Contract, the following order of precedence shall apply:
  - a) these General Provisions – Non-IT Commodities;
  - b) Contract form, i.e., Purchase Order STD 65, etc., and any amendments thereto;
  - c) Statement of Work, including any specifications incorporated by reference herein;
  - d) special terms and conditions; and
  - e) all other attachments incorporated in the Contract by reference.

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(REVISED AND EFFECTIVE 06/08/2010)

**GENERAL PROVISIONS**

**12. PACKING AND SHIPMENT:**

- a) All Goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
  - i) show the number of the container and the total number of containers in the shipment; and
  - ii) the number of the container in which the packing sheet has been enclosed.
- b) All shipments by Contractor or its subcontractors must include packing sheets identifying: the State's Contract number; item number; quantity and unit of measure; part number and description of the Goods shipped; and appropriate evidence of inspection, if required. Goods for different Contracts shall be listed on separate packing sheets.
- c) Shipments must be made as specified in this Contract, as it may be amended, or otherwise directed in writing by the State's Transportation Management Unit within the Department of General Services, Procurement Division.

**13. TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES:** No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by the State unless expressly included and itemized in the Contract.

- a) Contractor must strictly follow Contract requirements regarding Free on Board (F.O.B.), freight terms and routing instructions. The State may permit use of an alternate carrier at no additional cost to the State with advance written authorization of the Buyer.
- b) If "prepay and add" is selected, supporting freight bills are required when over \$50, unless an exact freight charge is approved by the Transportation Management Unit within the Department of General Services Procurement Division and a waiver is granted.
- c) On "F.O.B. Shipping Point" transactions, should any shipments under the Contract be received by the State in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers be wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper such as inadequate packaging or loading or some inherent defect in the equipment and/or material, Contractor, on request of the State, shall at Contractor's own expense assist the State in establishing carrier liability by supplying evidence that the equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.

**14. TIME IS OF THE ESSENCE:**

Time is of the essence in this Contract.

**15. DELIVERY:** Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If Contractor delivers in excess of the quantities specified herein, the State shall not be required to make any payment for the excess Goods, and may return them to Contractor at Contractor's expense or utilize any other rights available to the State at law or in equity.

**16. SUBSTITUTIONS:** Substitution of Goods may not be tendered without advance written consent of the Buyer. Contractor shall not use any specification in lieu of those contained in the Contract without written consent of the Buyer.

**17. INSPECTION, ACCEPTANCE AND REJECTION:**

- a) Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the State covering Goods and services under this Contract and will tender to

the State only those Goods that have been inspected and found to conform to this Contract's requirements. Contractor will keep records evidencing inspections and their result, and will make these records available to the State during Contract performance and for three years after final payment. Contractor shall permit the State to review procedures, practices, processes and related documents to determine the acceptability of Contractor's quality assurance system or other business practices related to performance of the Contract.

- b) All Goods may be subject to inspection and test by the State or its authorized representatives.
- c) Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
- d) All Goods to be delivered hereunder may be subject to final inspection, test and acceptance by the State at destination, notwithstanding any payment or inspection at source.
- e) The State shall give written notice of rejection of Goods delivered or services performed hereunder within a reasonable time after receipt of such Goods or performance of such services. Such notice of rejection will state the respects in which the Goods do not substantially conform to their specifications. If the State does not provide such notice of rejection within thirty (30) days, unless otherwise specified in the Statement of Work, of delivery, such Goods and services will be deemed to have been accepted. Acceptance by the State will be final and irreversible, except as it relates to latent defects, fraud, and gross mistakes amounting to fraud. Acceptance shall not be construed to waive any warranty rights that the State might have at law or by express reservation in this Contract with respect to any nonconformity.

**18. SAMPLES:**

- a) Samples of items may be required by the State for inspection and specification testing and must be furnished free of expense to the State. The samples furnished must be identical in all respects to the products bid and/or specified in the Contract.
- b) Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at Contractor's expense.

**19. WARRANTY:** Unless otherwise specified, the warranties contained in this Contract begin after acceptance has occurred.

- a) Contractor warrants that Goods and services furnished hereunder will conform to the requirements of this Contract (including all descriptions, specifications and drawings made a part hereof), and such Goods will be merchantable, fit for their intended purposes, free from all defects in materials and workmanship and to the extent not manufactured pursuant to detailed designs furnished by the State, free from defects in design. The State's approval of designs or specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty.
- b) All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies and users of the Goods or services.

**20. SAFETY AND ACCIDENT PREVENTION:** In performing work under this Contract on State premises, Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this Contract in accordance with the default provisions hereof.

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GSPD-401Non-IT Commodities

(REVISED AND EFFECTIVE 06/08/2010)

**GENERAL PROVISIONS**

- 21. INSURANCE:** When performing work on property in the care, custody or control of the State, Contractor shall maintain all commercial general liability insurance, workers' compensation insurance and any other insurance the State deems appropriate under the Contract. Contractor shall furnish an insurance certificate evidencing required insurance coverage acceptable to the State. Upon request by the Buyer, the Contractor may be required to have the State shown as an "additional insured" on selected policies.
- 22. TERMINATION FOR NON-APPROPRIATION OF FUNDS:**
- a) If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is contingent on the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, Contractor agrees to take back any affected Goods furnished under this Contract, terminate any services supplied to the State under this Contract, and relieve the State of any further obligation therefor.
  - b) STATE AGREES THAT IF PARAGRAPH (a) ABOVE IS INVOKED, GOODS SHALL BE RETURNED TO THE CONTRACTOR IN SUBSTANTIALLY THE SAME CONDITION IN WHICH DELIVERED TO THE STATE, SUBJECT TO NORMAL WEAR AND TEAR. STATE FURTHER AGREES TO PAY FOR PACKING, CRATING, TRANSPORTATION TO CONTRACTOR'S NEAREST FACILITY AND FOR REIMBURSEMENT TO THE CONTRACTOR FOR EXPENSES INCURRED FOR THEIR ASSISTANCE IN SUCH PACKING AND CRATING.
- 23. TERMINATION FOR THE CONVENIENCE OF THE STATE:**
- a) The State may terminate performance of work under this Contract for its convenience in whole or, from time to time, in part, if the Department of General Services, Deputy Director, Procurement Division, or designee, determines that a termination is in the State's interest. The Department of General Services, Deputy Director, Procurement Division, or designee, shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date thereof. The parties agree that, as to the terminated portion of the Contract, the Contract shall be deemed to remain in effect until such time as the termination settlement, if any, is concluded and the Contract shall not be void.
  - b) After receipt of a Notice of Termination, and except as directed by the State, the Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:
    - i) Stop work as specified in the Notice of Termination.
    - ii) Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continued portion of the Contract.
    - iii) Terminate all subcontracts to the extent they relate to the work terminated.
    - iv) Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification of which will be final for purposes of this clause.
- 24. TERMINATION FOR DEFAULT:**
- a) The State may, subject to the Force Majeure paragraph contained herein, by written notice of default to the Contractor, terminate this Contract in whole or in part if the Contractor fails to:
    - i) Deliver the Goods or to perform the services within the time specified in the Contract or any amendment thereto;
    - ii) Make progress, so as to endanger performance of this Contract (but see subparagraph (b) below); or
    - iii) Perform any of the other provisions of this Contract (but see subparagraph (b), below).
  - b) The State's right to terminate this Contract under subparagraphs (a)(ii) and (a)(iii) above, may be exercised if the Contractor does not cure such failure within the time frame stated in the cure notice issued by the Buyer.
  - c) If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the Buyer considers appropriate, Goods or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those Goods or services. However, the Contractor shall continue the work not terminated.
  - d) If the Contract is terminated for default, the State may require the Contractor to transfer title and deliver to the State, as directed by the Buyer, any:
    - i) Completed Goods, and
    - ii) Partially completed Goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and Contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this Contract. Upon direction of the Buyer, the Contractor shall also protect and preserve property in its possession in which the State has an interest.
  - e) The State shall pay Contract price for completed Goods delivered and accepted. The Contractor and Buyer shall agree on the amount of payment for manufacturing materials delivered and accepted for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the Buyer determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
  - f) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the State.
  - g) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this Contract.
- 25. FORCE MAJEURE:**
- Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include, but are not limited to:
- a) Acts of God or of the public enemy, and
  - b) Acts of the federal or state government in either its sovereign or contractual capacity.
- If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform.
- 26. RIGHTS AND REMEDIES OF STATE FOR DEFAULT:**
- a) In the event any Goods furnished or services provided by the Contractor in the performance of the Contract should fail to conform to the requirements herein, or to the sample submitted by the Contractor, the State may reject the same, and it shall become the duty of the Contractor to reclaim and remove the item promptly or to correct the performance of services, without expense to the State, and immediately replace all such rejected items with others conforming to the Contract.

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(REVISED AND EFFECTIVE 06/08/2010)

**GENERAL PROVISIONS**

- b) In addition to any other rights and remedies the State may have, the State may require Contractor, at Contractor's expense, to ship Goods via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the Contractor.
- c) In the event of the termination of the Contract, either in whole or in part, by reason of default or breach by the Contractor, any loss or damage sustained by the State in procuring any items which the Contractor agreed to supply shall be borne and paid for by the Contractor.
- d) The State reserves the right to offset the reasonable cost of all damages caused to the State against any outstanding invoices or amounts owed to Contractor or to make a claim against the Contractor therefore.
- 27. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:**
- a) The Contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the Contractor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Goods either at the Contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor.
- b) Contractor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the Contractor, or for damage to alterations or attachments that may result from the normal operation and maintenance of the Goods provided by the Contractor during the Contract.
- 28. INDEMNIFICATION:** Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all Contractors, subcontractors, suppliers, laborers and any other person, firm, or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this Contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation which may be injured or damaged by Contractor in the performance of this Contract.
- 29. INVOICES:** Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the Contract number; release order number (if applicable); item number; unit price, extended item price and invoice total amount. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.
- 30. REQUIRED PAYMENT DATE:** Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires state agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of Goods or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.
- 31. TAXES:** Unless otherwise required by law, the State of California is exempt from Federal excise taxes. The State will only pay for any State or local sales or use taxes on the services rendered or Goods supplied to the State pursuant to this Contract.
- 32. NEWLY MANUFACTURED GOODS:** All Goods furnished under this Contract shall be newly manufactured Goods; used or reconditioned Goods are prohibited, unless otherwise specified.
- 33. CONTRACT MODIFICATION:** No amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Contract is binding on any of the parties.
- 34. CONFIDENTIALITY OF DATA:** All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the Contractor in order to carry out this Contract, or which become available to the Contractor in carrying out this Contract, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession, is independently developed by the outside the scope of this Contract, or is rightfully obtained from third parties.
- 35. NEWS RELEASES:** Unless otherwise exempted, news releases pertaining to this Contract shall not be made without prior written approval of the Department of General Services.
- 36. PATENT, COPYRIGHT and TRADE SECRET INDEMNITY:**
- a) Contractor shall hold the State of California, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the Contract.
- b) Contractor may be required to furnish a bond to the State against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
- c) Contractor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the Goods or software supplied by the Contractor or the operation of such Goods pursuant to a current version of Contractor supplied operating software infringes a United States patent or copyright or violates a trade secret. The Contractor shall pay those costs and damages finally awarded against the State in any such action. Such defense and payment shall be conditioned on the following:
- i) That the Contractor shall be notified within a reasonable time in writing by the State of any notice of such claim; and,
- ii) That the Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when principles of government or public law are involved, the State shall have the option to participate in such action at its own expense.
- d) Should the Goods or software, or the operation thereof, become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement of a United States patent or copyright or a trade secret, the State shall permit the Contractor at its option and expense either to procure for the State the right to continue using the Goods or software, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such Goods or software by the State shall be prevented by injunction, the Contractor agrees to

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**GENERAL PROVISIONS**

- take back such Goods or software and make every reasonable effort to assist the State in procuring substitute Goods or software. If, in the sole opinion of the State, the return of such infringing Goods or software makes the retention of other Goods or software acquired from the Contractor under this Contract impractical, the State shall then have the option of terminating such Contracts, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such Goods or software and refund any sums the State has paid Contractor less any reasonable amount for use or damage.
- e) The Contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
- i) The combination or utilization of Goods furnished hereunder with equipment or devices not made or furnished by the Contractor; or,
  - ii) The operation of equipment furnished by the Contractor under the control of any operating software other than, or in addition to, the current version of Contractor-supplied operating software; or
  - iii) The modification by the State of the equipment furnished hereunder or of the software; or
  - iv) The combination or utilization of software furnished hereunder with non-contractor supplied software.
- f) Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.
- g) The foregoing states the entire liability of the Contractor to the State with respect to infringement of patents, copyrights or trade secrets.
- 37. EXAMINATION AND AUDIT:** Contractor agrees that the State, or its designated representative shall have the right to review and copy any records and supporting documentation pertaining to performance of this Contract. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Contract.
- 38. DISPUTES:**
- a) The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, Contractor shall submit to the Department Director or designee a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this Contract, unless the State, on its own initiative, has already rendered such a final decision. Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the Contract adjustment for which Contractor believes the State is liable. If the Contractor is not satisfied with the decision of the Department Director or designee, the Contractor may appeal the decision to the Department of General Services, Deputy Director, Procurement Division. In the event that this Contract is for information technology Goods and/or services, the decision may be appealed to an Executive Committee of State and Contractor personnel.
  - b) Pending the final resolution of any dispute arising under, related to or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of Goods or providing of services in accordance with the State's instructions. Contractor's failure to diligently proceed in accordance with the State's instructions shall be considered a material breach of this Contract.
  - c) Any final decision of the State shall be expressly identified as such, shall be in writing, and shall be signed by the Department Director or designee or Deputy Director, Procurement Division if an appeal was made. If the State fails to render a final decision within 90 days after receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contentions. The State's final decision shall be conclusive and binding regarding the dispute unless Contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.
- 39. STOP WORK:**
- a) The State may, at any time, by written Stop Work Order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this Contract for a period up to 90 days after the Stop Work Order is delivered to the Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 90 days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:
    - i) Cancel the Stop Work Order; or
    - ii) Terminate the work covered by the Stop Work Order as provided for in the termination by default or the termination for convenience clause of this Contract.
  - b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:
    - i) The Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this Contract; and
    - ii) The Contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.
  - c) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Convenience of the State, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
  - d) The State shall not be liable to the Contractor for loss of profits because of a Stop Work Order issued under this clause.
- 40. PRIORITY HIRING CONSIDERATIONS:**  
If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with PCC Section 10353.

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**GENERAL PROVISIONS**

- 41. COVENANT AGAINST GRATUITIES:** The Contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the State with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the State shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.
- 42. NONDISCRIMINATION CLAUSE:**
- a) During the performance of this Contract, Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- b) The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.
- 43. NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, PCC Section 10296.
- 44. ASSIGNMENT OF ANTITRUST ACTIONS**  
Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:
- a) In submitting a bid to the State, the supplier offers and agrees that if the bid is accepted, it will assign to the State all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of Goods, material, or services by the supplier for sale to the State pursuant to the solicitation. Such assignment shall be made and become effective at the time the State tenders final payment to the supplier.
- b) If the State receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.
- c) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and
- i) the assignee has not been injured thereby, or
- ii) the assignee declines to file a court action for the cause of action.
- 45. DRUG-FREE WORKPLACE CERTIFICATION:**  
The Contractor certifies under penalty of perjury under the laws of the State of California that the Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:
- a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
- b) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
- i) the dangers of drug abuse in the workplace;
- ii) the person's or organization's policy of maintaining a drug-free workplace;
- iii) any available counseling, rehabilitation and employee assistance programs; and,
- iv) penalties that may be imposed upon employees for drug abuse violations.
- c) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting Contract:
- i) will receive a copy of the company's drug-free policy statement; and,
- ii) will agree to abide by the terms of the company's statement as a condition of employment on the Contract.
- 46. FOUR-DIGIT DATE COMPLIANCE:**  
Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date Compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.
- 47. SWEATFREE CODE OF CONDUCT:**
- a) Contractor declares under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the State pursuant to the Contract have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at [www.dir.ca.gov](http://www.dir.ca.gov), and Public Contract Code Section 8108.

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- b) Contractor agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under paragraph (a).
48. **RECYCLING:** The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, Goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (PCC 12205).
49. **CHILD SUPPORT COMPLIANCE ACT:** For any Contract in excess of \$100,000, the Contractor acknowledges in accordance with PCC Section 7110, that:
- a) The Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
- b) The Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
50. **AMERICANS WITH DISABILITIES ACT:** Contractor assures the State that Contractor complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq).
51. **ELECTRONIC WASTE RECYCLING ACT OF 2003:** The Contractor certifies that it complies with the requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code, relating to hazardous and solid waste. Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.
52. **USE TAX COLLECTION:** In accordance with PCC Section 10295.1, Contractor certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Contractor further certifies that it will immediately advise State of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC Section 10295.1.
53. **EXPATRIATE CORPORATIONS:** Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC Section 10286 and 10286.1, and is eligible to Contract with the State.
54. **DOMESTIC PARTNERS:** For Contracts over \$100,000 executed or amended after January 1, 2007, the Contractor certifies that the Contractor is in compliance with Public Contract Code Section 10295.3.
55. **SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:**
- a) If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)
- b) If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)
56. **LOSS LEADER:** It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10302(b).)

COPY

**Request for Proposal  
For the Purchase of  
New Bi-Level Passenger Railcars**

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**Appendix 7: State of Illinois Standard  
Certifications**

COPY

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**STANDARD CERTIFICATIONS**

Vendor acknowledges and agrees that compliance with this section and each subsection for the term of the contract and any renewals is a material requirement and condition of this contract. By executing this contract Vendor certifies compliance with this section and each subsection and is under a continuing obligation to remain in compliance and report any non-compliance.

This section, and each subsection, applies to subcontractors used on this contract. Vendor shall include these Standard Certifications in any sub-contract used in the performance of the contract using the Standard Subcontractor Certification form provided by the State.

If this contract extends over multiple fiscal years including the initial term and all renewals, Vendor and its subcontractors shall confirm compliance with this section in the manner and format determined by the State by the date specified by the State and in no event later than July 1 of each year that this contract remains in effect.

If the Parties determine that any certification in this section is not applicable to this contract it may be stricken without affecting the remaining subsections.

1. As part of each certification, Vendor acknowledges and agrees that should Vendor or its subcontractors provide false information, or fail to be or remain in compliance with the Standard Certification requirements, one or more of the following sanctions will apply:

- the contract may be void by operation of law,
- the State may void the contract, and
- the Vendor and its subcontractors may be subject to one or more of the following: suspension, debarment, denial of payment, civil fine, or criminal penalty.

Identifying a sanction or failing to identify a sanction in relation to any of the specific certifications does not waive imposition of other sanctions or preclude application of sanctions not specifically identified.

2. Vendor certifies it and its employees will comply with applicable provisions of the U.S. Civil Rights Act, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) and applicable rules in performance under this contract.

3. Vendor certifies it is not in default on an educational loan (5 ILCS 385/3). This applies to individuals, sole proprietorships, partnerships and individuals as members of LLCs.

4. Vendor (if an individual, sole proprietor, partner or an individual as member of a LLC) certifies it has not received an (i) an early retirement incentive prior to 1993 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code, 40 ILCS 5/14-108.3 and 40 ILCS 5/16-133.3, or (ii) an early retirement incentive on or after 2002 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code, 40 ILCS 5/14-108.3 and 40 ILCS 5/16-133, (30 ILCS 105/15a).

5. Vendor certifies it is a properly formed and existing legal entity (30 ILCS 500/1.15.80, 20-43); and as applicable has obtained an assumed name certificate from the appropriate authority, or has registered to conduct business in Illinois and is in good standing with the Illinois Secretary of State.

6. To the extent there was a incumbent Vendor providing the services covered by this contract and the employees of that Vendor that provide those services are covered by a collective bargaining agreement, Vendor certifies (i) that it will offer to assume the collective bargaining obligations of the prior employer, including any existing collective bargaining agreement with the bargaining representative of any existing collective bargaining unit or units performing substantially similar work to the services covered by the contract subject to its bid or offer; and (ii) that it shall offer employment to all employees currently employed in any existing bargaining unit performing substantially similar work that will be performed under this contract (30 ILCS 500/25-80). This does not apply to heating, air conditioning, plumbing and electrical service contracts.

7. Vendor certifies it has not been convicted of bribing or attempting to bribe an officer or employee of the State of Illinois or any other State, nor has Vendor made an admission of guilt of such conduct that is a matter of record (30 ILCS 500/50-5).

8. If Vendor has been convicted of a felony, Vendor certifies at least five years have passed after the date of completion of the sentence for such felony, unless no person held responsible by a prosecutor's office for the facts upon which the conviction was based continues to have any involvement with the business (30 ILCS 500/50-10).

9. If Vendor, or any officer, director, partner, or other managerial agent of Vendor, has been convicted of a felony under the Sarbanes-Oxley Act of 2002, or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953, Vendor certifies at least five years have passed since the date of the conviction. Vendor further certifies that it is not barred from being awarded a contract and acknowledges that the State shall declare the contract void if this certification is false (30 ILCS 500/50-10.5).

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10. Vendor certifies it is not barred from having a contract with the State based on violating the prohibition on providing assistance to the state in identifying a need for a contract (except as part of a public request for information process) or by reviewing, drafting or preparing solicitation or similar documents for the State (30 ILCS 500/50-10.5e).
11. Vendor certifies that it and its affiliates are not delinquent in the payment of any debt to the State (or if delinquent has entered into a deferred payment plan to pay the debt), and Vendor and its affiliates acknowledge the State may declare the contract void if this certification is false (30 ILCS 500/50-11) or if Vendor or an affiliate later becomes delinquent and has not entered into a deferred payment plan to pay off the debt (30 ILCS 500/50-60).
12. Vendor certifies that it and all affiliates shall collect and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with provisions of the Illinois Use Tax Act (30 ILCS 500/50-12) and acknowledges that failure to comply can result in the contract being declared void.
13. Vendor certifies that it has not been found by a court or the Pollution Control Board to have committed a willful or knowing violation of the Environmental Protection Act within the last five years, and is therefore not barred from being awarded a contract (30 ILCS 500/50-14).
14. Vendor certifies it has not paid any money or valuable thing to induce any person to refrain from bidding on a State contract, nor has Vendor accepted any money or other valuable thing, or acted upon the promise of same, for not bidding on a State contract (30 ILCS 500/50-25).
15. Vendor certifies it is not in violation of the "Revolving Door" section of the Illinois Procurement Code (30 ILCS 500/50-30).
16. Vendor certifies that it has not retained a person or entity to attempt to influence the outcome of a procurement decision for compensation contingent in whole or in part upon the decision or procurement (30 ILCS 500/50-38).
17. Vendor certifies it will report to the Illinois Attorney General and the Chief Procurement Officer any suspected collusion or other anti-competitive practice among any bidders, offerors, contractors, proposers or employees of the State (30 ILCS 500/50-40, 50-45, 50-50).
18. In accordance with the Steel Products Procurement Act, Vendor certifies steel products used or supplied in the performance of a contract for public works shall be manufactured or produced in the United States, unless the executive head of the procuring agency grants an exception (30 ILCS 565).
19. a) If Vendor employs 25 or more employees and this contract is worth more than \$5000, Vendor certifies it will provide a drug free workplace pursuant to the Drug Free Workplace Act.  
b) If Vendor is an individual and this contract is worth more than \$5000, Vendor shall not engage in the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance during the performance of the contract (30 ILCS 580).
20. Vendor certifies that neither Vendor nor any substantially owned affiliate is participating or shall participate in an international boycott in violation of the U.S. Export Administration Act of 1979 or the applicable regulations of the U.S. Department of Commerce. This applies to contracts that exceed \$10,000 (30 ILCS 582).
21. Vendor certifies it has not been convicted of the offense of bid rigging or bid rotating or any similar offense of any state or of the United States (720 ILCS 5/33 E-3, E-4).
22. Vendor certifies it complies with the Illinois Department of Human Rights Act and rules applicable to public contracts, including equal employment opportunity, refraining from unlawful discrimination, and having written sexual harassment policies (775 ILCS 5/2-105).
23. Vendor certifies it does not pay dues to or reimburse or subsidize payments by its employees for any dues or fees to any "discriminatory club" (775 ILCS 25/2).
24. Vendor certifies it complies with the State Prohibition of Goods from Forced Labor Act, and certifies that no foreign-made equipment, materials, or supplies furnished to the State under the contract have been or will be produced in whole or in part by forced labor, or indentured labor under penal sanction (30 ILCS 583).
25. Vendor certifies that no foreign-made equipment, materials, or supplies furnished to the State under the contract have been produced in whole or in part by the labor or any child under the age of 12 (30 ILCS 584).

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26. Vendor certifies that it is not in violation of Section 50-14.5 of the Illinois Procurement Code (30 ILCS 500/50-14.5) that states: "Owners of residential buildings who have committed a willful or knowing violation of the Lead Poisoning Prevention Act (410 ILCS 45) are prohibited from doing business with the State until the violation is mitigated".

27. Vendor warrants and certifies that it and, to the best of its knowledge, its subcontractors have and will comply with Executive Order No. 1 (2007). The Order generally prohibits Vendors and subcontractors from hiring the then-serving Governor's family members to lobby procurement activities of the State, or any other unit of government in Illinois including local governments if that procurement may result in a contract valued at over \$25,000. This prohibition also applies to hiring for that same purpose any former State employee who had procurement authority at any time during the one-year period preceding the procurement lobbying activity.

28. Vendor certifies that information technology, including electronic information, software, systems and equipment, developed or provided under this contract will comply with the applicable requirements of the Illinois Information Technology Accessibility Act Standards as published at [www.dhs.state.il.us/iitaa](http://www.dhs.state.il.us/iitaa). (30 ILCS 587)

29. Vendor certifies that it has read, understands, and is in compliance with the registration requirements of the Elections Code (10 ILCS 5/9-35) and the restrictions on making political contributions and related requirements of the Illinois Procurement Code (30 ILCS 500/20-160 and 50-37). Vendor will not make a political contribution that will violate these requirements. These requirements are effective for the duration of the term of office of the incumbent Governor or for a period of 2 years after the end of the contract term, whichever is longer.

In accordance with section 20-160 of the Illinois Procurement Code, Vendor certifies as applicable:

- Vendor is not required to register as a business entity with the State Board of Elections.  
or  
 Vendor has registered **and has attached a copy** of the official certificate of registration as issued by the State Board of Elections. As a registered business entity, Vendor acknowledges a continuing duty to update the registration as required by the Act.

VENDOR (show Company name and DBA)

\_\_\_\_\_

Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



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**DISCLOSURES AND CONFLICTS OF INTEREST**

**Instructions:** Vendor shall disclose financial interests, potential conflicts of interest and contract information identified in Sections 1, 2 and 3 below as a condition of receiving an award or contract (30 ILCS 500/50-13 and 50-35). Failure to fully disclose shall render the contract, bid, proposal, sub-contract, or relationship voidable by the chief procurement officer if s/he deems it in the best interest of the State of Illinois and may be cause for barring from future contracts, bids, proposals, subcontracts, or relationships with the State.

- There are six sections to this form and each must be completed to meet full disclosure requirements.
- Note: The requested disclosures are a continuing obligation and must be promptly supplemented for accuracy throughout the process and throughout the term of the resultant contract if the bid/offer is awarded. As required by 30 ILCS 500/50-2, for multi-year contracts Vendors must submit these disclosures on an annual basis.

A publicly traded entity may submit its 10K disclosure in satisfaction of the disclosure requirements set forth in Section 1 below. HOWEVER, if a Vendor submits a 10K, they must still must complete Sections 2, 3, 4, 5 and 6 and submit the disclosure form.

If the Vendor is a wholly owned subsidiary of a parent organization, separate disclosures must be made by the Vendor and the parent. For purposes of this form, a parent organization is any entity that owns 100% of the Vendor.

This disclosure information is submitted on behalf of (show official name of Vendor, and if applicable, D/B/A and parent):

Name of Vendor: \_\_\_\_\_

D/B/A (if used): \_\_\_\_\_

Name of any Parent Organization: \_\_\_\_\_

**Section 1: Section 50-35 Disclosure of Financial Interest in the Vendor. (All Vendors must complete this section)**

*Vendors must complete subsection (a), (b) or (c) below. Please read the following subsections and complete the information requested.*

- a. If Vendor is a Publicly traded corporation subject to SEC reporting requirements
- i. Vendor shall submit their 10K disclosure (include proxy if referenced in 10k) in satisfaction of the financial and conflict of interest disclosure requirements set forth in subsections 50-35 (a) and (b) of the Procurement Code. The SEC 20f or 40f, supplemented with the names of those owning in excess of 5% and up to the ownership percentages disclosed in those submissions, may be accepted as being substantially equivalent to 10K.

Check here if submitting a 10k , 20f , or 40f .

**OR**

- b. If Vendor is a privately held corporation with more than 400 shareholders

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- i. These Vendors may submit the information identified in 17 CFR 229.401 and list the names of any person or entity holding any ownership share in excess of 5% in satisfaction of the financial and conflict of interest disclosure requirements set forth in subsections 50-35 a and b of the Illinois Procurement Code.

OR

- c. If Vendor is an individual, sole proprietorship, partnership or any other not qualified to use subsections (A) or (B), complete (i) and (ii) below as appropriate.

- i. For **each individual** having any of the following financial interests in the Vendor (or its parent), please mark each that apply and show the applicable name and address. Use a separate form for each individual.

1. Do you have an ownership share of greater than 5% of the offering entity or parent entity?

Yes  No

2. Do you have an ownership share of less than 5%, but which has a value greater than \$106,447.20?

Yes  No

3. Do you receive more than \$106,447.20 of the offering entity's or parent entity's distributive income? (Note: Distributive income is, for these purposes, any type of distribution of profits. An annual salary is not distributive income.)

Yes  No

4. Do you receive greater than 5% of the offering entity's or parent entity's total distributive income, but which is less than \$106,447.20?

Yes  No

5. If you responded yes to any of questions 1 – 4 above, please provide either the percentage or dollar amount of your ownership or distributive share of income: \_\_\_\_\_. For partnerships with more than 50 partners, the percentage share of ownership of each individual identified above may be shown in the following ranges (dollar value fields must also be completed when applicable):

0.5% or less \_\_\_\_\_ >0.5 to 1.0% \_\_\_\_\_ >1.0 to 2.0% \_\_\_\_\_ >2.0 to 3.0 % \_\_\_\_\_ > 3.0 to 4.0% \_\_\_\_\_ %  
>4.0 to 5.0% \_\_\_\_\_ and in additional 1% increments as appropriate \_\_\_\_\_ %

6. If you responded yes to any of the questions 1-4 above, please check the appropriate type of ownership/distributable income share:

Sole Proprietorship       Stock  Partnership       Other (explain) \_\_\_\_\_

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

Address: \_\_\_\_\_

- ii. In relation to individuals identified above, indicate whether any of the following potential conflict of interest relationships apply. If "Yes," please describe each situation (label with appropriate letter) using the space at the end of this Section (attach additional pages as necessary). If no individual has been identified above, mark not applicable (N/A) here \_\_\_\_\_.

(a) State employment, currently or in the previous 3 years, including contractual employment of services directly with the individuals identified in Section 1 in their individual capacity unrelated to the Vendor's contract. Yes  No

(b) State employment of spouse, father, mother, son, or daughter, including contractual employment for services in the previous 2 years. Yes  No

(c) Elective status; the holding of elective office of the State of Illinois, the government of the United States, any unit of local government authorized by the Constitution of the State of Illinois or the statutes of the State of Illinois currently or in the previous 3 years. Yes  No

(d) Relationship to anyone holding elective office currently or in the previous 2 years; spouse, father, mother, son, or daughter. Yes  No

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- (e) Appointive office; the holding of any appointive government office of the State of Illinois, the United States of America, or any unit of local government authorized by the Constitution of the State of Illinois or the statutes of the State of Illinois, which office entitles the holder to compensation in excess of expenses incurred in the discharge of that office currently or in the previous 3 years. Yes  No
- (f) Relationship to anyone holding appointive office currently or in the previous 2 years; spouse, father, mother, son, or daughter. Yes  No
- (g) Employment, currently or in the previous 3 years, as or by any registered lobbyist of the State government. Yes  No
- (h) Relationship to anyone who is or was a registered lobbyist in the previous 2 years; spouse, father, mother, son, or daughter. Yes  No
- (i) Compensated employment, currently or in the previous 3 years, by any registered election or re-election committee registered with the Secretary of State or any county clerk in the State of Illinois, or any political action committee registered with either the Secretary of State or the Federal Board of Elections. Yes  No
- (j) Relationship to anyone; spouse, father, mother, son, or daughter; who is or was a compensated employee in the last 2 years of any registered election or reelection committee registered with the Secretary of State or any county clerk in the State of Illinois, or any political action committee registered with either the Secretary of State or the Federal Board of Elections. Yes  No

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**Section 2: Section 50-13 Conflicts of Interest** *(All Vendors must complete this section)*

(a) Prohibition. It is unlawful for any person holding an elective office in this State, holding a seat in the General Assembly, or appointed to or employed in any of the offices or agencies of State government and who receives compensation for such employment in excess of 60% of the salary of the Governor of the State of Illinois [\$106,447.20], or who is an officer or employee of the Capital Development Board or the Illinois Toll Highway Authority, or who is the spouse or minor child of any such person to have or acquire any contract, or any direct pecuniary interest in any contract therein, whether for stationery, printing, paper, or any services, materials, or supplies, that will be wholly or partially satisfied by the payment of funds appropriated by the General Assembly of the State of Illinois or in any contract of the Capital Development Board or the Illinois Toll Highway Authority.

(b) Interests. It is unlawful for any firm, partnership, association, or corporation, in which any person listed in subsection (a) is entitled to receive (i) more than 7 1/2% of the total distributable income or (ii) an amount in excess of the salary of the Governor (\$177,412.00), to have or acquire any such contract or direct pecuniary interest therein.

(c) Combined interests. It is unlawful for any firm, partnership, association, or corporation, in which any person listed in subsection (a) together with his or her spouse or minor children is entitled to receive (i) more than 15%, in the aggregate, of the total distributable income or (ii) an amount in excess of 2 times the salary of the Governor [\$354,824.00], to have or acquire any such contract or direct pecuniary interest therein.

Check One:            No Conflicts Of Interest  
                               Potential Conflict of Interest (If checked, name each conflicted individual, the nature of the conflict, and the name of the State agency that is associated directly or indirectly with the conflicted individual.)

**Section 3: Debarment/Legal Proceeding Disclosure** *(All Vendors must complete this section)*

Each of the persons identified in Sections 1, 2 and 3 must each identify any of the following that occurred within the previous 10 years:

Debarment from contracting with any governmental entity	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Professional licensure discipline	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Bankruptcies	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Adverse civil judgments and administrative findings	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Criminal felony convictions	Yes <input type="checkbox"/>	No <input type="checkbox"/>

If any of the above is checked yes, please identify with descriptive information the nature of the debarment and legal proceeding. The State reserves the right to request more information, should the information need further clarification.

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**Section 4: Disclosure of Business Operations with Iran** *(All Vendors must complete this section)*

In accordance with 30 ILCS 500/50-36, each bid, offer, or proposal submitted for a State contract, other than a small purchase defined in Section 20-20 [of the Illinois Procurement Code], shall include a disclosure of whether or not the bidder, offeror, or proposing entity, or any of its corporate parents or subsidiaries, within the 24 months before submission of the bid, offer, or proposal had business operations that involved contracts with or provision of supplies or services to the Government of Iran, companies in which the Government of Iran has any direct or indirect equity share, consortiums or projects commissioned by the Government of Iran and:

- (1) more than 10% of the company's revenues produced in or assets located in Iran involve oil-related activities or mineral-extraction activities; less than 75% of the company's revenues produced in or assets located in Iran involve contracts with or provision of oil-related or mineral – extraction products or services to the Government of Iran or a project or consortium created exclusively by that Government; and the company has failed to take substantial action;  
or
- (2) the company has, on or after August 5, 1996, made an investment of \$20 million or more, or any combination of investments of at least \$10 million each that in the aggregate equals or exceeds \$20 million in any 12- month period that directly or significantly contributes to the enhancement of Iran's ability to develop petroleum resources of Iran.

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A bid, offer, or proposal that does not include this disclosure shall not be considered responsive. We may consider this disclosure when evaluating the bid, offer, or proposal or awarding the contract.

You must check one of the following items and if item 2 is checked you must also make the necessary disclosure:

- There are no business operations that must be disclosed to comply with the above cited law.
- The following business operations are disclosed to comply with the above cited law:

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**Section 5: Current and Pending Contracts** *(All Vendors must complete this section).*

Does the Vendor have any contracts pending contracts, bids, proposals or other ongoing procurement relationships with units of State of Illinois government? Yes  No

If yes, please identify each contract, pending contract, bid, proposal and other ongoing procurement relationship it has with units of State of Illinois government by showing agency name and other descriptive information such as bid number, project title, purchase order number or contract reference number.

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**Section 6: Representative Lobbyist/Other Agent** *(All Vendors must complete this section).*

Is the Vendor represented by or employing a lobbyist required to register under the Lobbyist Registration Act or other agent who is not identified under Sections 1 and 2 and who has communicated, is communicating, or may communicate with any State officer or employee concerning the bid, offer or contract? Yes  No

If yes, please identify each agent / lobbyist, including name and address.

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Costs/Fees/Compensation/Reimbursements related to assistance to obtain contract (describe):

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Vendor certifies that none of these costs will be billed to the State in the event of contract award. Vendor must file this information with the Secretary of State.

**This Disclosure is signed and made under penalty of perjury pursuant to Sections 500/50-13 and 500/50-35(a) of the Illinois Procurement Code.**

This Disclosure information is submitted on behalf of: \_\_\_\_\_  
(Vendor/Subcontractor Name)

Name of Authorized Representative: \_\_\_\_\_  
Title of Authorized Representative: \_\_\_\_\_

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Signature of Authorized Representative:  
Date:

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