

State of Florida  
Department of Transportation  
District Five  
Procurement Services, MS #524-4  
719 South Woodland Boulevard  
DeLand, Florida 32720-6834

**REQUEST FOR PROPOSAL REGISTRATION**

\*\*\*\*\*

**PLEASE COMPLETE AND RETURN THIS FORM ASAP  
TO THE ABOVE ADDRESS OR FAX TO 850-412-8092**

\*\*\*\*\*

RFP Number: RFP-DOT-14-15-5015-LLR

Title: Central Florida Rail Corridor (CFRC) Commodities – Continuously Welded Rail (CWR)

Proposal Due Date & Time (On or Before): June 23, 2015 12:00 Noon

Potential proposers should notify our office by returning this Registration Form as soon as possible after downloading. Complete the information below and fax this sheet only to the Florida Department of Transportation Procurement Office at (850) 412-8092, or mail to the address noted above.

**THE REQUEST FOR PROPOSAL DOCUMENT YOU RECEIVED IS SUBJECT TO CHANGE. Notice of changes (addenda), will be posted on the Florida Vendor Bid System at [www.myflorida.com](http://www.myflorida.com), under this RFP number (click on “BUSINESS”, click on “Doing Business with the State”, under “Everything for Vendors and Customers”, click on “Vendor Bid System (VBS)”, then click on “Search Advertisements”, click on the drop-down arrow beside the box under Advertisement Type, select Competitive Solicitation, click on the drop-down arrow beside the box under Agency, select DEPARTMENT OF TRANSPORTATION, then go to the bottom of the same page and click on Initiate Search). It is the responsibility of all potential proposers to monitor this site for any changing information prior to submitting your proposal.**

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

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_ Fax Number: (\_\_\_\_) \_\_\_\_\_

Contact Person: \_\_\_\_\_

Internet E-Mail Address: \_\_\_\_\_

For further information on this process, you may e-mail or telephone: Ashley Henning, Purchasing Agent  
Email: [Ashley.Henning@dot.state.fl.us](mailto:Ashley.Henning@dot.state.fl.us)

**BID PRICE PROPOSAL Form**  
**Central Florida Rail Corridor (CFRC) Commodities – Continuously Welded Rail**  
**RFP-DOT-14-15-5015-LLR**

<u>Item</u>	<u>Units</u>	<u>Description</u>	<u>Amount</u>
1	68,800	115RE standard strength continuously Welded Rail (CWR) tee rail, 1,600 Ft. Strings	
		Per String Price: \$ _____	\$ _____
2	11,200	115RE head hardened continuously Welded Rail (CWR) tee rail, 1,600 Ft. Strings	
		Per String Price: \$ _____	\$ _____
<b>TOTAL MAXIMUM AMOUNT Line 1 plus Line 2 **</b>			<b>\$ _____</b>

Price evaluation is the process of examining a prospective price without evaluation of the separate cost elements and proposed profit of the potential provider. Price analysis is conducted through the comparison of price quotations submitted.

\*\* The number shown here will be used for bidding purposes

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

Contractor Number: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

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

Printed Name: \_\_\_\_\_

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

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

**MFMP Transaction Fee:**

All payment(s) to the vendor resulting from this competitive solicitation **WILL** be subject to the 1% MFMP Transaction Fee in accordance with the attached Form PUR 1000 General Contract Condition #14.

**NOTE:** In submitting a response, the proposer acknowledges they have read and agree to the solicitation terms and conditions and their submission is made in conformance with those terms and conditions.

**ACKNOWLEDGEMENT:** I certify that I have read and agree to abide by all terms and conditions of this

**BID PRICE PROPOSAL Form**  
**Central Florida Rail Corridor (CFRC) Commodities – Continuously Welded Rail**  
**RFP-DOT-14-15-5015-LLR**

solicitation and that I am authorized to sign for the proposer. I certify that the response submitted is made in conformance with all requirements of the solicitation.

Proposer: \_\_\_\_\_ FEID # \_\_\_\_\_

Address: \_\_\_\_\_ City, State, Zip \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed / Typed: \_\_\_\_\_ Title: \_\_\_\_\_

**CONTRACTOR DATA SHEET**  
**CENTRAL FLORIDA RAIL Corridor (CFRC)**  
**Commodities – Continuously Welded Rail (CWR)**  
**RFP-DOT-14-15-5015-LLR**

CORPORATE INFORMATION

DATE: \_\_\_\_\_

FEDERAL EMPLOYER IDENTIFICATION NUMBER (FEID): \_\_\_\_\_  
(State Purchasing System (SPURS) Contractor Number)

CONTRACTOR NAME: \_\_\_\_\_

CORPORATE STRUCTURE: (Inc./LLC): \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY, STATE, ZIP: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

CELLULAR: \_\_\_\_\_

TOLL FREE NO.: (800) \_\_\_\_\_ FAX NO.: \_\_\_\_\_ / \_\_\_\_\_

INTERNET E-MAIL ADDRESS: \_\_\_\_\_

INTERNET WEBSITE URL: \_\_\_\_\_

LOCAL OFFICE INFORMATION, (If other than above)

CONTACT NAME: \_\_\_\_\_

ALTERNATE CONTACT: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY, STATE, ZIP: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

CELLULAR: \_\_\_\_\_

TOLL FREE NO.: (800) \_\_\_\_\_ FAX NO.: \_\_\_\_\_ / \_\_\_\_\_

INTERNET E-MAIL ADDRESS: \_\_\_\_\_

**CONTRACTOR DATA SHEET  
CENTRAL FLORIDA RAIL Corridor (CFRC)  
Commodities – Continuously Welded Rail (CWR)  
RFP-DOT-14-15-5015-LLR**

**RFP Requirements**

1) REGISTERED IN MYFLORIDAMARKETPLACE:\_(Y/N) \_\_\_\_\_Attach Proof

5.2) AUTHORIZED TO DO BUSINESS IN THE STATE OF FLORIDA: (Y/N)\_\_\_\_\_Attach Proof

5.3) LICENSED TO CONDUCT BUSINESS IN THE STATE OF FLORIDA: (As Applicable)

(Y/N)

Attach Proof

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
DRUG-FREE WORKPLACE PROGRAM CERTIFICATION  
RFP-DOT-14-15-5015-LLR

287.087 Preference to businesses with drug-free workplace programs. --Whenever two or more bids, proposals, or replies that are equal with respect to price, quality, and service are received by the state or by any political subdivision for the procurement of commodities or contractual services, a bid, proposal, or reply received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. In order to have a drug- free workplace program, a business shall:

(1) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.

(2) Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.

(3) Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).

(4) In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than 5 days after such conviction.

(5) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community by, any employee who is so convicted.

(6) Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

**Does the individual responding to this solicitation certify that their firm has implemented a drug-free workplace program in accordance with the provision of Section 287.087, Florida Statutes, as stated above?**

YES

NO

Name of Business: \_\_\_\_\_

\_\_\_\_\_  
(Authorized Signature in Ink)

\_\_\_\_\_  
(Date)

(Print Name)

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**BID OPPORTUNITY LIST FOR PROFESSIONAL CONSULTANT SERVICES,  
AND COMMODITIES & CONTRACTUAL SERVICES**

375-040-62  
PROCUREMENT  
04/07

Prime Contractor/Prime Consultant: \_\_\_\_\_

Address/Phone Number: \_\_\_\_\_

Procurement Number/Advertisement Number: \_\_\_\_\_

49 CFR Part 26.11 The list is intended to be a listing of all firms that are participating, or attempting to participate, on DOT-assisted contracts. The list must include all firms that bid on prime contracts, or bid or quote subcontracts and supplies materials on DOT-assisted projects, including both DBEs and non-DBEs. For consulting companies this list must include all subconsultants contacting you and expressing an interest in teaming with you on a specific DOT-assisted project. Prime contractors and consultants must provide information for Numbers 1, 2, 3 and 4, and should provide any information they have available on Numbers 5, 6, 7, and 8 for themselves, and their subcontractors and subconsultants.

1. Federal Tax ID Number: _____	6. <input type="checkbox"/> DBE	8. Annual Gross Receipts
2. Firm Name: _____	<input type="checkbox"/> Non-DBE	<input type="checkbox"/> Less than \$1 million
3. Phone: _____		<input type="checkbox"/> Between \$1 - \$5 million
4. Address: _____		<input type="checkbox"/> Between \$5 - \$10 million
_____	7. <input type="checkbox"/> Subcontractor	<input type="checkbox"/> Between \$10 - \$15 million
_____	<input type="checkbox"/> Subconsultant	<input type="checkbox"/> More than \$15 million
5. Year Firm Established: _____		

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1. Federal Tax ID Number: _____	6. <input type="checkbox"/> DBE	8. Annual Gross Receipts
2. Firm Name: _____	<input type="checkbox"/> Non-DBE	<input type="checkbox"/> Less than \$1 million
3. Phone: _____		<input type="checkbox"/> Between \$1 - \$5 million
4. Address: _____		<input type="checkbox"/> Between \$5 - \$10 million
_____	7. <input type="checkbox"/> Subcontractor	<input type="checkbox"/> Between \$10 - \$15 million
_____	<input type="checkbox"/> Subconsultant	<input type="checkbox"/> More than \$15 million
5. Year Firm Established: _____		

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1. Federal Tax ID Number: _____	6. <input type="checkbox"/> DBE	8. Annual Gross Receipts
2. Firm Name: _____	<input type="checkbox"/> Non-DBE	<input type="checkbox"/> Less than \$1 million
3. Phone: _____		<input type="checkbox"/> Between \$1 - \$5 million
4. Address: _____		<input type="checkbox"/> Between \$5 - \$10 million
_____	7. <input type="checkbox"/> Subcontractor	<input type="checkbox"/> Between \$10 - \$15 million
_____	<input type="checkbox"/> Subconsultant	<input type="checkbox"/> More than \$15 million
5. Year Firm Established: _____		

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1. Federal Tax ID Number: _____	6. <input type="checkbox"/> DBE	8. Annual Gross Receipts
2. Firm Name: _____	<input type="checkbox"/> Non-DBE	<input type="checkbox"/> Less than \$1 million
3. Phone: _____		<input type="checkbox"/> Between \$1 - \$5 million
4. Address: _____		<input type="checkbox"/> Between \$5 - \$10 million
_____	7. <input type="checkbox"/> Subcontractor	<input type="checkbox"/> Between \$10 - \$15 million
_____	<input type="checkbox"/> Subconsultant	<input type="checkbox"/> More than \$15 million
5. Year Firm Established: _____		

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**AS APPLICABLE, PLEASE SUBMIT THIS FORM WITH YOUR:    BID SHEET (Invitation to Bid - ITB)  
LETTERS OF RESPONSE (LOR)  
PRICE PROPOSAL (Request for Proposal - RFP)  
REPLY (Invitation to Negotiate - ITN)**

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**ANTICIPATED DBE PARTICIPATION STATEMENT**

375-040-63  
PROCUREMENT  
02/07

The Prime contractor is encouraged to complete this form and submit this form with your bid/price proposal/reply. Submission of this form is not mandatory.

Procurement Number: \_\_\_\_\_

Contractor's Name: \_\_\_\_\_

Contractor's FEID Number: \_\_\_\_\_

Is the prime contractor a Florida Department of Transportation Certified Disadvantaged Business Enterprise (DBE)?  
(yes  ) (no  )

Expected amount of contract dollars to be subcontracted to DBE(s): \$ \_\_\_\_\_

**OR**

It is our intent to subcontract \_\_\_\_\_ % of the contract dollars to DBE(s). Listed below are the proposed DBE sub-contractors:

<u>DBE (s) Name</u>	<u>Type of Work/Specialty</u>	<u>Dollar Amount/Percentage</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Submitted by: \_\_\_\_\_ Title: \_\_\_\_\_  
(Type or Print)

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

Note: This information is used to track and report anticipated DBE participation in FDOT contracts. The anticipated DBE amount will not become part of the contractual terms.



**STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
Public Records Form**

Solicitation No:  RFP-DOT-14-15-5015-LLR

Financial Project No(s):  423446-9-53-01

Project Description:  Central Florida Rail Corridor (CFRC) Commodities – Continuously Welded Rail (CWR)

Vendor/Consultant acknowledges and agrees to the following:

The Vendor shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Vendor in conjunction with this Agreement. Specifically, if the Vendor is acting on behalf of a public agency the Vendor shall:

- (1) Keep and maintain public records that ordinarily and necessarily would be required by the Department in order to perform the services being performed by the Vendor.
- (2) Provide the public with access to public records on the same terms and conditions that the Department would provide the records and at a cost that does not exceed the cost provided in chapter 119, Florida Statutes, or as otherwise provided by law.
- (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- (4) Meet all requirements for retaining public records and transfer, at no cost, to the Department all public records in possession of the Vendor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Department in a format that is compatible with the information technology systems of the Department.

Failure by the Vendor to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the Department. The Vendor shall promptly provide the Department with a copy of any request to inspect or copy public records in possession of the Vendor and shall promptly provide the Department a copy of the Vendor’s response to each such request.

Company/Firm: \_\_\_\_\_

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

Printed Name: \_\_\_\_\_

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

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

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**VENDOR CERTIFICATION REGARDING  
SCRUTINIZED COMPANIES LISTS**

Florida Statutes  
PROCUREMENT  
287.135

06/11

Respondent Vendor Name: \_\_\_\_\_  
Vendor FEIN: \_\_\_\_\_  
Vendor's Authorized Representative Name and Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone Number: \_\_\_\_\_  
Email Address: \_\_\_\_\_

Section 287.135, Florida Statutes, prohibits agencies from contracting with companies, for goods or services of \$1 million or more, that are on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Both lists are created pursuant to section 215.473, Florida Statutes.

As the person authorized to sign on behalf of Respondent, I hereby certify that the company identified above in the section entitled "Respondent Vendor Name" is not listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. I understand that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject company to civil penalties, attorney's fees, and/or costs.

Certified By: \_\_\_\_\_,  
who is authorized to sign on behalf of the above referenced company.  
Authorized Signature Print Name and Title: \_\_\_\_\_

**State of Florida  
Department of Transportation**



REQUEST FOR PROPOSAL  
Central Florida Rail Corridor (CFRC) Commodities – Continuously Welded Rail (CWR)

**RFP-DOT-14-15-5015-LLR**

Financial Project No. 423446-9-53-01

Orange and Osceola Counties

**PROCUREMENT OFFICE CONTACT:**

Ashley Henning, Purchasing Agent  
Ashley.Henning@dot.state.fl.us  
Fax: (850) 412-8092  
Florida Department of Transportation  
719 South Woodland Boulevard MS-4-524  
DeLand, Florida 32720-6834

# INTRODUCTION SECTION

## 1) INVITATION

The State of Florida Department of Transportation, hereinafter referred to as the "Department", requests written proposals from qualified Proposers to furnish and deliver Continuously Welded Rail (CWR).

Interested contractors must submit a Technical Proposal and a Price Proposal by the Date and time to the location cited in Introduction, Section 4, Timeline of this Request for Proposal. Specific requirements for the Technical Proposal and Price Proposal are outlined in this Request for Proposal. Technical Proposals and Price Proposals will be evaluated in accordance with this Request for Proposal.

The process for selecting a single Contractor to represent the Department requires submission of the sealed Technical and Price Proposals to provide the Commodities.. Subject to the Qualifications outlined in this Request for Proposal, the Department will select a single Contractor to provide these commodities. The selected Contractor will fully coordinate with the Department's Project Manager or his designee in the performance of all services hereunder.

It is anticipated that the term of the contract will begin on July 30, 2015 and be effective through May 31, 2016.

The Department intends to award this contract to the responsive and responsible Proposer whose proposal is determined to be the most advantageous to the Department. After the award, said Proposer will be referred to as the "Contractor". For the purpose of this document, the term "Proposer" means the prime Contractor acting on its own behalf and those individuals, partnerships, firms, or corporations comprising the Proposer team. The term "proposal" means the complete response of the Proposer to the Request for Proposals (RFP), including properly completed forms and supporting documentation.

The Contractor shall be responsible for delivering the commodities described in this RFP, to location(s) determined by the Department. The Department shall provide delivery locations no less than sixty (60) days prior to delivery. The Contractor shall anticipate delivery to be within and along the CFRC corridor in Orange and Osceola Counties between Mileposts MP 796.63 and MP 813.82. The earliest allowable delivery of commodities shall be January 4, 2016. All commodities shall meet the requirements included in Exhibit A and shall be furnished and delivered in accordance with the contract documents. The contract documents include the Standard Written Agreement, Exhibit "A", Scope of Services, CFRC 115RE Steel Rail Specification, Exhibit "B", Method of Compensation and Exhibit "C", Federal Transit Administration (FTA) Terms and Conditions.

## 2) NOTIFICATION OF FEDERAL PARTICIPATION

To the extent required by Federal law, the State of Florida agrees that, in administering any Federal assistance Program or Project supported by the underlying Grant Agreement or Cooperative Agreement, any request for proposals, solicitation, grant application, form, notification, press release, or other publication involving the distribution of FTA assistance for the Program or the Project that it will identify the FTA grant source by listing the Catalog of Federal Domestic Assistance Number of the program. The following FTA grant programs will be eligible to participate in this bid, Federal Transit Capital Investment Grant, 49 U.S.C. 5309, and the CFDA number 20.500. Federal funding assistance up to Fifty (50%) percent may be provided.

## 3) COMMODITY SPECIFICATIONS

Minimum specifications of the commodity to be furnished by the Contractor are described in Exhibit "A",

Scope of Services, CFRC 115RE Steel Rail Specification – included with this Request for Proposal attached by reference hereto and made a part thereof.

Proposers are instructed to examine the Contract Documents and the general area near the CFRC corridor between Mileposts MP 796.63 and MP 813.82 carefully before submitting a proposal for the commodities to be provided.

Proposers are not permitted to enter the CFRC Right-of-Way to investigate the site.

The Proposers submission of a Technical and a Price Proposal is prima facie evidence that the proposer has made an examination as described in this Special Condition.

**4) TIMELINE**

Provided below is a list of critical dates and actions. These dates are subject to change. Notices of changes (addenda) will be posted on the Florida Vendor Bid System at [www.myflorida.com](http://www.myflorida.com) (click on “BUSINESS”, click on “Doing Business with the State”, under “Everything for Vendors and Customers”, click on “Vendor Bid System (VBS)”, click on “Search Advertisements”) under this RFP number. It is the responsibility of all potential proposers to monitor this site for any changing information prior to submitting your proposal.

<b><u>ACTION / LOCATION</u></b>	<b><u>DATE</u></b>	<b><u>LOCAL TIME</u></b>
<b>ADVERTISEMENT DATE</b>	<b>05-27-2015</b>	
<b>DEADLINE FOR ALL QUESTIONS . . . . .</b>	<b>06-15-2015</b>	<b>05:00 PM</b>
<b>POSTING OF ALL QUESTIONS TO VENDOR BID SYSTEM . . . . .</b>	<b>06-19-2015</b>	<b>4:00 PM</b>
<b>PROPOSALS DUE, ON OR BEFORE . . . . .</b> (Technical and Price Proposal) Ashley Henning Purchasing Agent Florida Department of Transportation 719 South Woodland Boulevard, MS 524-4 DeLand, Florida 32720-6834	<b>06-23-2015</b>	<b>12:00 PM</b>
<b>PUBLIC OPENING (Price Proposals and Technical Proposal). . . . .</b> Cypress A and B Conference Rooms Florida Department of Transportation 719 South Woodland Boulevard DeLand, Florida 32720-6834	<b>06-23-2015</b>	<b>1:00 PM</b>
<b>PUBLIC MEETING OF THE TECHNICAL REVIEW COMMITTEE AND ADVISORS, DETERMINE RESPONSIVENESS OF THE TECHNICAL PROPOSALS OF THE LOWEST PROPOSER . . . . .</b>	<b>06-30-2015</b>	<b>01:00 PM</b>
Cypress A and B Conference Rooms Florida Department of Transportation 719 South Woodland Boulevard DeLand, Florida 32720-6834		

**SELECTION MEETING** .....07-06-2015                      **08:15 AM**

Lake County Conference room, fourth floor  
Florida Department of Transportation  
719 South Woodland Boulevard  
DeLand, Florida 32720-6834

**POSTING OF INTENDED AWARD -** ..... 07-06-2015                      **10:00 AM**

**5) AGENDA FOR PUBLIC MEETINGS**

**5015-LLR Agenda – Public Opening (Price Proposals and Technical Proposal of low proposer)**

Agenda for Public Opening of Technical Proposals for RFP-DOT-14-15-5015-LLR:

Starting Time: see “Timeline” in RFP solicitation

- Opening remarks of approx. 2 minutes by Department Procurement Office personnel.
- Public input period – To allow a maximum of 15 minutes total for public input related to the RFP solicitation.
- At conclusion of public input or 15 minutes, whichever occurs first, the Technical Proposals received timely will be opened, with proposer’s name read aloud and tabulated. Price proposals will be kept secured and unopened until the Price Proposal Opening.
- Adjourn meeting.

**Agenda – Technical Review Committee and Advisor Meeting**

Agenda for Technical Review Committee and Advisor Meeting for RFP-DOT-14-15-5015-LLR

Starting Time: see “Timeline” in RFP solicitation

- Opening Comments by Department Procurement Office personnel
- Introduction of meeting attendees
- Project overview and Timeline
- Review of Scope
- Review Evaluation Requirements
- Review of proposed product specifications
- Comments from Technical Advisors, if applicable
- Questions from Technical Review Committee to Advisors and responses, if applicable
- Technical Review Committee recommendation for award
- Adjourn meeting.

**Agenda – Selection Committee Meeting to Summarize Evaluations and Determine Anticipated Award**

Agenda for Selection Committee Meeting for RFP-DOT-14-15-5015-LLR

Starting Time: See “Timeline” in RFP Solicitation

- Opening remarks of approx. 2 minutes by Department Procurement Office personnel.
- Public input period – To allow a maximum of 15 minutes total for public input related to the RFP solicitation
- Summarize Technical Proposal Responsiveness
- Summarize Price Proposal Scores
- Announce Anticipated Award decision
- Announce time and date decision will be posted on the Contractor Bid System (VBS)
- Adjourn meeting

**6) SPECIAL ACCOMMODATIONS**

Any person with a qualified disability requiring special accommodations at a pre-proposal conference, public meeting, oral presentation and/or opening shall contact the contact person at the phone number, e-mail address or fax number provided on the title page at least five (5) working days prior to the event. If

you are hearing or speech impaired, please contact this office by using the Florida Relay Services which can be reached at 1 (800) 955-8771 (TDD).

## **SPECIAL CONDITIONS**

### **1) MyFloridaMarketPlace**

PROPOSERS MUST BE REGISTERED IN THE STATE OF FLORIDA'S MYFLORIDAMARKETPLACE SYSTEM BY THE TIME AND DATE OF THE TECHNICAL PROPOSAL OPENING OR THEY MAY BE CONSIDERED NON-RESPONSIVE (see Special Condition 21). All prospective proposers that are not registered should go to <https://vendor.myfloridamarketplace.com/> to complete on-line registration, or call 1-866-352-3776 for assisted registration.

All payment(s) to the vendor resulting from this competitive solicitation **WILL** be subject to the 1% MFMP Transaction Fee in accordance with the attached Form PUR 1000 General Contract Condition #14.

### **2) Florida Department of Financial Services (DFS) W-9 INITIATIVE**

The Florida Department of Financial Services (DFS) requires all vendors that do business with the state to submit an electronic Substitute Form W-9. Vendors must submit their W-9 forms electronically at <https://flvendor.myfloridacfo.com> to receive payments from the state. Contact the DFS Customer Service Desk at (850) 413-5519 or [FLW9@myfloridacfo.com](mailto:FLW9@myfloridacfo.com) with any questions.

### **3) QUESTIONS & ANSWERS**

In accordance with section 287.057(23), Florida Statutes, respondents to this solicitation or persons acting on their behalf may not contact, between the release of the solicitation and the end of the 72-hour period following the agency posting the notice of intended award, excluding Saturdays, Sundays, and state holidays, any employee or officer of the executive or legislative branch concerning any aspect of this solicitation, except in writing to the procurement officer or as provided in the solicitation documents. Violation of this provision may be grounds for rejecting a response.

All questions arising from this Request for Proposal must be forwarded, in writing as described below.

All questions arising from this Request for Proposal must be forwarded, in writing, to the Web Address identified below. Questions must be received no later than the applicable time and date reflected on the Timeline. Proposers shall direct all questions to the Department by posting them to the Department's Bid Q&A website at the following URL address:

<https://www3b.dot.state.fl.us/BidQuestionsAndAnswers/Proposal.aspx/SearchProposal>. A placeholder contract # has been created on the Bidders Q&A site for this project and that number is B5LLR. All questions posted after the applicable deadline stated in the Timeline will not be answered. When, in the sole judgment of the Department, responses to questions, required revisions to any procurement related document and addendum will be posted on the Departments Bid VBS website. The Department's response to questions submitted timely by Proposers will be posted on the Departments Bid Q&A site and the Florida Vendor Bid System at [www.myflorida.com](http://www.myflorida.com) (click on "BUSINESS", click on "Doing Business with the State", under "Everything for Vendors and Customers", click on "Vendor Bid System (VBS)", click on "Search Advertisements"). **It is the responsibility of all potential Proposers to monitor these sites for any changing information prior to submitting their Proposal.**

### **4) ORAL INSTRUCTIONS / CHANGES TO THE REQUEST FOR PROPOSAL (ADDENDA)**

No negotiations, decisions, or actions will be initiated or executed by a proposer as a result of any oral

discussions with a State employee. Only those communications which are in writing from the Department will be considered as a duly authorized expression on behalf of the Department.

Notices of changes (addenda) will be posted on the Florida Vendor Bid System at [www.myflorida.com](http://www.myflorida.com) (click on "BUSINESS", click on "Doing Business with the State", under "Everything for Vendors and Customers", click on "Vendor Bid System (VBS)", click on "Search Advertisements") under this RFP number. It is the responsibility of all potential proposers to monitor this site for any changing information prior to submitting your proposal. All addenda will be acknowledged by signature and subsequent submission of addenda with the Technical Proposal when so stated in the addenda.

## 5) **DIVERSITY ACHIEVEMENT**

### **DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION**

#### **FEDERAL TRANSPORTATION ADMINISTRATION DBE GOAL:**

The Federal Transportation Administration, (FTA) has established a goal of 8.72% DBE participation for this project.

#### **DBE AND NON-DBE SMALL BUSINESS ASPIRATION GOAL:**

It is the policy of FDOT to encourage the participation of small businesses and disadvantaged business enterprises ("DBE") in all facets of the business activities of FDOT, consistent with applicable laws and regulations. FDOT has established an aspiration goal of 10% DBE usage and an additional 3% non-DBE Small Business usage for the subject Project. Firms proposing for this Project shall aspire to have ten percent (10%) or more of the total contract costs performed by DBEs, and an additional three percent (3%) or more of the total contract costs performed by non-DBE small businesses. Although not a contract requirement, FDOT believes that the aforementioned aspiration goal can realistically be achieved based on current availability of DBEs and small businesses. FDOT further believes that the 13% overall goal can be achieved through race neutral means, using standard competitive procurement processes. Pursuant to the provisions of Section 339.0805, Florida Statutes, and Rule 14.78.005, Florida Administrative Code, FDOT has adopted rules to provide certified DBEs opportunities to participate in the business activities of FDOT as vendors, contractors, subcontractors, and consultants. FDOT has adopted the DBE definition set forth in Code 49 of Federal Regulations Section 26.5. The Department's DBE directory may be found at the following website: <https://www3.dot.state.fl.us/EqualOpportunityOffice/biznet/mainmenu.asp> Firms agree to apply their best efforts to utilize qualified non-DBE small businesses as vendors, contractors, subcontractors, and consultants for the Project. Qualifications for small businesses may be found at the following website: <http://www.dot.state.fl.us/EqualOpportunityOffice/sizeStandards.shtm> Firms will submit the Aspiration Goal Form for "DBE" and "Non-DBE Small Business" Firms at the Pre-Construction Conference.

The Department, in accordance with ***Title VI of the Civil Rights Act of 1964, 42 USC 2000d- 2000d-4, Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21***, Nondiscrimination in federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that the Department will affirmatively ensure that in any contract/agreement entered into pursuant to this advertisement, minority and disadvantaged business enterprises will be afforded the full opportunity to submit bids in response to this invitation and will not be discriminated on the basis of race, color, national origin, or sex in consideration for an award.

The Department encourages DBE firms to compete for Department contractual services projects, and also encourages non-DBE and other minority contractors to use DBE firms as sub-contractors. The Department, its contractors, suppliers, and consultants shall take all necessary and reasonable steps to ensure that disadvantaged businesses have an opportunity to compete for and perform contract work for the Department in a nondiscriminatory environment. The Department shall require its contractors, suppliers, and consultants to not discriminate on the basis of race, color, national origin, religion, gender, age, or disability in the award and performance of its contracts.

Federal law requires states to maintain a database of all firms that are participating or attempting to participate in DOT-assisted contracts. To assist the Department in this endeavor, proposers are requested to submit the **Bidder's Opportunity List** with their Price Proposal Sheet. The list should include yourself



as well as any prospective sub-contractor that you contacted or who has contacted you regarding the project.

Proposers are requested to indicate their intention regarding DBE participation on the **Anticipated DBE Participation Statement** and to submit that Statement with their Price Proposal Sheet. After award of the contract resulting from this RFP, the awarded Vendor will need to complete the “Anticipated DBE Participation Statement” online through the Equal Opportunity Compliance (EOC) system within 3 business days after award of the contract. The link to access the EOC system is:

<https://www3.dot.state.fl.us/EqualOpportunityCompliance>. This will assist the Department in tracking and reporting planned or estimated DBE utilization.

During the contract period, the Vendor will be required to report actual payments to DBE and MBE subcontractors through the web-based EOC system. All DBE payments must be reported whether or not you initially planned to utilize the company. In order for our race neutral DBE Program to be successful, your cooperation is imperative. If you have any questions, please contact [EOOHelp@dot.state.fl.us](mailto:EOOHelp@dot.state.fl.us).

Additional information about the EOC system can be found on the Equal Opportunity Office (EOO) website at <http://www.dot.state.fl.us/equalopportunityoffice/eoc.shtm>. A help manual on how to use the system will be available within the EOC application. If you have any questions or technical issues, please contact the EOO help desk at [EOOHelp@dot.state.fl.us](mailto:EOOHelp@dot.state.fl.us).

To request certification or to locate DBEs, call the Department of Transportation’s Equal Opportunity Office at (850) 414-4747, or access an application or listing of DBEs on the Internet at: [www.dot.state.fl.us/equalopportunityoffice/](http://www.dot.state.fl.us/equalopportunityoffice/).

**6) SCOPE OF SERVICES, Exhibit “A”, Scope of Services, CFRC 115RE Steel Rail Specification.**

Details of the services, information and items to be furnished by the Contractor are described in the attached Exhibit “A”, Scope of Services, CFRC 115RE Steel Rail Specification. All material shall be new. The following table summarizes the commodities to be provided:

**Continuously Welded Rail**

Item Description	Quantity
115RE standard strength Continuously Welded Rail (CWR) tee rail in 1,600 Ft. Strings	68,800 Linear Feet, (Delivered in 1,600 Ft. Strings)
115RE head hardened Continuously Welded Rail (CWR) tee rail in 1,600 Ft. Strings	11,200 Linear Feet (Delivered in 1,600 Ft. Strings)

**7) INTENDED AWARD**

The Department intends to award a contract to the responsive and responsible vendor with lowest price proposal in compliance with the evaluation criteria specified herein. The Intended Award decision will be announced at the Selection Committee meeting specified in the Timeline (See Introduction Section 4 Timeline). If the Department is confronted with identical scoring from multiple vendors, the Department shall determine the order of award in accordance with Rule 60A-1.011 Florida Administrative Code.

**8) QUALIFICATIONS**

**8.1 General**

The Department will determine whether the Proposer is qualified to perform the services being contracted

based upon their Technical Proposal demonstrating satisfactory qualifications, technical ability, experience, capacity and capability in the work area. The Proposer shall identify necessary experienced personnel and facilities to support the activities associated with this proposal in their Technical Proposal.

The requirements of Sections 8.2, 8.3, and 8.4 below are threshold requirements and failure to meet these requirements shall disqualify the Proposer.

## 8.2 Authorized To Do Business in the State of Florida

In accordance with sections 607.1501, 608.501, and 620.9102, Florida Statutes, out-of-state corporations, out-of-state limited liability companies, and out-of-state limited partnerships must be authorized to do business in the State of Florida. Such authorization should be obtained by the proposal due date and time, but in any case, must be obtained prior to posting of the intended award of the contract. For authorization, contact:

Florida Department of State  
Tallahassee, Florida 32399  
(850) 245-6051

## 8.3 Licensed to Conduct Business in the State of Florida

If the business being provided requires that individuals be licensed by the Department of Business and Professional Regulation, such licenses should be obtained by the proposal due date and time, but in any case, must be obtained prior to posting of the intended award of the contract. For licensing, contact:

Florida Department of Business and Professional Regulation  
Tallahassee, Florida 32399-0797  
(850) 487-1395

## 8.4 E-VERIFY

Vendors/Contractors:

1. shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Vendor/Contractor during the term of the contract; and shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

## 9) WARRANTY/SUBSTITUTIONS

The Department may require that the Contractor furnish a statement of the origin, composition and manufacture of any and all materials, together with samples that may be subjected to the test provided for in Exhibit "A", Scope of Services, CFRC 115RE Steel Rail Specification to determine the materials quality and fitness for the work.

When performance of the services requires the supply of commodities, a warranty is required on all items provided against defective materials, workmanship, and failure to perform in accordance with required industry performance criteria, for a period of not less than one (1) year from the date of acceptance by the purchaser. Any deviation from these criteria must be documented in the proposal response or the above statement shall prevail. Delivery of substitute commodities requires prior written approval from the Department.

Replacement of all materials found defective within the warranty period shall be made without cost to the Department, including transportation, installation, track adjustment, repair, removal of defective material,

demurrage and labor as applicable. All fees associated with restocking cancelled orders shall be the responsibility of the vendor/contractor.

All items provided during the performance of the contract found to be poorly manufactured will not be accepted, but returned to the Contractor, at their expense, for replacement. Replacement of all items found defective shall be made without cost to the Department, including transportation installation, track adjustment, repair, removal of defective material, demurrage and labor as applicable. As it may be impossible for each facility to inspect all items upon arrival, a reasonable opportunity must be given to these facilities for inspection of the items, and returning those that are defective.

**10) LIABILITY INSURANCE**

The Contractor shall not commence any work until they have obtained the types of insurance required by the Standard Written Agreement, attached hereto, and certificates of such insurance have been received by the Department. Nor shall the Contractor allow any subcontractor to commence work on this project until all similar insurance required of the subcontractor has been so obtained. The Contractor shall submit the required Certificates of Insurance to the Purchasing Agent shown on the cover sheet of this Request for Proposal, at the following address: **Florida Department of Transportation, Procurement Office, 719 South Woodland Boulevard, DeLand, Florida 32720-6834. Failure to provide proof of the required insurance with the partially executed contract documents may be cause for dismissal of the award.**

**11) CONTRACT BOND**

( X ) A Performance Bond is not required for this project.

**12) METHOD OF COMPENSATION**

Payment for commodities and services under this contract shall be made in accordance with Exhibit "B", Method of Compensation and the contract documents.

**13) STANDARD WRITTEN AGREEMENT**

The Department and contractor shall execute the Departments Standard Written Agreement for the required commodities. The Contract is comprised of the following documents: The Department's Standard Written Agreement, Exhibit "A", Scope of Services, CFRC 115RE Steel Rail Specification, Including form PUR 1000, Exhibit "B", Method of Compensation, Exhibit "C", Required Contract provisions for Federal Transit Administration Federal Aid Contracts, and all written Amendments, Supplemental Agreements, Work Orders, and other documents modifying or supplementing the Contract Documents pursuant to the Specifications.

.The Contract Documents are attached to this Request for Proposal..

**THE STANDARD WRITTEN AGREEMENT TERMS AND CONDITIONS (AGREEMENT)**

The Standard Written Agreement attached hereto and made a part hereof. The terms and conditions contained therein will become an integral part of the contract resulting from this solicitation. In submitting a proposal, the proposer agrees to be legally bound by these terms and conditions.

**14) REVIEW OF PROPOSER'S FACILITIES & QUALIFICATIONS**

After the proposal due date and prior to contract execution, the Department reserves the right to perform or have performed an on-site review of the Proposer's facilities and qualifications. This review will serve to verify data and representations submitted by the Proposer and may be used to determine whether the Proposer has an adequate, qualified, and experienced staff, and can provide overall management facilities. The review may also serve to verify whether the Proposer has financial capability adequate to meet the contract requirements.

Should the Department determine that the proposal has material misrepresentations or that the size or nature of the Proposer's facilities or the number of experienced personnel (including technical staff) are not adequate to ensure satisfactory contract performance, the Department has the right to reject the proposal.

#### **15) PROTEST OF REQUEST FOR PROPOSAL SPECIFICATIONS**

Any person who is adversely affected by the contents of this Request for Proposal must file the following with the Department of Transportation, Clerk of Agency Proceedings, Office of the General Counsel, 605 Suwannee Street, Mail Station 58, Tallahassee, Florida 32399-0450:

1. A written notice of protest within seventy-two (72) hours after the posting of the solicitation, (the notice of protest may be Faxed to 850-414-5264), and
2. A formal written protest in compliance with Section 120.57(3), Florida Statutes, within ten (10) days of the date on which the written notice of protest is filed.

Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, Florida Statutes.

#### **16) UNAUTHORIZED ALIENS**

The employment of unauthorized aliens by any contractor is considered a violation of Section 274A(e) of the Immigration and Nationality Act. If the contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of the contract.

#### **17) SCRUTINIZED COMPANIES LISTS**

Section 287.135, Florida Statutes, requires that at the time a company submits a bid or proposal for a contract for goods or services of \$1 million or more, the company must certify that the company is not on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Both lists are created pursuant to section 215.473, Florida Statutes.

RFP responses of \$1 million or more must include the attached **Scrutinized Companies Lists** Form to certify the respondent is not on either of those lists. The Form should be submitted with the Price Proposal.

#### **18) RESERVATIONS**

The Department reserves the right to accept or reject any or all proposals received and reserves the right to make an award without further discussion of the proposals submitted. Therefore, the proposals should be submitted initially in the most favorable manner. It is understood that the proposal will become a part of the Department's official file, without obligation to the Department.

#### **19) ADDITIONAL TERMS & CONDITIONS**

No conditions may be applied to any aspect of the RFP by the proposer. Any conditions placed on any aspect of the proposal documents by the proposer may result in the proposal being rejected as a conditional proposal (see "RESPONSIVENESS OF PROPOSALS"). **DO NOT WRITE IN CHANGES ON ANY RFP SHEET.** The only recognized changes to the RFP prior to proposal opening will be a written addenda issued by the Department.

## 20) RESPONSIVENESS OF PROPOSALS

### 20.1 Responsiveness of Proposals

Proposals will not be considered if not received by the Department **on or before** the date and time specified as the due date for submission. All proposals must be typed or printed in ink. A responsive proposal is an offer to provide the commodities as outlined in Exhibit "A", Scope of Services, CFRC 115RE Steel Rail Specification, called for in this Request for Proposal in accordance with all requirements of this Request for Proposal. I. Proposals found to be non-responsive shall not be considered. Proposals may be rejected if found to be irregular or not in conformance with the requirements and instructions herein contained. A proposal may be found to be irregular or non-responsive by reasons that include, but are not limited to, failure to utilize or complete prescribed forms, conditional proposals, incomplete proposals, indefinite or ambiguous proposals, and improper and/or undated signatures.

### 20.2 Multiple Proposals

Proposals may be rejected if more than one proposal is received from a Proposer. Such duplicate interest may cause the rejection of all proposals in which such Proposer has participated. Subcontractors may appear in more than one proposal.

### 20.3 Other Conditions

Other conditions which may cause rejection of proposals include, but are not limited to, evidence of collusion among Proposers, obvious lack of experience or expertise to perform the required work, failure to perform or meet financial obligations on previous contracts, or in the event an individual, firm, partnership, or corporation is on the General Services Administration Excluded Parties List. Proposers whose proposals, past performance, or current status do not reflect the capability, integrity, or reliability to fully and in good faith perform the requirements of the Contract may be rejected as non-responsive. The Department reserves the right to determine which proposals meet the requirements of this solicitation, and which Proposers are responsive and responsible.

## 21) PROPOSAL FORMAT INSTRUCTIONS

### 21.1 General Information

This section contains instructions that describe the required format for the proposal. All proposals submitted shall contain two parts and be marked as follows:

PART I TECHNICAL PROPOSAL NUMBER RFP-DOT-14-15-5015-LLR  
(One Separately Sealed Package for Technical Proposal)

PART II PRICE PROPOSAL NUMBER RFP-DOT-14-15-5015-LLR  
(One Separately Sealed Package for Price Proposal)

THE SEPARATELY SEALED PACKAGES MAY BE MAILED TOGETHER IN ONE ENVELOPE OR BOX.

21.2 Technical Proposal (Part I) One (1) original hard copy and one (1) copy on CD/DVD that should be fixed to the inside cover of the original hard copy

#### **(Do not include price information in Part I)**

The Proposer must submit one (1) original and one (1) CD/DVD of the Technical Proposal which is to be divided into the sections described below. Since the Department will expect all technical

proposals to be in this format, failure of the Proposer to follow this outline may result in the rejection of the proposal. The Technical Proposal must be submitted in a separate sealed package marked "TECHNICAL PROPOSAL NUMBER RFP-DOT-14-15-5015-LLR"

## 1. PROPOSER'S TECHNICAL PLAN

The Proposer shall provide a technical plan which explains their technical approach, and prior relevant experience. The Technical Plan shall be limited to five (5) pages.

### a. Prior Relevant Experience (1 page)

The Proposer shall provide a summary of prior relevant experience documenting a minimum of five (5) years of experience in providing similar commodities to a Passenger Rail System with Intercity Rail and/or freight service.

### b. Buy America Certification (2 Pages)

The Proposer shall provide a certification of compliance with Buy America Requirements of the Federal Transit Administration (FTA) Terms and Conditions.

### c. Material Specifications (2 Pages)

The Proposer shall provide material specifications and product cut sheets for each commodity. These specifications and cut sheets must demonstrate compatibility of the products with the Project.

## 21.3 Price Proposal (Part II) (One (1) Original)

The price proposal information is to be submitted in a separate sealed package marked "PRICE PROPOSAL NUMBER RFP-DOT-14-15-5015-LLR". The Price Proposal information shall be submitted on the form provided in the Request for Proposal.

## 21.4 Presenting the Technical Proposal

The proposal shall be limited to a page size of eight and one-half by eleven inches (8½" x 11") with one half inch margins on all sides. Type size shall not be less than 10 point font. The proposals pages shall be sequentially numbered. Bindings and covers will be at the Proposer's discretion.

Unnecessarily elaborate special brochures, art work, expensive paper and expensive visual and other presentation aids are neither necessary nor desired.

## 22) "DRUG-FREE WORK PLACE" PREFERENCE

Whenever two or more bids which are equal with respect to price, quality, and service are received, the Department shall determine the order of award in accordance with section 295.187(4), Florida Statutes, and Rule 60A-1.011 Florida Administrative Code, which includes a preference for bid responses that certify the business has implemented a drug-free workplace program in accordance with Section 287.087, F.S. The "Drug-Free Workplace Program Certification" must be completed and submitted with the bid response to be eligible for this preference.

## 23) COPYRIGHTED MATERIAL

Copyrighted material will be accepted as part of a technical proposal only if accompanied by a waiver that will allow the Department to make paper and electronic copies necessary for the use of Department staff and agents. It is noted that copyrighted material is not exempt from the Public Records Law, Chapter 119, Florida Statutes. Therefore, such material will be subject to viewing by the public, but copies of the material will not be provided to the public.

**24) ATTACHMENT TO RFP SUBMITTAL - CONFIDENTIAL MATERIAL**

The Proposer must include any materials it asserts to be exempted from public disclosure under Chapter 119, Florida Statutes, in a separate bound document labeled "**Attachment to Request for Proposals, Number RFP-DOT-14-15-5015-LLR- Confidential Material**". The Proposer must identify the specific Statute that authorizes exemption from the Public Records Law. Any claim of confidentiality on materials the Proposer asserts to be exempt from public disclosure and placed elsewhere in the proposal will be considered waived by the Proposer upon submission, effective after opening.

**25) COSTS INCURRED IN RESPONDING**

This Request for Proposal does not commit the Department or any other public agency to pay any costs incurred by an individual firm, partnership, or corporation in the submission of a proposal or to make necessary studies or designs for the preparation thereof, nor to procure or contract for any articles or services.

**26) MAIL OR DELIVER PROPOSAL TO: (DO NOT FAX OR E-MAIL)**

**Ashley Henning, Purchasing Agent  
Florida Department of Transportation  
719 South Woodland Boulevard  
MS 524-4  
DeLand, Florida 32720-6834**

It is the proposer's responsibility to assure that the Technical and Price Proposals are delivered to the proper place **on or before** the Proposal Due date and time (See Introduction Section 4 Timeline). Proposals which for any reason are not so delivered will not be considered.

By submitting a proposal, the Proposer represents that it understands and accepts the terms and conditions to be met and the character, quality and scope of services as outlined in the Technical Requirements to be provided.

All proposals and associated forms shall be signed and dated in ink by a duly authorized representative of the Proposer.

Each Proposer shall fully acquaint itself with the conditions relating to furnishing and delivery of the commodities required under the conditions of this Request for Proposal. .

**27) MODIFICATIONS, RESUBMITTAL AND WITHDRAWAL**

Proposers may modify submitted proposals at any time prior to the proposal due date. Requests for modification of a submitted proposal shall be in writing and must be signed by an authorized signatory of the proposer. Upon receipt and acceptance of such a request, the entire proposal will be returned to the proposer and not considered unless resubmitted by the due date and time. Proposers may also send a change in a sealed envelope to be opened at the same time as the proposal. The RFP number, due date and time should appear on the envelope of the modified proposal.

**28) PRICE PROPOSAL**

The Proposer shall complete the Price Proposal form, Form no. 2 of this Request for Proposal and submit as part of the Price Proposal. Any proposal in which this form is not used or in which the form is improperly executed, or incomplete may be considered non-responsive and the proposal will be subject to rejection.

The Contractor's Price Proposal amount shown in the properly completed form shall become a part of the contract upon award of the contract.

## **29) PROPOSAL OPENING**

The Department shall open all Price Proposals received at a public bid opening on the date found in Section 4, Timeline of this RFP. All proposal openings are open to the public. The Procurement Office will evaluate the Price Proposals received and determine the lowest Price Proposal. The Procurement unit will open the Technical Proposal of the Lowest Price Proposer and distribute it to the Technical Review Committee and Advisers for review.

## **30) PROPOSAL EVALUATION**

### **30.1 Evaluation Process:**

A Technical Review team will be established to review and evaluate the proposal of the lowest Proposer submitted in response to this Request for Proposal (RFP). The Technical Review team will be comprised of at least three persons with background, experience, and/or professional credentials in relative service areas.

The Procurement Office will distribute to each member of the Technical Review Committee a copy of the Technical Proposal of the Proposer with the Lowest Price Proposal. The Technical Review Committee will review the Technical Proposal of the Lowest Proposer for compliance with the requirements of this Request for Proposal. The Technical Review Committee if needed will meet with the Advisers, if any, to seek clarification and information regarding each Technical Proposal. The Technical Review Committee will then establish if the Technical Proposal of the Lowest Proposer is responsive or non-responsive based on the criteria described in this Request for Proposal. If the Technical Proposal is responsive, that Proposer will be recommended to the Selection Committee for the intended award of the contract. If the Technical Proposal is found to be non-responsive, the Technical Review Committee will review the Technical Proposal of the next Lowest Proposer and establish if the Technical Proposal is responsive or non-responsive based on the criteria described in this Request for Proposal until a responsive Technical Proposal is determined.

## **31) POSTING OF INTENDED DECISION/AWARD**

31.1 The Department's decision will be posted on the Florida Vendor Bid System, at [www.myflorida.com](http://www.myflorida.com), (click on "BUSINESS", click on "Doing Business with the State", under "Everything for Vendors and Customers", click on "Vendor Bid System (VBS)", on date and time in the Timeline, and will remain posted for a period of seventy-two (72) hours. Any proposer who is adversely affected by the Department's recommended award or intended decision must file the following with the Department of Transportation, Clerk of Agency Proceedings, Office of the General Counsel, 605 Suwannee Street, Mail Station 58, Tallahassee, Florida 32399-0450:

1. A written notice of protest within seventy-two (72) hours after posting of the Intended Award, (the notice of protest may be Faxed to 850-414-5264), and
2. A formal written protest and protest bond in compliance with Section 120.57(3), Florida Statutes, within ten (10) days of the date on which the written notice of protest is filed. At the time of filing the formal written protest, a bond (a cashier's check or money order may be accepted) payable to the Department must also be submitted in an amount equal to one percent (1%) of the estimated contract amount based on the contract price submitted by the protestor.

Failure to file a protest within the time prescribed in Section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, Florida Statutes.



### 31.2 - Inability to Post:

If the Department is unable to post as defined above, the Department will notify all proposers by electronic notification on the Florida Vendor Bid System (see special condition 31.1, above) or by mail, fax, and/or telephone. The Department will provide notification of any future posting in a timely manner.

### 31.3 - Request to Withdraw Proposal:

Requests for withdrawal will be considered if received by the Department, in writing, within seventy-two (72) hours after the price proposal opening time and date. Requests received in accordance with this provision will be granted by the Department upon proof of the impossibility to perform based upon obvious error on the part of the proposer.

## **32) AWARD OF THE CONTRACT**

The contract will be awarded to the responsible and responsive Proposer whose Proposal is determined to be the most advantageous to the State. The Department will hold a public meeting of the Selection Committee to review the recommendation of the Technical Review Committee regarding the responsiveness of the Technical Proposal of the proposer with the lowest Price Proposal. After review, the Selection Committee will determine the responsiveness of the proposer with the Lowest Price Proposal and if deemed responsive the Department will make the intended award to that firm. If the Department is confronted with identical scoring from multiple Proposers, the Department shall determine the order of award in accordance with Rule 60A-1.011, Florida Administrative Code. The final decision will be determined by the Selection Committee. A statement will be placed in the procurement file that explains the basis for Proposer selection. The Department reserves the right to reject any Proposal submitted with an un-reasonably high or unreasonably low Price Proposal Amount.

The Department reserves the right to accept or reject any or all Technical Proposals and Price Proposals received. The Department is not obligated to execute a contract and may terminate this solicitation at any time.

## **33 ATTACHED FORMS, To be included in a separate section of the Technical Proposal marked "Required Forms"**

### **TECHNICAL PROPOSAL**

- Bid Forms, Forms No. 1, 3, 4, 5, 6, 7, , and 8 as described below shall be properly executed and included in the Original copy of the Technical proposal.
  - No. 1, Registration Form
  - No. 3, Contractor Data Sheet
  - No. 4, Drug Free Workplace Certification
  - No. 5 Bid Opportunity List for Professional Consultant Services, &Commodities and Contractual Services, form no. 375- 040-62
  - No. 6, DBE Participation Statement
  - No. 7, Public Records form
  - No. 8 Contractor Certification Regarding Scrutinized Companies Lists
  - Properly completed appropriate Buy American Certification (Required Contract Provisions for Federal Transit Administration Federal Aid).

### **PRICE PROPOSAL**

- Bid Form 2 and the Certification Regarding Lobbying (Required Contract Provisions for Federal

Transit Administration Federal Aid), shall be properly completed and submitted in a sealed envelope on the date and time shown in Section 4, Timeline

- o No. 2, Bid Price Proposal Form, to be submitted in a separate sealed envelope.
- o Properly completed Certification Regarding Lobbying (Required Contract Provisions for Federal Transit Administration Federal Aid).

**Do not include Price Proposal Forms with the Technical Proposal. Submit in a separate sealed envelope**

**34) ATTACHED TERMS AND CONDITIONS**

All responses are subject to the terms and conditions of this solicitation, which, in case of conflict, shall have the following order of precedence listed:

Exhibit "A", Scope of Services CFRC 115RE Steel Rail Specification, to include form PUR 1000  
Required Contract Provisions for Federal Transit Administration Federal-Aid Contract Standard Written Agreement  
Form PUR 1001, General Instructions to Respondents,  
Exhibit "B", Method of Compensation  
RFP-DOT-14-15-5015-LLR

**35) ATTACHED FORM PUR 1001, GENERAL INSTRUCTIONS TO RESPONDENTS**

This is a Standard Form from the Department of Management Services that the Department is required to include in all formal solicitations. The following paragraphs do not apply to this Request for Proposal. Deletion of these paragraphs shall not be deemed to be deletion of content contained elsewhere and the substance of these excepted paragraphs may be addressed in other locations in the procurement documents. That substance located elsewhere continues to apply regardless of this exception paragraph PUR 1001

Paragraph 3, Electronic Submission  
Paragraph 4, Terms and Conditions  
Paragraph 5, Questions  
Paragraph 10, Manufacturer's name and Approved Equivalentents – PUR 1001  
Paragraph 11, Performance Qualifications – PUR 1001  
Paragraph 12, Public Opening  
Paragraph 13, Electronic Posting  
Paragraph 14, Firm Response  
Paragraph 19, Public Records

**State of Florida  
PUR 1001  
General Instructions to Respondents  
Central Florida Rail Corridor (CFRC) Commodities – Continuously Welded Rail**

**Contents**

- [1. Definitions.](#)
- [2. General Instructions.](#)
- [3. Electronic Submission of Responses.](#)
- [4. Terms and Conditions.](#)

- 5. Questions.
- 6. Conflict of Interest.
- 7. Convicted Vendors.
- 8. Discriminatory Vendors.
- 9. Respondent's Representation and Authorization.
- ~~10. Manufacturer's Name and Approved Equivalents.~~
- 11. Performance Qualifications.
- 12. Public Opening.
- 13. Electronic Posting of Notice of Intended Award.
- 14. Firm Response.
- 15. Clarifications/Revisions.
- 16. Minor Irregularities/Right to Reject.
- 17. Contract Formation.
- 18. Contract Overlap.
- 19. Public Records.
- 20. Protests.
- 21. Limitation on Vendor Contact with Agency During Solicitation Period

**1. Definitions.** The definitions found in s. 60A-1.001, F.A.C. shall apply to this agreement. The following additional terms are also defined:

- (a) "Buyer" means the entity that has released the solicitation. The "Buyer" may also be the "Customer" as defined in the PUR 1000 if that entity meets the definition of both terms.
- (b) "Procurement Officer" means the Buyer's contracting personnel, as identified in the Introductory Materials.
- (c) "Respondent" means the entity that submits materials to the Buyer in accordance with these Instructions.
- (d) "Response" means the material submitted by the respondent in answering the solicitation.
- (e) "Timeline" means the list of critical dates and actions included in the Introductory Materials.

**2. General Instructions.** Potential respondents to the solicitation are encouraged to carefully review all the materials contained herein and prepare responses accordingly.

~~**3. Electronic Submission of Responses.** Respondents are required to submit responses electronically. For this purpose, all references herein to signatures, signing requirements, or other required acknowledgments hereby include electronic signature by means of clicking the "Submit Response" button (or other similar symbol or process) attached to or logically associated with the response created by the respondent within MyFloridaMarketPlace. The respondent agrees that the action of electronically submitting its response constitutes:~~

- ~~• an electronic signature on the response, generally,~~
- ~~• an electronic signature on any form or section specifically calling for a signature, and~~
- ~~• an affirmative agreement to any statement contained in the solicitation that requires a definite confirmation or acknowledgement.~~

~~**4. Terms and Conditions.** All responses are subject to the terms of the following sections of this solicitation, which, in case of conflict, shall have the order of precedence listed:~~

- ~~• Technical Specifications,~~
- ~~• Special Conditions and Instructions,~~
- ~~• Instructions to Respondents (PUR 1001),~~
- ~~• General Conditions (PUR 1000), and~~
- ~~• Introductory Materials.~~

~~The Buyer objects to and shall not consider any additional terms or conditions submitted by a respondent, including any appearing in documents attached as part of a respondent's response. In submitting its response, a respondent~~

~~agrees that any additional terms or conditions, whether submitted intentionally or inadvertently, shall have no force or effect. Failure to comply with terms and conditions, including those specifying information that must be submitted with a response, shall be grounds for rejecting a response.~~

~~**5. Questions.** Respondents shall address all questions regarding this solicitation to the Procurement Officer. Questions must be submitted via the Q&A Board within MyFloridaMarketPlace and must be RECEIVED NO LATER THAN the time and date reflected on the Timeline. Questions shall be answered in accordance with the Timeline. All questions submitted shall be published and answered in a manner that all respondents will be able to view. Respondents shall not contact any other employee of the Buyer or the State for information with respect to this solicitation. Each respondent is responsible for monitoring the MyFloridaMarketPlace site for new or changing information. The Buyer shall not be bound by any verbal information or by any written information that is not contained within the solicitation documents or formally noticed and issued by the Buyer's contracting personnel. Questions to the Procurement Officer or to any Buyer personnel shall not constitute formal protest of the specifications or of the solicitation, a process addressed in paragraph 19 of these Instructions.~~

**6. Conflict of Interest.** This solicitation is subject to chapter 112 of the Florida Statutes. Respondents shall disclose with their response the name of any officer, director, employee or other agent who is also an employee of the State. Respondents shall also disclose the name of any State employee who owns, directly or indirectly, an interest of five percent (5%) or more in the respondent or its affiliates.

**7. Convicted Vendors.** A person or affiliate placed on the convicted vendor list following a conviction for a public entity crime is prohibited from doing any of the following for a period of 36 months from the date of being placed on the convicted vendor list:

- submitting a bid on a contract to provide any goods or services to a public entity;
- submitting a bid on a contract with a public entity for the construction or repair of a public building or public work;
- submitting bids on leases of real property to a public entity;
- being awarded or performing work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and
- transacting business with any public entity in excess of the Category Two threshold amount (\$25,000) provided in section 287.017 of the Florida Statutes.

**8. Discriminatory Vendors.** An entity or affiliate placed on the discriminatory vendor list pursuant to section 287.134 of the Florida Statutes may not:

- submit a bid on a contract to provide any goods or services to a public entity;
- submit a bid on a contract with a public entity for the construction or repair of a public building or public work;
- submit bids on leases of real property to a public entity;
- be awarded or perform work as a contractor, supplier, sub-contractor, or consultant under a contract with any public entity; or
- transact business with any public entity.

**9. Respondent's Representation and Authorization.** In submitting a response, each respondent understands, represents, and acknowledges the following (if the respondent cannot so certify to any of following, the respondent shall submit with its response a written explanation of why it cannot do so).

- The respondent is not currently under suspension or debarment by the State or any other governmental authority.
- To the best of the knowledge of the person signing the response, the respondent, its affiliates, subsidiaries, directors, officers, and employees are not currently under investigation by any governmental authority and have not in the last ten (10) years been convicted or found liable for any act prohibited by law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract.
- Respondent currently has no delinquent obligations to the State, including a claim by the State for liquidated damages under any other contract.

- The submission is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive response.
- The prices and amounts have been arrived at independently and without consultation, communication, or agreement with any other respondent or potential respondent; neither the prices nor amounts, actual or approximate, have been disclosed to any respondent or potential respondent, and they will not be disclosed before the solicitation opening.
- The respondent has fully informed the Buyer in writing of all convictions of the firm, its affiliates (as defined in section 287.133(1)(a) of the Florida Statutes), and all directors, officers, and employees of the firm and its affiliates for violation of state or federal antitrust laws with respect to a public contract for violation of any state or federal law involving fraud, bribery, collusion, conspiracy or material misrepresentation with respect to a public contract. This includes disclosure of the names of current employees who were convicted of contract crimes while in the employ of another company.
- Neither the respondent nor any person associated with it in the capacity of owner, partner, director, officer, principal, investigator, project director, manager, auditor, or position involving the administration of federal funds:
  - Has within the preceding three years been convicted of or had a civil judgment rendered against them or is presently indicted for or otherwise criminally or civilly charged for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local government transaction or public contract; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or
  - Has within a three-year period preceding this certification had one or more federal, state, or local government contracts terminated for cause or default.
- The product offered by the respondent will conform to the specifications without exception.
- The respondent has read and understands the Contract terms and conditions, and the submission is made in conformance with those terms and conditions.
- If an award is made to the respondent, the respondent agrees that it intends to be legally bound to the Contract that is formed with the State.
- The respondent has made a diligent inquiry of its employees and agents responsible for preparing, approving, or submitting the response, and has been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act or other conduct inconsistent with any of the statements and representations made in the response.
- The respondent shall indemnify, defend, and hold harmless the Buyer and its employees against any cost, damage, or expense which may be incurred or be caused by any error in the respondent's preparation of its bid.
- All information provided by, and representations made by, the respondent are material and important and will be relied upon by the Buyer in awarding the Contract. Any misstatement shall be treated as fraudulent concealment from the Buyer of the true facts relating to submission of the bid. A misrepresentation shall be punishable under law, including, but not limited to, Chapter 817 of the Florida Statutes.

~~**10. Manufacturer's Name and Approved Equivalents.** Unless otherwise specified, any manufacturers' names, trade names, brand names, information or catalog numbers listed in a specification are descriptive, not restrictive. With the Buyer's prior approval, the Contractor may provide any product that meets or exceeds the applicable specifications. The Contractor shall demonstrate comparability, including appropriate catalog materials, literature, specifications, test data, etc. The Buyer shall determine in its sole discretion whether a product is acceptable as an equivalent.~~

~~**11. Performance Qualifications.** The Buyer reserves the right to investigate or inspect at any time whether the product, qualifications, or facilities offered by Respondent meet the Contract requirements. Respondent shall at all times during the Contract term remain responsive and responsible. In determining Respondent's responsibility as a vendor, the agency shall consider all information or evidence which is gathered or comes to the attention of the agency which demonstrates the Respondent's capability to fully satisfy the requirements of the solicitation and the contract.~~

~~Respondent must be prepared, if requested by the Buyer, to present evidence of experience, ability, and financial standing, as well as a statement as to plant, machinery, and capacity of the respondent for the production, distribution, and servicing of the product bid. If the Buyer determines that the conditions of the solicitation documents are not complied with, or that the product proposed to be furnished does not meet the specified requirements, or that the qualifications, financial standing, or facilities are not satisfactory, or that performance is untimely, the Buyer may reject the response or terminate the Contract. Respondent may be disqualified from receiving awards if respondent, or anyone in respondent's employment, has previously failed to perform satisfactorily in connection with public bidding or contracts. This paragraph shall not mean or imply that it is obligatory upon the Buyer to make an investigation either before or after award of the Contract, but should the Buyer elect to do so, respondent is not relieved from fulfilling all Contract requirements.~~

~~**12. Public Opening.** Responses shall be opened on the date and at the location indicated on the Timeline. Respondents may, but are not required to, attend. The Buyer may choose not to announce prices or release other materials pursuant to s. 119.071(1)(b), Florida Statutes. Any person requiring a special accommodation because of a disability should contact the Procurement Officer at least five (5) workdays prior to the solicitation opening. If you are hearing or speech impaired, please contact the Buyer by using the Florida Relay Service at (800) 955-8771 (TDD).~~

~~**13. Electronic Posting of Notice of Intended Award.** Based on the evaluation, on the date indicated on the Timeline the Buyer shall electronically post a notice of intended award at [http://fen.state.fl.us/owa\\_vbs/owa/vbs\\_www.main\\_menu](http://fen.state.fl.us/owa_vbs/owa/vbs_www.main_menu). If the notice of award is delayed, in lieu of posting the notice of intended award the Buyer shall post a notice of the delay and a revised date for posting the notice of intended award. Any person who is adversely affected by the decision shall file with the Buyer a notice of protest within 72 hours after the electronic posting. The Buyer shall not provide tabulations or notices of award by telephone.~~

~~**14. Firm Response.** The Buyer may make an award within sixty (60) days after the date of the opening, during which period responses shall remain firm and shall not be withdrawn. If award is not made within sixty (60) days, the response shall remain firm until either the Buyer awards the Contract or the Buyer receives from the respondent written notice that the response is withdrawn. Any response that expresses a shorter duration may, in the Buyer's sole discretion, be accepted or rejected.~~

~~**15. Clarifications/Revisions.** Before award, the Buyer reserves the right to seek clarifications or request any information deemed necessary for proper evaluation of submissions from all respondents deemed eligible for Contract award. Failure to provide requested information may result in rejection of the response.~~

~~**16. Minor Irregularities/Right to Reject.** The Buyer reserves the right to accept or reject any and all bids, or separable portions thereof, and to waive any minor irregularity, technicality, or omission if the Buyer determines that doing so will serve the State's best interests. The Buyer may reject any response not submitted in the manner specified by the solicitation documents.~~

~~**17. Contract Formation.** The Buyer shall issue a notice of award, if any, to successful respondent(s), however, no contract shall be formed between respondent and the Buyer until the Buyer signs the Contract. The Buyer shall not be liable for any costs incurred by a respondent in preparing or producing its response or for any work performed before the Contract is effective.~~

~~**18. Contract Overlap.** Respondents shall identify any products covered by this solicitation that they are currently authorized to furnish under any state term contract. By entering into the Contract, a Contractor authorizes the Buyer to eliminate duplication between agreements in the manner the Buyer deems to be in its best interest.~~

~~**19. Public Records.** Article 1, section 24, Florida Constitution, guarantees every person access to all public records, and Section 119.011, Florida Statutes, provides a broad definition of public record. As such, all responses to a competitive solicitation are public records unless exempt by law. Any respondent claiming that its response contains information that is exempt from the public records law shall clearly segregate and mark that information and provide the specific statutory citation for such exemption.~~

**20. Protests.** Any protest concerning this solicitation shall be made in accordance with sections 120.57(3) and 287.042(2) of the Florida Statutes and chapter 28-110 of the Florida Administrative Code. Questions to the Procurement Officer shall not constitute formal notice of a protest. It is the Buyer's intent to ensure that specifications are written to obtain the best value for the State and that specifications are written to ensure competitiveness, fairness, necessity and reasonableness in the solicitation process.

Section 120.57(3)(b), F.S. and Section 28-110.003, Fla. Admin. Code require that a notice of protest of the solicitation documents shall be made within seventy-two hours after the posting of the solicitation.

Section 120.57(3)(a), F.S. requires the following statement to be included in the solicitation: "Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, shall constitute a waiver of proceedings under Chapter 120, Florida Statutes."

Section 28-110.005, Fla. Admin. Code requires the following statement to be included in the solicitation: "Failure to file a protest within the time prescribed in Section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, Florida Statutes."

**21. Limitation on Vendor Contact with Agency During Solicitation Period.** Respondents to this solicitation or persons acting on their behalf may not contact, between the release of the solicitation and the end of the 72-hour period following the agency posting the notice of intended award, excluding Saturdays, Sundays, and state holidays, any employee or officer of the executive or legislative branch concerning any aspect of this solicitation, except in writing to the procurement officer or as provided in the solicitation documents. Violation of this provision may be grounds for rejecting a response.

RFP CHECKLIST  
(DOES NOT NEED TO BE RETURNED WITH YOUR PROPOSAL)

This Checklist is provided as a guideline, only, to assist Proposers in the preparation of their RFP response. Included are some important matters that the proposer should check. This checklist is just a guideline, and is not intended to include all matters required by the RFP. Proposers are responsible to read and comply with the RFP in its entirety.

Check off each the following:

- \_\_\_ 1. The Price Proposal has been completed, as specified, and enclosed in the RFP response.
- \_\_\_ 2. The Federal Employers Identification Number or Social Security Number has been entered in the space provided.
- \_\_\_ 3. The “Drug-Free Workplace Program Certification” form has been read, signed, and enclosed in the RFP response, if applicable.
- \_\_\_ 4. “Scrutinized Companies Lists” certification form has been read, signed, and enclosed in the RFP price proposal, if applicable (proposals of \$1 million or more).
- \_\_\_ 5. The “Bid Opportunity List” and the “DBE Participation Statement” form has been read, completed, and enclosed in the RFP response, if applicable.
- \_\_\_ 6. The Exhibit “A”, Scope of Services, CFRC 115RE Steel Rail Specification, has been thoroughly reviewed for compliance to the RFP requirements.
- \_\_\_ 7. The Technical Proposal (one (1) original and the specified number of copies) has been completed, as specified, and enclosed in the RFP response.
- \_\_\_ 8. The [www.myflorida.com](http://www.myflorida.com) website has been checked and any Addendums posted have been completed, signed, and included in the RFP response.
- \_\_\_ 9. The RFP response must be received, at the location specified, **on or before** the Opening Date and Time designated in the RFP.
- \_\_\_ 10. On the Lower Left Hand Corner of the Envelope transmitting your RFP response, write in the following information:

RFP No.: RFP-DOT-14-15-5015-LLR

Title: Central Florida Rail Corridor (CFRC) Commodities – Continuously Welded Rail (CWR)

Opening Date & Time: June 16, 2015



STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**STANDARD WRITTEN AGREEMENT**

375-040-19  
PROCUREMENT  
OGC - 05/15  
Page 1 of 9

Agreement No.: \_\_\_\_\_

Financial Project I.D.: 423446-9-53-01

F.E.I.D. No: \_\_\_\_\_

Appropriation Bill Number(s)/Line Item Number(s) for 1st year of contract, pursuant to s. 216.313, F.S.: SB 1500, Line No. 1856

(required for contracts in excess of \$5 million)

Procurement No.: RFP-DOT-14-15-5015-LLR

D.M.S. Catalog Class No.: 30103100, 30121500, 30121700

BY THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, hereinafter called the "Department" and

of \_\_\_\_\_  
duly authorized to conduct business in the State of Florida, hereinafter called "Vendor," hereby agree as follows:

1. SERVICES AND PERFORMANCE

- A. In connection with Central Florida Rail Corridor (CFRC) Commodities- Continuously Welded Rail, the Department does hereby retain the Vendor to furnish certain services, information, and items as described in Exhibit "A," attached hereto and made a part hereof.
- B. Before making any additions or deletions to the work described in this Agreement, and before undertaking any changes or revisions to such work, the parties shall negotiate any necessary cost changes and shall enter into an Amendment covering such work and compensation. Reference herein to this Agreement shall include any amendment(s).
- C. All tracings, plans, specifications, maps, computer files, and reports prepared or obtained under this Agreement, as well as all data collected, together with summaries and charts derived therefrom, shall be the exclusive property of the Department without restriction or limitation on their use and shall be made available, upon request, to the Department at any time during the performance of such services and/or upon completion or termination of this Agreement. Upon delivery to the Department of said document(s), the Department shall become the custodian thereof in accordance with Chapter 119, Florida Statutes. The Vendor shall not copyright any material and products or patent any invention developed under this Agreement. The Department shall have the right to visit the site for inspection of the work and the products of the Vendor at any time.
- D. All final plans, documents, reports, studies, and other data prepared by the Vendor shall bear the professional's seal/signature, in accordance with the applicable Florida Statutes, Administrative Rules promulgated by the Department of Business and Professional Regulation, and guidelines published by the Department, in effect at the time of execution of this Agreement. In the event that changes in the statutes or rules create a conflict with the requirements of published guidelines, requirements of the statutes and rules shall take precedence.
- E. The Vendor agrees to provide project schedule progress reports in a format acceptable to the Department and at intervals established by the Department. The Department shall be entitled at all times to be advised, at its request, as to the status of work being done by the Vendor and of the details thereof. Coordination shall be maintained by the Vendor with representatives of the Department, or of other agencies interested in the project on behalf of the Department. Either party to this Agreement may request and be granted a conference.
- F. All services shall be performed by the Vendor to the satisfaction of the Director who shall decide all questions, difficulties, and disputes of any nature whatsoever that may arise under or by reason of this Agreement, the prosecution and fulfillment of the services hereunder and the character, quality, amount of value thereof; and the decision upon all claims, questions, and disputes shall be final and binding upon the parties hereto. Adjustments of compensation and contract time because of any major changes in the work that may become necessary or desirable as the work progresses shall be subject to mutual agreement of the parties, and amendment(s) shall be entered into by the parties in accordance herewith.

Reference herein to the Director shall mean the  
Director of Transportation Operations

## 2. TERM

- A. Initial Term. This Agreement shall begin on date of execution and shall remain in full force and effect through completion of all services required or one year after execution, whichever occurs first. Subsequent to the execution of this Agreement by both parties, the services to be rendered by the Vendor shall commence and be completed in accordance with the option selected below. (Select box and indicate date(s) as appropriate):

- Services shall commence \_\_\_\_\_ and shall be completed by \_\_\_\_\_ or date of termination, whichever occurs first.
- Services shall commence upon written notice from the Department's Contract Manager and shall be completed by \_\_\_\_\_ or date of termination, whichever occurs first.
- Other: See Exhibit "A"

- B. RENEWALS (Select appropriate box):

- This Agreement may not be renewed.
- This Agreement may be renewed for a period that may not exceed three (3) years or the term of the original contract, whichever is longer. Renewals are contingent upon satisfactory performance evaluations by the Department and subject to the availability of funds. Costs for renewal may not be charged. Any renewal or extension must be in writing and is subject to the same terms and conditions set forth in this Agreement and any written amendments signed by the parties.

- C. EXTENSIONS. In the event that circumstances arise which make performance by the Vendor impracticable or impossible within the time allowed or which prevent a new contract from being executed, the Department, in its discretion, may grant an extension of this Agreement. Extension of this Agreement must be in writing for a period not to exceed six (6) months and is subject to the same terms and conditions set forth in this Agreement and any written amendments signed by the parties; provided the Department may, in its discretion, grant a proportional increase in the total dollar amount based on the method and rate established herein. There may be only one extension of this Agreement unless the failure to meet the criteria set forth in this Agreement for completion of this Agreement is due to events beyond the control of the Vendor.

It shall be the responsibility of the Vendor to ensure at all times that sufficient time remains in the Project Schedule within which to complete services on the project. In the event there have been delays which would affect the project completion date, the Vendor shall submit a written request to the Department which identifies the reason(s) for the delay and the amount of time related to each reason. The Department shall review the request and make a determination as to granting all or part of the requested extension.

## 3. COMPENSATION AND PAYMENT

- A. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Chief Financial Officer of the State of Florida under Chapters 215 and 216, Florida Statutes. Deliverable(s) must be received and accepted in writing by the Contract Manager on the Department's invoice transmittal forms prior to payment. If the Department determines that the performance of the Vendor is unsatisfactory, the Department shall notify the Vendor of the deficiency to be corrected, which correction shall be made within a time-frame to be specified by the Department. The Vendor shall, within five days after notice from the Department, provide the Department with a corrective action plan describing how the Vendor will address all issues of contract non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to the Department, the Vendor shall be assessed a non-performance retainage equivalent to 10% of the total invoice amount. The retainage shall be applied to the invoice for the then-current billing period. The retainage shall be withheld until the vendor resolves the deficiency. If the deficiency is subsequently resolved, the Vendor may bill the Department for the retained amount during the next billing period. If the Vendor is unable to resolve the deficiency, the funds retained may be forfeited at the end of the agreement period.

- B. If this Agreement involves units of deliverables, then such units must be received and accepted in writing by the Contract Manager prior to payments.
- C. Bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper preaudit and postaudit thereof.
- D. The bills for any travel expenses, when authorized by terms of this Agreement and by the Department's Project Manager, shall be submitted in accordance with Section 112.061, Florida Statutes, and the Department's Disbursement Handbook - For Employees and Managers.
- E. Vendors providing goods and services to the Department should be aware of the following time frames. Upon receipt, the Department has five (5) working days to inspect and approve the goods and services, unless otherwise specified herein. The Department has twenty (20) days to deliver a request for payment (voucher) to the Department of Financial Services. The twenty (20) days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.
- F. If a payment is not available within forty (40) days, a separate interest penalty as established pursuant to Section 215.422, Florida Statutes, shall be due and payable, in addition to the invoice amount, to the Vendor. Interest penalties of less than one (1) dollar shall not be enforced unless the Vendor requests payment. Invoices which have to be returned to a Vendor because of Vendor preparation errors shall result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.
- G. The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system. Pursuant to Section 287.057(22), Florida Statutes, all payments shall be assessed a transaction fee of one percent (1%), which the Vendor shall pay to the State. For payments within the State accounting system (FLAIR or its successor), the transaction fee shall, when possible, be automatically deducted from payments to the Vendor. If automatic deduction is not possible, the Vendor shall pay the transaction fee pursuant to Rule 60A-1.031 (2), Florida Administrative Code. By submission of these reports and corresponding payments, Vendor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee. The Vendor shall receive a credit for any transaction fee paid by the Vendor for the purchase of any item(s) if such item(s) are returned to the Vendor through no fault, act, or omission of the Vendor. Notwithstanding the foregoing, a transaction fee is non-refundable when an item is rejected or returned, or declined, due to the Vendor's failure to perform or comply with specifications or requirements of the Agreement. Failure to comply with these requirements shall constitute grounds for declaring the Vendor in default and recovering procurement costs from the Vendor in addition to all outstanding fees. **VENDORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE EXCLUDED FROM CONDUCTING FUTURE BUSINESS WITH THE STATE.**
- H. A vendor ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.
- I. Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for three (3) years after final payment for the work pursuant to this Agreement is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred shall include the Vendor's general accounting records and the project records, together with supporting documents and records of the Vendor and all subcontractors performing work on the project, and all other records of the Vendor and subcontractors considered necessary by the Department for a proper audit of project costs.
- J. The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

4. INDEMNITY AND PAYMENT FOR CLAIMS

- A. **INDEMNITY:** To the extent permitted by Florida Law, the Vendor shall indemnify and hold harmless the Department, its officers and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by negligence, recklessness, or intentional wrongful misconduct of the Vendor and persons employed or utilized by the Vendor in the performance of this Agreement.

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof, a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

**PAYMENT FOR CLAIMS:** The Vendor guaranties the payment of all just claims for materials, supplies, tools, or labor and other just claims against the Vendor or any subcontractor, in connection with the Agreement. The Department's final acceptance and payment does not release the Vendor's bond until all such claims are paid or released.

- B. **LIABILITY INSURANCE.** (Select and complete as appropriate):

No general liability insurance is required.

The Vendor shall carry and keep in force during the term of this Agreement, a general liability insurance policy or policies with a company or companies authorized to do business in Florida, affording public liability insurance with a combined bodily injury limits of at least \$ 200,000.00 per person and \$ 300,000.00 each occurrence, and property damage insurance of at least \$ 200,000.00 each occurrence, for the services to be rendered in accordance with this Agreement.

The Vendor shall have and maintain during the term of this Agreement, a professional liability insurance policy or policies or an irrevocable letter of credit established pursuant to Chapter 675 and Section 337.106, Florida Statutes, with a company or companies authorized to do business in the State of Florida, affording liability coverage for the professional services to be rendered in accordance with this Agreement in the amount of \$ \_\_\_\_\_.

- C. **WORKERS' COMPENSATION.** The Vendor shall also carry and keep in force Workers' Compensation insurance as required for the State of Florida under the Workers' Compensation Law.

- D. **PERFORMANCE AND PAYMENT BOND.** (Select as appropriate):

No Bond is required.

Prior to commencement of any services pursuant to this Agreement and at all times during the term hereof, including renewals and extensions, the Vendor will supply to the Department and keep in force a bond provided by a surety authorized to do business in the State of Florida, payable to the Department and conditioned for the prompt, faithful, and efficient performance of this Agreement according to the terms and conditions hereof and within the time periods specified herein, and for the prompt payment of all persons furnishing labor, materials, equipment, and supplies therefor.

- E. **CERTIFICATION.** With respect to any general liability insurance policy required pursuant to this Agreement, all such policies shall be issued by companies licensed to do business in the State of Florida. The Vendor shall provide to the Department certificates showing the required coverage to be in effect with endorsements showing the Department to be an additional insured prior to commencing any work under this Contract. Policies that include Self Insured Retention (SIR) will not be accepted. The certificates and policies shall provide that in the event of any material change in or cancellation of the policies reflecting the required coverage, thirty days advance notice shall be given to the Department or as provided in accordance with Florida law.

## 5. COMPLIANCE WITH LAWS

- A. The Vendor shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Vendor in conjunction with this Agreement. Specifically, if the Vendor is acting on behalf of a public agency the Vendor shall:
- (1) Keep and maintain public records that ordinarily and necessarily would be required by the Department in order to perform the services being performed by the Vendor.
  - (2) Provide the public with access to public records on the same terms and conditions that the Department would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
  - (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
  - (4) Meet all requirements for retaining public records and transfer, at no cost, to the Department all public records in possession of the Vendor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Department in a format that is compatible with the information technology systems of the Department.
- Failure by the Vendor to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the Department. The Vendor shall promptly provide the Department with a copy of any request to inspect or copy public records in possession of the Vendor and shall promptly provide the Department a copy of the Vendor's response to each such request.
- B. The Vendor agrees that it shall make no statements, press releases or publicity releases concerning this Agreement or its subject matter or otherwise discuss or permit to be disclosed or discussed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the Department's Contract Manager and securing prior written consent. The Vendor also agrees that it shall not publish, copyright, or patent any of the data developed under this Agreement, it being understood that such data or information are works made for hire and the property of the Department.
- C. The Vendor shall comply with all federal, state, and local laws and ordinances applicable to the work or payment for work thereof, and will not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the performance of work under this Agreement.
- D. If the Vendor is licensed by the Department of Business and Professional Regulation to perform the services herein contracted, then Section 337.162, Florida Statutes, applies as follows:
- (1) If the Department has knowledge or reason to believe that any person has violated the provisions of state professional licensing laws or rules, it shall submit a complaint regarding the violations to the Department of Business and Professional Regulation. The complaint shall be confidential.
  - (2) Any person who is employed by the Department and who is licensed by the Department of Business and Professional Regulation and who, through the course of the person's employment, has knowledge to believe that any person has violated the provisions of state professional licensing laws or rules shall submit a complaint regarding the violations to the Department of Business and Professional Regulation. Failure to submit a complaint about the violations may be grounds for disciplinary action pursuant to Chapter 455, Florida Statutes, and the state licensing law applicable to that licensee. The complaint shall be confidential.
  - (3) Any complaints submitted to the Department of Business and Professional Regulation are confidential and exempt from Section 119.07(1), Florida Statutes, pursuant to Chapter 455, Florida Statutes, and applicable state law.
- E. The Vendor covenants and agrees that it and its employees and agents shall be bound by the standards of conduct provided in applicable law and applicable rules of the Board of Business and Professional Regulation as they relate to work performed under this Agreement. The Vendor further covenants and agrees that when a former state employee is employed by the Vendor, the Vendor shall require that strict adherence by the former state employee to Sections 112.313 and 112.3185, Florida Statutes, is a condition of employment for said former state employee. These statutes will by reference be made a part of this Agreement as though set forth in full. The Vendor agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed pursuant to this Agreement.

- F. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity, may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids, proposals, or replies on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of thirty-six (36) months following the date of being placed on the convicted vendor list.
- G. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity, may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids, proposals, or replies on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity.
- H. The Department shall consider the employment by any vendor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the Vendor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this agreement.
- I. Pursuant to Section 216.347, Florida Statutes, the vendor may not expend any State funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency.

6. TERMINATION AND DEFAULT

- A. This Agreement may be canceled by the Department in whole or in part at any time the interest of the Department requires such termination. The Department reserves the right to terminate or cancel this Agreement in the event an assignment be made for the benefit of creditors.
- B. If the Department determines that the performance of the Vendor is not satisfactory, the Department shall have the option of (a) immediately terminating the Agreement, or (b) notifying the Vendor of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the Agreement will be terminated at the end of such time, or (c) taking whatever action is deemed appropriate by the Department.
- C. If the Department requires termination of the Agreement for reasons other than unsatisfactory performance of the Vendor, the Department shall notify the Vendor of such termination, with instructions as to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.
- D. If the Agreement is terminated before performance is completed, the Vendor shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the agreement price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. All work in progress shall become the property of the Department and shall be turned over promptly by the Vendor.
- E. For Agreements \$1,000,000 and greater, if the Department determines the Vendor submitted a false certification under Section 287.135(5), Florida Statutes, been placed on the Scrutinized Companies with Activities in the Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the Department shall either terminate the Agreement after it has given the Vendor notice and an opportunity to demonstrate the Department's determination of false certification was in error pursuant to Section 287.135(5)(a), Florida Statutes, or maintain the Agreement if the conditions of Section 287.135 (4), Florida Statutes, are met.

7. ASSIGNMENT AND SUBCONTRACTS

A. The Vendor shall maintain an adequate and competent staff so as to enable the Vendor to timely perform under this Agreement and may associate with it such subcontractors, for the purpose of its services hereunder, without additional cost to the Department, other than those costs within the limits and terms of this Agreement. The Vendor is fully responsible for satisfactory completion of all subcontracted work. The Vendor, however, shall not sublet, assign, or transfer any work under this Agreement to other than subcontractors specified in the proposal, bid, and/or Agreement without the written consent of the Department.

B. Select the appropriate box:

The following provision is not applicable to this Agreement:

The following provision is hereby incorporated in and made a part of this Agreement:

It is expressly understood and agreed that any articles that are the subject of, or required to carry out this Agreement shall be purchased from a nonprofit agency for the blind or for the severely handicapped that is qualified pursuant to Chapter 413, Florida Statutes, in the same manner and under the same procedures set forth in Section 413.036(1) and (2), Florida Statutes; and for purposes of this Agreement the person, firm, or other business entity (Vendor) carrying out the provisions of this Agreement shall be deemed to be substituted for the state agency (Department) insofar as dealings with such qualified nonprofit agency are concerned. RESPECT of Florida provides governmental agencies within the State of Florida with quality products and services produced by persons with disabilities. Available pricing, products, and delivery schedules may be obtained by contacting:

RESPECT  
2475 Apalachee Pkwy  
Tallahassee, Florida 32301-4946  
Phone: (850)487-1471

The following provision is hereby incorporated in and made a part of this Agreement:

It is expressly understood and agreed that any articles which are the subject of, or required to carry out this Agreement shall be purchased from the corporation identified under Chapter 946, Florida Statutes, in the same manner and under the procedures set forth in Sections 946.515(2) and (4), Florida Statutes; and for purposes of this Agreement the person, firm, or other business entity (Vendor) carrying out the provisions of this Agreement shall be deemed to be substituted for this agency (Department) insofar as dealings with such corporation are concerned. The "corporation identified" is Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE). Available pricing, products, and delivery schedules may be obtained by contacting:

PRIDE Enterprises  
12425 - 28th Street, North  
St. Petersburg, FL 33716-1826  
(800)643-8459

This Agreement involves the expenditure of federal funds and Section 946.515, Florida Statutes, as noted above, does not apply. However, Appendix I is applicable to all parties and is hereof made a part of this Agreement.

8. MISCELLANEOUS

A. The Vendor and its employees, agents, representatives, or subcontractors are not employees of the Department and are not entitled to the benefits of State of Florida employees. Except to the extent expressly authorized herein, Vendor and its employees, agents, representatives, or subcontractors are not agents of the Department or the State for any purpose or authority such as to bind or represent the interests thereof, and shall not represent that it is an agent or that it is acting on the behalf of the Department or the State. The Department shall not be bound by any unauthorized acts or conduct of the Vendor or its employees, agents, representatives, or subcontractors. Vendor agrees to include this provision in all its subcontracts under this Agreement.

B. All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

- C. This Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto. The State of Florida terms and conditions, whether general or specific, shall take precedence over and supersede any inconsistent or conflicting provision in any attached terms and conditions of the Vendor.
- D. It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Florida, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.
- E. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- F. In any legal action related to this Agreement, instituted by either party, the Vendor hereby waives any and all privileges and rights it may have under Chapter 47 and Section 337.19, Florida Statutes, relating to venue, as it now exists or may hereafter be amended, and any and all such privileges and rights it may have under any other statute, rule, or case law, including, but not limited to those grounded on convenience. Any such legal action may be brought in the appropriate Court in the county chosen by the Department and in the event that any such legal action is filed by the Vendor, the Vendor hereby consents to the transfer of venue to the county chosen by the Department upon the Department filing a motion requesting the same.
- G. If this Agreement involves the purchase or maintenance of information technology as defined in Section 282.0041, Florida Statutes, the selected provisions of the attached Appendix II are made a part of this Agreement.
- H. If this Agreement is the result of a formal solicitation (Invitation to Bid, Request for Proposal or Invitation to Negotiate), the Department of Management Services Forms PUR1000 and PUR1001, included in the solicitation, are incorporated herein by reference and made a part of this Agreement.
- I. Vendor/Contractor:
1. shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Vendor/Contractor during the term of the contract; and
  2. shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.
- J. Time is of the essence as to each and every obligation under this Agreement.
- K. The following attachments are incorporated and made a part of this agreement:  
Exhibit A, Scope of Services  
Exhibit B, Method of Compensation  
Exhibit C, Required Contract Provisions for Federal Transit Administration Commodity Contracts
- L. Other Provisions:  
Section 8-G is hereby deleted.



IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers on the day, month and year set forth above.

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
Name of Vendor

BY: \_\_\_\_\_  
Authorized Signature

BY: \_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
(Print/Type)

\_\_\_\_\_  
(Print/Type)

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

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

FOR DEPARTMENT USE ONLY

APPROVED:

LEGAL REVIEW:

Procurement Office

\_\_\_\_\_

EXHIBIT A – SCOPE OF SERVICES CENTRAL FLORIDA RAIL CORRIDOR  
(CFRC) Continuously Welded Rail (CWR)

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**115 RE Steel Rail Specification**

**5/20/2015**

This document describes all of the technical requirements including but not limited to material description, delivery, certification, quality control, execution, testing, warranty, etc. for the Request For Proposal Central Florida Rail Corridor (CFRC) Commodities – Continuously Welded Rail (CWR)

The provided CWR will be used in the construction of the next phase (Phase 2 South) of the Central Florida Commuter Rail Transit system

## 1. General

### 1.1. Description

- 1.1.1. This Section includes specifications for furnishing, testing, inspecting, handling, loading, shipping, delivering, and unloading of new Standard and Head Hardened AREMA 115RE CWR tee rail manufactured from AREMA Standard Chemistry Rail Steel (Domestic).
- 1.1.2. Furnish all labor, tools, materials, equipment, facilities and transportation necessary to furnish and deliver 68,800 linear feet of 115RE standard strength and 11,200 linear feet of 115RE head hardened CWR in 1,600 foot CWR strings to delivery sites as designated by the Engineer.
- 1.1.3. All Work shall be in accordance with the edition of the AREMA Manual for Railway Engineering, Chapter 4 – Rail, current as of the bid due date, except as modified herein.

### 1.2. Submittals

Submit the following for review and approval by the Engineer:

- 1.2.1. Schedule of rail testing and inspection, shipment and delivery within fifteen (15) days of Notice to Proceed.
- 1.2.2. Quality Control Program within thirty (30) days of Notice to Proceed.
- 1.2.3. Schedule of CWR string lengths for delivery to the designated site(s) at least thirty (30) days prior to delivery. Inventory records of CWR strings shipped at the time of each shipment.
- 1.2.4. Ultrasonic Test Report at least fifteen (15) days prior to delivery.
- 1.2.5. Certificates of Compliance at least fifteen (15) days prior to delivery.

## 2. Products

### 2.1. General

- 2.1.1. All rail provided shall be new Standard Chemistry Rail Steel rail in accordance with AREMA Manual for Railway Engineering, Chapter 4 - Rail, Part 1 - Design and Part 2 – Specifications, except as modified herein.
- 2.1.2. All rails shall meet the requirements of the AREMA Manual for Railway Engineering, Chapter 4 - Rail, Part 2 - Specifications, Articles 2.1.7 and 2.1.18. The mill brand or stamp shall identify the hydrogen elimination

process by use of the initials in parenthesis as shown in AREMA Manual for Railway Engineering, Chapter 4 - Rail, Part 2 - Specifications, Article 2.1.7.

- 2.1.3. All rails shall meet the hardness criteria of the AREMA Manual for Railway Engineering, Chapter 4 - Rail, Part 2 - Specifications, Table 4-2-1-4-1 b.

## **2.2. Rail Length**

- 2.2.1. The nominal length of the CWR strings delivered to the work site shall be approximately 1,600 ft, when corrected to a temperature of 60° F. Shorter lengths may be allowed at the approval of the Engineer but shall not be less than 800 ft.

## **2.3. Rail Ends**

- 2.3.1. Furnish CWR strings with one 1-1/8 inch diameter hole located 6-inches from one end, or as per Engineer's unloading requirements.

## **2.4. Rail Tolerances and Condition**

See AREMA article 2.1.13.1.h

## **3. Execution**

### **3.1. Quality Control Program**

- 3.1.1. Develop and maintain a Quality Control Program (QCP) regulating methods, procedures and processes to ensure compliance with standards of quality required by the Contract Documents for the duration of the Contract. The QCP shall include all tests and inspections specified herein. The QCP shall address the manufacture of the rail.
- 3.1.2. The Contractor shall have primary responsibility for Quality Control and shall bear all expenses therefore. The Engineer reserves the right to perform additional testing and periodic inspection.
- 3.1.3. Within 30 days after Notice to Proceed, submit a detailed narrative explaining the QCP procedures and organization to be utilized for the work. All work undertaken by the Contractor before approval of the QCP will be at the Contractor's risk. The Engineer will monitor the Contractor's methods, procedures and processes for compliance with the accepted program.

- 3.1.4. Prepare and maintain complete records of all testing and inspection work. Such records shall be made available to the Engineer during the performance of the Contract; and for a period not to exceed five (5) years.

### **3.2. Testing and Inspection**

- 3.2.1. All testing and inspection shall be at the expense of the Contractor.
- 3.2.2. The Contractor shall provide not less than fourteen (14) days advance notice when any testing and inspection is to be performed. The Engineer retains the right to witness the tests.
- 3.2.3. Within seven (7) days after completion of testing, the testing firm shall submit six (6) certified copies of all test results including original data calculations and interpretation of results to the Engineer.

### **3.3. Ultrasonic Testing**

Upon completion of the installation of the rail by the Department's Design-Build Contractor, the Engineer will ultrasonically test the rail in-track. Defects found in the rail at that time will be removed by the Department's Design-Build Contractor and a replacement section of defect-free rail not less than thirteen (13) ft in length will be field welded in place. All costs associated with the removal and replacement of the defective rail, unless the defect falls within a field weld zone, shall be the responsibility of this Contractor and set at a not to exceed amount of \$2,000.00 per each occurrence.

### **3.4. Visual Inspection**

All rails shall be visually inspected for defects, damage and non-conformance by the Contractor's quality control representative in the presence of the Engineer, when the material is welded and stored, then again when the rail is delivered to the project site. Rail that is found to not meet the requirements of these specifications or that are determined to be damaged or defective shall be removed from the project site and shall be replaced by acceptable materials at no additional cost to the Department.

### **3.5. Certificates of Compliance**

- 3.5.1. Furnish certificates of compliance for all rails. Submit certificates to demonstrate proof of compliance of the rail. Clearly identify by heat number and rail letter the pieces of rail, and or CWR strings so certified by each

certificate. Have certificates signed by an authorized representative of the Contractor, stating that the material complies in all respects with the Contract requirements.

3.5.2. Submit certificate of compliance with a certified copy of results of the ultrasonic tests. On the certificate, give the name and address of the organization that performed the tests, the date of the tests, and the quantity of materials furnished.

3.5.3. The Engineer reserves the right to prohibit the use of certain rails regardless of a certificate of compliance. The Engineer may, however, accept such rejected rails based upon further control testing by the Contractor. The Contractor shall bear all costs for additional control testing therefore.

### **3.6. Markings**

3.6.1. Each CWR string shall be paint marked in the web area on both ends with white painted numbers indicating the string length.

3.6.2. Mark rails with an oil-base paint that is suitable for application to steel and is weather-resistant.

### **3.7. Rail Cutting**

3.7.1. Rails shall be cut square and clean by means of rail saws or abrasive cutting wheels.

3.7.2. Torch cutting of rail is prohibited.

### **3.8. Loading, Shipping, Unloading and Stockpiling**

3.8.1. Rails shall be handled in a manner to avoid damage during loading, shipping, unloading and stockpiling.

3.8.2. All rail shipments shall be adequately prepared to preclude damage during shipment. All rails shall be shipped head upward with separators between tiers.

3.8.3. Rail shall be shipped to Engineer-designated project segments located along the proposed project alignment. Said project segments are to be designated by the Engineer no less than sixty (60) days prior to delivery.

3.8.4. Contractor shall be responsible for coordinating deliveries with the Department. The Contractor may contact:

Miguel Torres, Chief Operating Officer (COO)

Central Florida Rail Corridor

801 Sunrail Drive

Sanford FL 32771

Phone: 407.732.6703

E-mail: miguel.torres@dot.state.fl.us

Contractor must make arrangements with CFRC COO for access to CFRC ROW and Department's Design-Build Contractor for coordinating the unloading of the CWR strings along the existing ROW. Specific locations will be provided by the Engineer no later than sixty days prior to delivery.

3.8.5. The Contractor shall furnish a threader operator for the unloading of CWR along the project alignment, two rail lengths at a time on the west or east side of the CFRC main line tracks as directed by the Engineer. The north end of a pair of rail lengths shall overlap the south end of the next pair of rail lengths by approximately 5 ft. The Contractor shall not cut CWR at road crossings or obstructions.

3.8.6. The Contractor shall replace all rail damaged during loading, shipping, unloading and stockpiling with new rail at no additional cost to the Department.

### **3.9. Warranty**

Any item or material delivered under this contract found to be defective within one year after the installation in track, shall be repaired, remedied or replaced by the Contractor free of all charges including transportation, removal of defective material and track adjustment/installation with new material.

4.0. Form PUR 1000, General Contract Conditions  
The Departments Form PUR 1000, General Contract Conditions is hereby incorporated into the Exhibit "A", Scope of Services.

**END OF SECTION**

**State of Florida  
PUR 1000  
General Contract Conditions**

**Central Florida Rail Corridor (CFRC)  
Continuously Welded Rail (CWR)**

The PUR 1000 conditions as set forth below are incorporated in and part of Division I of the Specifications, except that the following paragraphs of PUR 1000 do not apply: 2, 3, 4, 5, 11, 12, 13, 15, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 31, 35, 40, 41, 42, 43, 45, and 47. Deletion of these paragraphs shall not be deemed to be deletion of content contained elsewhere and the substance of these excepted paragraphs may be addressed in other locations in the Contract. The substance located elsewhere continues to apply regardless of this exception paragraph.

**Contents**

1. Definitions.
- ~~2. Purchase Orders.~~
- ~~3. Product Version.~~
- ~~4. Price Changes Applicable only to Term Contracts.~~
- ~~5. Additional Quantities.~~
6. Packaging.
7. Inspection at Contractor's Site.
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- ~~13. Risk of Loss.~~
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16. Taxes.
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18. Lobbying and Integrity.
- ~~19. Indemnification.~~
- ~~20. Limitation of Liability.~~
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- ~~25. Changes.~~
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28. Advertising.
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30. Antitrust Assignment
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32. Employees, Subcontractors, and Agents.
33. Security and Confidentiality.
34. Contractor Employees, Subcontractors, and Other Agents.
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- 38. Notices.
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- 40. ~~Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE).~~
- 41. ~~Products Available from the Blind or Other Handicapped.~~
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- 44. Waiver.
- 45. ~~Annual Appropriations.~~
- 46. Execution in Counterparts.
- 47. ~~Severability.~~

**1. Definitions.** The definitions contained in s. 60A-1.001, F.A.C. shall apply to this agreement. The following additional terms are also defined:

(a) “Contract” means the legally enforceable agreement that results from a successful solicitation. The parties to the Contract will be the Customer and Contractor.

(b) “Customer” means the State agency or other entity identified in a contract as the party to receive commodities or contractual services pursuant to a contract or that orders commodities or contractual services via purchase order or other contractual instrument from the Contractor under the Contract. The “Customer” may also be the “Buyer” as defined in the PUR 1001 if it meets the definition of both terms.

(c) “Product” means any deliverable under the Contract, which may include commodities, services, technology or software.

(d) “Purchase order” means the form or format a Customer uses to make a purchase under the Contract (e.g., a formal written purchase order, electronic purchase order, procurement card, contract or other authorized means).

**2. Purchase Orders.** ~~In contracts where commodities or services are ordered by the Customer via purchase order, Contractor shall not deliver or furnish products until a Customer transmits a purchase order. All purchase orders shall bear the Contract or solicitation number, shall be placed by the Customer directly with the Contractor, and shall be deemed to incorporate by reference the Contract and solicitation terms and conditions. Any discrepancy between the Contract terms and the terms stated on the Contractor’s order form, confirmation, or acknowledgement shall be resolved in favor of terms most favorable to the Customer. A purchase order for services within the ambit of section 287.058(1) of the Florida Statutes shall be deemed to incorporate by reference the requirements of subparagraphs (a) through (f) thereof. Customers shall designate a contract manager and a contract administrator as required by subsections 287.057(15) and (16) of the Florida Statutes.~~

**3. Product Version.** ~~Purchase orders shall be deemed to reference a manufacturer’s most recently release model or version of the product at the time of the order, unless the Customer specifically requests in writing an earlier model or version and the contractor is willing to provide such model or version.~~

**4. Price Changes Applicable only to Term Contracts.** ~~If this is a term contract for commodities or services, the following provisions apply.~~

~~(a) Quantity Discounts. Contractors are urged to offer additional discounts for one time delivery of large single orders. Customers should seek to negotiate additional price concessions on quantity purchases of any products offered under the Contract. State Customers shall document their files accordingly.~~

~~(b) Best Pricing Offer. During the Contract term, if the Customer becomes aware of better pricing offered by the Contractor for substantially the same or a smaller quantity of a product outside the Contract, but upon the same or similar~~

~~terms of the Contract, then at the discretion of the Customer the price under the Contract shall be immediately reduced to the lower price.~~

~~(c) **Sales Promotions.** In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, a Contractor may conduct sales promotions involving price reductions for a specified lesser period. A Contractor shall submit to the Contract Specialist documentation identifying the proposed (1) starting and ending dates of the promotion, (2) products involved, and (3) promotional prices compared to then authorized prices. Promotional prices shall be available to all Customers. Upon approval, the Contractor shall provide conspicuous notice of the promotion.~~

~~(d) **Trade-In.** Customers may trade in equipment when making purchases from the Contract. A trade in shall be negotiated between the Customer and the Contractor. Customers are obligated to actively seek current fair market value when trading equipment, and to keep accurate records of the process. For State agencies, it may be necessary to provide documentation to the Department of Financial Services and to the agency property custodian pursuant to Chapter 273, F.S.~~

~~(e) **Equitable Adjustment.** The Customer may, in its sole discretion, make an equitable adjustment in the Contract terms or pricing if pricing or availability of supply is affected by extreme and unforeseen volatility in the marketplace, that is, by circumstances that satisfy all the following criteria: (1) the volatility is due to causes wholly beyond the Contractor's control, (2) the volatility affects the marketplace or industry, not just the particular Contract source of supply, (3) the effect on pricing or availability of supply is substantial, and (4) the volatility so affects the Contractor that continued performance of the Contract would result in a substantial loss.~~

~~**5. Additional Quantities.** For a period not exceeding ninety (90) days from the date of solicitation award, the Customer reserves the right to acquire additional quantities up to the amount shown on the solicitation but not to exceed the threshold for Category Two at the prices submitted in the response to the solicitation.~~

**6. Packaging.** Tangible product shall be securely and properly packed for shipment, storage, and stocking in appropriate, clearly labeled, shipping containers and according to accepted commercial practice, without extra charge for packing materials, cases, or other types of containers. All containers and packaging shall become and remain Customer's property.

**7. Inspection at Contractor's Site.** The Customer reserves the right to inspect, at any reasonable time with prior notice, the equipment or product or plant or other facilities of a Contractor to assess conformity with Contract requirements and to determine whether they are adequate and suitable for proper and effective Contract performance.

**8. Safety Standards.** All manufactured items and fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate State inspector. Acceptability customarily requires, at a minimum, identification marking of the appropriate safety standard organization, where such approvals of listings have been established for the type of device offered and furnished, for example: the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; and the American Gas Association for gas-operated assemblies. In addition, all items furnished shall meet all applicable requirements of the Occupational Safety and Health Act and state and federal requirements relating to clean air and water pollution.

**9. Americans with Disabilities Act.** Contractors should identify any products that may be used or adapted for use by visually, hearing, or other physically impaired individuals.

**10. Literature.** Upon request, the Contractor shall furnish literature reasonably related to the product offered, for example, user manuals, price schedules, catalogs, descriptive brochures, etc.

~~**11. Transportation and Delivery.** Prices shall include all charges for packing, handling, freight, distribution, and inside delivery. Transportation of goods shall be FOB Destination to any point within thirty (30) days after the Customer places an Order. A Contractor, within five (5) days after receiving a purchase order, shall notify the Customer of any potential delivery delays. Evidence of inability or intentional delays shall be cause for Contract cancellation and Contractor suspension.~~

~~**12. Installation.** Where installation is required, Contractor shall be responsible for placing and installing the product in the required locations at no additional charge, unless otherwise designated on the Contract or purchase order. Contractor's authorized product and price list shall clearly and separately identify any additional installation charges. All materials used in the installation shall be of good quality and shall be free of defects that would diminish the appearance of the product or render it structurally or operationally unsound. Installation includes the furnishing of any equipment, rigging, and materials required to install or replace the product in the proper location. Contractor shall protect the site from damage and shall repair damages or injury caused during installation by Contractor or its employees or agents. If any alteration, dismantling, excavation, etc., is required to achieve installation, the Contractor shall promptly restore the structure or site to its original condition. Contractor shall perform installation work so as to cause the least inconvenience and interference with Customers and with proper consideration of others on site. Upon completion of the installation, the location and surrounding area of work shall be left clean and in a neat and unobstructed condition, with everything in satisfactory repair and order.~~

~~**13. Risk of Loss.** Matters of inspection and acceptance are addressed in s. 215.422, F.S. Until acceptance, risk of loss or damage shall remain with the Contractor. The Contractor shall be responsible for filing, processing, and collecting all damage claims. To assist the Contractor with damage claims, the Customer shall: record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading; report damages to the carrier and the Contractor; and provide the Contractor with a copy of the carrier's Bill of Lading and damage inspection report. When a Customer rejects a product, Contractor shall remove it from the premises within ten days after notification or rejection. Upon rejection notification, the risk of loss of rejected or non-conforming product shall remain with the Contractor. Rejected product not removed by the Contractor within ten days shall be deemed abandoned by the Contractor, and the Customer shall have the right to dispose of it as its own property. Contractor shall reimburse the Customer for costs and expenses incurred in storing or effecting removal or disposition of rejected product.~~

~~**14. Transaction Fee.** The State of Florida has instituted MyFloridaMarketPlace, a statewide eProcurement System ("System"). Pursuant to section 287.057(23), Florida Statutes (2002), all payments shall be assessed a Transaction Fee of one percent (1.0%), which the Contractor shall pay to the State, unless exempt pursuant to 60A-1.032, F.A.C.~~

~~For payments within the State accounting system (FLAIR or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to the Contractor. If automatic deduction is not possible, the Contractor shall pay the Transaction Fee pursuant to Rule 60A-1.031(2), F.A.C. By submission of these reports and corresponding payments, Contractor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee.~~

~~Contractor shall receive a credit for any Transaction Fee paid by the Contractor for the purchase of any item(s) if such item(s) are returned to the Contractor through no fault, act, or omission of the Contractor. Notwithstanding the foregoing, a Transaction Fee is non-refundable when an item is rejected or returned, or declined, due to the Contractor's failure to perform or comply with specifications or requirements of the agreement.~~

~~Failure to comply with these requirements shall constitute grounds for declaring the Contractor in default and recovering procurement costs from the Contractor in addition to all outstanding fees. **CONTRACTORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE SUBJECT TO BEING REMOVED FROM THE DEPARTMENT OF MANAGEMENT SERVICES' VENDOR LIST AS PROVIDED IN RULE 60A-1.006, F.A.C.**~~

~~**15. Invoicing and Payment.** Invoices shall contain the Contract number, purchase order number if applicable, and the appropriate vendor identification number. The State may require any other information from the Contractor that the State deems necessary to verify any purchase order placed under the Contract.~~

~~At the State's option, Contractors may be required to invoice electronically pursuant to guidelines of the Department of Management Services. Current guidelines require that Contractor supply electronic invoices in lieu of paper based invoices for those transactions processed through the system. Electronic invoices shall be submitted to the Customer through the Ariba Supplier Network (ASN) in one of the following mechanisms—EDI 810, eXML, or web based invoice entry within the ASN.~~

~~Payment shall be made in accordance with sections 215.422 and 287.0585 of the Florida Statutes, which govern time limits for payment of invoices. Invoices that must be returned to a Contractor due to preparation errors will result in a delay in payment. Contractors may call (850) 413-7269 Monday through Friday to inquire about the status of payments by State Agencies. The Customer is responsible for all payments under the Contract. A Customer's failure to pay, or delay in payment, shall not constitute a breach of the Contract and shall not relieve the Contractor of its obligations to the Department or to other Customers.~~

**16. Taxes.** The State does not pay Federal excise or sales taxes on direct purchases of tangible personal property. The State will not pay for any personal property taxes levied on the Contractor or for any taxes levied on employees' wages. Any exceptions to this paragraph shall be explicitly noted by the Customer in the special contract conditions section of the solicitation or in the Contract or purchase order.

**17. Governmental Restrictions.** If the Contractor believes that any governmental restrictions have been imposed that require alteration of the material, quality, workmanship or performance of the products offered under the Contract, the Contractor shall immediately notify the Customer in writing, indicating the specific restriction. The Customer reserves the right and the complete discretion to accept any such alteration or to cancel the Contract at no further expense to the Customer.

**18. Lobbying and Integrity.** Customers shall ensure compliance with Section 11.062, FS and Section 216.347, FS. The Contractor shall not, in connection with this or any other agreement with the State, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of the Customer's Inspector General, or other authorized State official, the Contractor shall provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor shall retain such records for the longer of (1) three years after the expiration of the Contract or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dliis.dos.state.fl.us/barm/genschedules/gensched.htm>). The Contractor agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for any costs of investigations that do not result in the Contractor's suspension or debarment.

**19. Indemnification.** ~~The Contractor shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the State and Customers, and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Contractor, its agents, employees, partners, or subcontractors, provided, however, that the Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State or a Customer.~~

~~Further, the Contractor shall fully indemnify, defend, and hold harmless the State and Customers from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right, provided, however, that the foregoing obligation shall not apply to a Customer's misuse or modification of Contractor's products or a Customer's operation or use of Contractor's products in a manner not contemplated by the Contract or the purchase order. If any product is the subject of an infringement suit, or in the Contractor's opinion is likely to become the subject of such a suit, the Contractor may at its sole expense procure for the Customer the right to continue using the product or to modify it to become non-infringing. If the Contractor is not reasonably able to modify or otherwise secure the Customer the right to continue using the product, the Contractor shall remove the product and refund the Customer the amounts paid in excess of a reasonable rental for past use. The customer shall not be liable for any royalties.~~

~~The Contractor's obligations under the preceding two paragraphs with respect to any legal action are contingent upon the State or Customer giving the Contractor (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Contractor's sole expense, and (3) assistance in defending the action at Contractor's sole expense. The Contractor shall not be liable for any cost, expense, or compromise incurred or made by the State or Customer in any legal action without the Contractor's prior written consent, which shall not be unreasonably withheld.~~

**20. Limitation of Liability.** ~~For all claims against the Contractor under any contract or purchase order, and regardless of the basis on which the claim is made, the Contractor's liability under a contract or purchase order for direct damages shall be limited to the greater of \$100,000, the dollar amount of the contract or purchase order, or two times the charges rendered by the Contractor under the purchase order. This limitation shall not apply to claims arising under the Indemnity paragraph contain in this agreement.~~

~~Unless otherwise specifically enumerated in the Contract or in the purchase order, no party shall be liable to another for special, indirect, punitive, or consequential damages, including lost data or records (unless the contract or purchase order requires the Contractor to back up data or records), even if the party has been advised that such damages are possible. No party shall be liable for lost profits, lost revenue, or lost institutional operating savings. The State and Customer may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them. The State may set off any liability or other obligation of the Contractor or its affiliates to the State against any payments due the Contractor under any contract with the State.~~

**21. Suspension of Work.** ~~The Customer may in its sole discretion suspend any or all activities under the Contract or purchase order, at any time, when in the best interests of the State to do so. The Customer shall provide the Contractor written notice outlining the particulars of suspension. Examples of the reason for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, the Contractor shall comply with the notice and shall not accept any purchase orders. Within ninety days, or any longer period agreed to by the Contractor, the Customer shall either (1) issue a notice authorizing resumption of work, at which time activity shall resume, or (2) terminate the Contract or purchase order. Suspension of work shall not entitle the Contractor to any additional compensation.~~

**22. Termination for Convenience.** ~~The Customer, by written notice to the Contractor, may terminate the Contract in whole or in part when the Customer determines in its sole discretion that it is in the State's interest to do so. The Contractor shall not furnish any product after it receives the notice of termination, except as necessary to complete the continued portion of the Contract, if any. The Contractor shall not be entitled to recover any cancellation charges or lost profits.~~

**23. Termination for Cause.** ~~The Customer may terminate the Contract if the Contractor fails to (1) deliver the product within the time specified in the Contract or any extension, (2) maintain adequate progress, thus endangering performance of the Contract, (3) honor any term of the Contract, or (4) abide by any statutory, regulatory, or licensing requirement. Rule 60A-1.006(3), F.A.C., governs the procedure and consequences of default. The Contractor shall continue work on~~

~~any work not terminated. 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 events completely beyond the control, and without the fault or negligence, of the Contractor. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted products were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule. 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 Customer. The rights and remedies of the Customer in this clause are in addition to any other rights and remedies provided by law or under the Contract.~~

**24. Force Majeure, Notice of Delay, and No Damages for Delay.** The Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Contractor's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. In case of any delay the Contractor believes is excusable, the Contractor shall notify the Customer in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) days after the cause that creates or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) days after the date the Contractor first had reason to believe that a delay could result. ~~THE FOREGOING SHALL CONSTITUTE THE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.~~ Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against the Customer. The Contractor shall not be entitled to an increase in the Contract price or payment of any kind from the Customer for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor shall perform at no increased cost, unless the Customer determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State or to Customers, in which case the Customer may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to Customers with respect to products subjected to allocation, or (2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the products that are the subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part.

**25. Changes.** The Customer may unilaterally require, by written order, changes altering, adding to, or deducting from the Contract specifications, provided that such changes are within the general scope of the Contract. The Customer may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the written consent of the Contractor, which shall not be unreasonably withheld. If unusual quantity requirements arise, the Customer may solicit separate bids to satisfy them.

**26. Renewal.** Upon mutual agreement, the Customer and the Contractor may renew the Contract, in whole or in part, for a period that may not exceed 3 years or the term of the contract, whichever period is longer. Any renewal shall specify the renewal price, as set forth in the solicitation response. The renewal must be in writing and signed by both parties, and is contingent upon satisfactory performance evaluations and subject to availability of funds.

**27. Purchase Order Duration.** ~~Purchase orders issued pursuant to a state term or agency contract must be received by the Contractor no later than close of business on the last day of the contract's term to be considered timely. The Contractor is obliged to fill those orders in accordance with the contract's terms and conditions. Purchase orders received by the contractor after close of business on the last day of the state term or agency contract's term shall be considered void.~~

~~Purchase orders for a one-time delivery of commodities or performance of contractual services shall be valid through the performance by the Contractor, and all terms and conditions of the state term or agency contract shall apply to the single delivery/performance, and shall survive the termination of the Contract.~~

~~Contractors are required to accept purchase orders specifying delivery schedules exceeding the contracted schedule even when such extended delivery will occur after expiration of the state term or agency contract. For example, if a state term contract calls for delivery 30 days after receipt of order (ARO), and an order specifies delivery will occur both in excess of 30 days ARO and after expiration of the state term contract, the Contractor will accept the order. However, if the Contractor expressly and in writing notifies the ordering office within ten (10) calendar days of receipt of the purchase order that Contractor will not accept the extended delivery terms beyond the expiration of the state term contract, then the purchase order will either be amended in writing by the ordering entity within ten (10) calendar days of receipt of the contractor's notice to reflect the state term contract delivery schedule, or it shall be considered withdrawn.~~

~~The duration of purchase orders for recurring deliveries of commodities or performance of services shall not exceed the expiration of the state term or agency contract by more than twelve months. However, if an extended pricing plan offered in the state term or agency contract is selected by the ordering entity, the contract terms on pricing plans and renewals shall govern the maximum duration of purchase orders reflecting such pricing plans and renewals.~~

~~Timely purchase orders shall be valid through their specified term and performance by the Contractor, and all terms and conditions of the state term or agency contract shall apply to the recurring delivery/performance as provided herein, and shall survive the termination of the Contract.~~

~~Ordering offices shall not renew a purchase order issued pursuant to a state term or agency contract if the underlying contract expires prior to the effective date of the renewal.~~

**28. Advertising.** Subject to Chapter 119, Florida Statutes, the Contractor shall not publicly disseminate any information concerning the Contract without prior written approval from the Customer, including, but not limited to mentioning the Contract in a press release or other promotional material, identifying the Customer or the State as a reference, or otherwise linking the Contractor's name and either a description of the Contract or the name of the State or the Customer in any material published, either in print or electronically, to any entity that is not a party to Contract, except potential or actual authorized distributors, dealers, resellers, or service representative.

**29. Assignment.** ~~The Contractor shall not sell, assign or transfer any of its rights, duties or obligations under the Contract, or under any purchase order issued pursuant to the Contract, without the prior written consent of the Customer. In the event of any assignment, the Contractor remains secondarily liable for performance of the contract, unless the Customer expressly waives such secondary liability. The Customer may assign the Contract with prior written notice to Contractor of its intent to do so.~~

**30. Antitrust Assignment.** The Contractor and the State of Florida recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State of Florida. Therefore, the contractor hereby assigns to the State of Florida any and all claims for such overcharges as to goods, materials or services purchased in connection with the Contract.

**31. Dispute Resolution.** ~~Any dispute concerning performance of the Contract shall be decided by the Customer's designated contract manager, who shall reduce the decision to writing and serve a copy on the Contractor. The decision shall be final and conclusive unless within twenty one (21) days from the date of receipt, the Contractor files with the Customer a petition for administrative hearing. The Customer's decision on the petition shall be final, subject to the Contractor's right to review pursuant to Chapter 120 of the Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to the Contractor's ability to pursue any other form of dispute resolution; provided, however, that the parties may employ the alternative dispute resolution procedures outlined in Chapter 120.~~

~~Without limiting the foregoing, the exclusive venue of any legal or equitable action that arises out of or relates to the Contract shall be the appropriate state court in Leon County, Florida; in any such action, Florida law shall apply and the parties waive any right to jury trial.~~

**32. Employees, Subcontractors, and Agents.** All Contractor employees, subcontractors, or agents performing work under the Contract shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Contractor shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Contract must comply with all security and administrative requirements of the Customer and shall comply with all controlling laws and regulations relevant to the services they are providing under the Contract. The State may conduct, and the Contractor shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by the Contractor. The State may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with a Customer's security or other requirements. Such approval shall not relieve the Contractor of its obligation to perform all work in compliance with the Contract. The State may reject and bar from any facility for cause any of the Contractor's employees, subcontractors, or agents.

**33. Security and Confidentiality.** The Contractor shall comply fully with all security procedures of the United States, State of Florida and Customer in performance of the Contract. The Contractor shall not divulge to third parties any confidential information obtained by the Contractor or its agents, distributors, resellers, subcontractors, officers or employees in the course of performing Contract work, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of the State or Customer. The Contractor shall not be required to keep confidential information or material that is publicly available through no fault of the Contractor, material that the Contractor developed independently without relying on the State's or Customer's confidential information, or material that is otherwise obtainable under State law as a public record. To insure confidentiality, the Contractor shall take appropriate steps as to its personnel, agents, and subcontractors. The warranties of this paragraph shall survive the Contract.

**34. Contractor Employees, Subcontractors, and Other Agents.** The Customer and the State shall take all actions necessary to ensure that Contractor's employees, subcontractors and other agents are not employees of the State of Florida. Such actions include, but are not limited to, ensuring that Contractor's employees, subcontractors, and other agents receive benefits and necessary insurance (health, workers' compensations, and unemployment) from an employer other than the State of Florida.

~~**35. Insurance Requirements.** During the Contract term, the Contractor at its sole expense shall provide commercial insurance of such a type and with such terms and limits as may be reasonably associated with the Contract. Providing and maintaining adequate insurance coverage is a material obligation of the Contractor. Upon request, the Contractor shall provide certificate of insurance. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Contract. All insurance policies shall be through insurers authorized or eligible to write policies in Florida.~~

**36. Warranty of Authority.** Each person signing the Contract warrants that he or she is duly authorized to do so and to bind the respective party to the Contract.

**37. Warranty of Ability to Perform.** The Contractor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Contractor's ability to satisfy its Contract obligations. The Contractor warrants that neither it nor any affiliate is currently on the convicted vendor list maintained pursuant to section 287.133 of the Florida Statutes, or on any similar list maintained by any other state or the federal government. The Contractor shall immediately notify the Customer in writing if its ability to perform is compromised in any manner during the term of the Contract.



**38. Notices.** All notices required under the Contract shall be delivered by certified mail, return receipt requested, by reputable air courier service, or by personal delivery to the agency designee identified in the original solicitation, or as otherwise identified by the Customer. Notices to the Contractor shall be delivered to the person who signs the Contract. Either designated recipient may notify the other, in writing, if someone else is designated to receive notice.

**39. Leases and Installment Purchases.** Prior approval of the Chief Financial Officer (as defined in Section 17.001, F.S.) is required for State agencies to enter into or to extend any lease or installment-purchase agreement in excess of the Category Two amount established by section 287.017 of the Florida Statutes.

~~**40. Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE).** Section 946.515(2), F.S. requires the following statement to be included in the solicitation: "It is expressly understood and agreed that any articles which are the subject of, or required to carry out, the Contract shall be purchased from the corporation identified under Chapter 946 of the Florida Statutes (PRIDE) in the same manner and under the same procedures set forth in section 946.515(2) and (4) of the Florida Statutes; and for purposes of the Contract the person, firm, or other business entity carrying out the provisions of the Contract shall be deemed to be substituted for the agency insofar as dealings with such corporation are concerned." Additional information about PRIDE and the products it offers is available at <http://www.pridefl.com>.~~

~~**41. Products Available from the Blind or Other Handicapped.** Section 413.036(3), F.S. requires the following statement to be included in the solicitation: "It is expressly understood and agreed that any articles that are the subject of, or required to carry out, this contract shall be purchased from a nonprofit agency for the Blind or for the Severely Handicapped that is qualified pursuant to Chapter 413, Florida Statutes, in the same manner and under the same procedures set forth in section 413.036(1) and (2), Florida Statutes; and for purposes of this contract the person, firm, or other business entity carrying out the provisions of this contract shall be deemed to be substituted for the State agency insofar as dealings with such qualified nonprofit agency are concerned." Additional information about the designated nonprofit agency and the products it offers is available at <http://www.respectofflorida.org>.~~

~~**42. Modification of Terms.** The Contract contains all the terms and conditions agreed upon by the parties, which terms and conditions shall govern all transactions between the Customer and the Contractor. The Contract may only be modified or amended upon mutual written agreement of the Customer and the Contractor. No oral agreements or representations shall be valid or binding upon the Customer or the Contractor. No alteration or modification of the Contract terms, including substitution of product, shall be valid or binding against the Customer. The Contractor may not unilaterally modify the terms of the Contract by affixing additional terms to product upon delivery (e.g., attachment or inclusion of standard preprinted forms, product literature, "shrink wrap" terms accompanying or affixed to a product, whether written or electronic) or by incorporating such terms onto the Contractor's order or fiscal forms or other documents forwarded by the Contractor for payment. The Customer's acceptance of product or processing of documentation on forms furnished by the Contractor for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.~~

~~**43. Cooperative Purchasing.** Pursuant to their own governing laws, and subject to the agreement of the Contractor, other entities may be permitted to make purchases at the terms and conditions contained herein. Non-Customer purchases are independent of the agreement between Customer and Contractor, and Customer shall not be a party to any transaction between the Contractor and any other purchaser.~~

~~State agencies wishing to make purchases from this agreement are required to follow the provisions of s. 287.042(16)(a), F.S. This statute requires the Department of Management Services to determine that the requestor's use of the contract is cost-effective and in the best interest of the State.~~

**44. Waiver.** The delay or failure by the Customer to exercise or enforce any of its rights under this Contract shall not constitute or be deemed a waiver of the Customer's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

~~**45. Annual Appropriations.** The State's performance and obligation to pay under this contract are contingent upon an~~

~~annual appropriation by the Legislature.~~

**46. Execution in Counterparts.** The Contract may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**47. Severability.** ~~If a court deems any provision of the Contract void or unenforceable, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable and all other provisions shall remain in full force and effect.~~

**Method of Compensation**

Central Florida Rail Corridor, (CFRC) Continuously Welded Rail (CWR)

Contract B \_\_\_\_\_

Financial Project ID No. 423446-9-52-01

1.0 PURPOSE

This exhibit defines the method and limits of compensation to be made to the Contractor for the commodities described in the Contract Documents; Exhibit “A” – Scope of Services and Exhibit “C” Required Contract Provisions for Federal Transportation Administration Commodity Contracts,” and the method by which payments will be made.

2.0 COMPENSATION

The Contractor shall be paid up to the Maximum Amount of \$\_\_\_\_\_ for delivery of the commodities in accordance with the Scope of Services. This is a term contract whereby the vendor agrees to furnish the commodities as requested by the Department during the contract term.

2.1 Summary of Compensation

2.1.1 Railroad Track:

The Department will compensate the contractor for Railroad ties at the unit rates shown in Table 1, Unit Rates for Railroad Ties below.

Table 1, Unit Rates for Railroad Track	
Description	Unit Rate
115RE standard strength continuously Welded Rail (CWR) tee rail, 1,600 Ft. Strings	\$
115RE head hardened continuously Welded Rail (CWR) tee rail, 1,600 Ft. Strings	\$

3.0 INVOICING PROCEDURE

The Contractor shall receive progress payments for the Railroad track on a per unit basis upon delivery, and after acceptance has been given by the Department.

The Contractor will be eligible for progress payments under this agreement at intervals not less than monthly or when individual deliveries are completed and accepted by the Department.

Invoices will be prepared by the Contractor and submitted in quintuplicate in a format prescribed of the Department. The invoices will be supported by such information as may be required by Department procedures to substantiate the charges being invoiced. The Contractor will maintain for this purpose a job cost accounting system that is acceptable to the Department.

4.0 PROJECT CLOSEOUT

If requested, the Contractor will permit the Department to perform, or have performed, an audit of the records of the Contractor and any or all sub-Contractors to support the compensation paid the Contractor. The audit will be performed as soon as practical after completion and acceptance of the contracted services. In the event funds paid to the Contractor under this agreement are subsequently properly disallowed by the Department because of accounting errors or changes not in conformity with this Agreement, the Contractor agrees that such disallowed amounts are due to the Department on demand. Further, the Department will have the right to deduct from any payment due the Contractor under any other contract any amount due the Department.

*Florida Department of Transportation  
District 5*

**Exhibit “C”**

**REQUIRED CONTRACT PROVISIONS FOR  
FEDERAL TRANSIT ADMINISTRATION  
COMMODITY CONTRACTS**

For

Central Florida Rail Corridor (CFRC)  
Commodities – Continuously Welded Rail (CWR)

**Financial Projects Number(s): 423446-9-53-02**

**Federal Aid Project Number(s): N/A**

**Contract Number: \_\_\_\_\_**

REQUIRED CONTRACT PROVISIONS FOR  
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 COMMODITY CONTRACTS

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CERTIFICATION FORMS

- Certification for Contracts, Grants, Loans, and Cooperative Agreements
- Certificate of Compliance with Buy America Requirements

## **I. FLY AMERICA REQUIREMENTS**

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

## **II. CARGO PREFERENCE REQUIREMENTS**

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

## **III. SEISMIC SAFETY**

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

## **IV. ENERGY CONSERVATION**

The contractor agrees to comply with mandatory standards and policies relating to energy

efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

## **V. CLEAN WATER**

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

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

## **VI. LOBBYING**

**Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] -** Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

### **APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING**

Certification for Contracts, Grants, Loans, and Cooperative Agreements

*(To be submitted with each bid or offer exceeding \$100,000)*

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

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for 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 instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 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.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

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

\_\_\_\_\_ Signature of Contractor's Authorized Official

\_\_\_\_\_ Name and Title of Contractor's Authorized Official

\_\_\_\_\_ Date



## **VII. ACCESS TO RECORDS**

The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.15, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Contractor shall provide to the U.S. Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, access to all third party records as required by 49 U.S.C. section 5325 (g). The Contractor shall further provide sufficient access to third party procurement records as needed for compliance with Federal laws and regulations or to assure Project management as

determined by FTA.

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

7. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

8. Contractor shall also include in its subcontracts the requirement that the subcontractors shall provide to the U.S. Secretary of Transportation and the Comptroller General of the United States or their duly authorized representatives access to all third party contract records as required by 49 U.S.C. section 5325 (g), and shall further provide sufficient access to third party procurement records as needed for compliance with Federal laws and regulations or to assure Project management as determined by FTA.

## **VIII. FEDERAL CHANGES**

Contractor shall at all times comply with all applicable Federal laws, regulations, and directives, including without limitation those listed directly or by reference in the Master Agreement between the Florida Department of Transportation and FTA, as they may be amended or promulgated from time to time during the term of this contract, except to the extent that FTA determines otherwise in writing, which Master Agreement is hereby incorporated herein by this reference. All standards or limits in the Grant Agreement or Cooperative Agreement for the Project, and in the Master Agreement, are minimum requirements, unless modified by FTA.

Contractor's failure to so comply shall constitute a material breach of this contract.

## **IX. CLEAN AIR**

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

## **X. RECYCLED PRODUCTS**

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

## **XI. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS**

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

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

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

(1) The work to be performed by the classification requested is not performed by a

classification in the wage determination; and

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

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

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

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

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

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

(2) **Withholding** - The Department shall upon its own action or upon written request of

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

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

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Transit Administration if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social

security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose - from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Federal Transit Administration if the agency is a party of the contract, but if the agency is not such a party the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the Federal Transit Administration, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

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

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

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

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

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

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

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

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

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

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval,

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

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

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

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

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

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

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the



Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

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

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

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

## **XII. CONTRACT WORK HOURS AND SAFETY STANDARDS**

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

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

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

liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

### **XIII. NO OBLIGATION BY FEDERAL GOVERNMENT.**

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

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

### **XIV. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

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

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

## **XV. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

The contractor is required to comply with 2 CFR 1200 and 2 CFR 180, Subpart 3, and must include the requirement to comply with 2 CFR 180, Subpart 3, as supplemented by 2 CFR 1200, in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

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

## **XVI. PRIVACY ACT**

**Contracts Involving Federal Privacy Act Requirements** - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

## **XVII. CIVIL RIGHTS REQUIREMENTS**

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

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

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

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

(3) The Contractor also agrees to include these requirements in each subcontract financed

in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

### **XVIII. ACCESS FOR INDIVIDUALS WITH DISABILITIES**

Contractor agrees to comply with 49 U.S.C. Section 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Contractor also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29. U.S.C. Section 794, and all applicable provisions of the American with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. Sections 12101 *et. seq.* , and all applicable provisions of the Architectural Barriers Act of 1968, as amended, 42 U.S. C. sections 4151 *et. seq.*, and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Contractor agrees to comply with applicable implementing Federal regulations, and any later amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent FTA approves otherwise in writing.

### **XIX. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS**

**Transit Employee Protective Provisions.** (1) The Contractor agrees to the comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. §

5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(2) The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

**XX. BUY AMERICA REQUIREMENTS**

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

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below).

If steel, iron, or manufactured products (as defined in 43 CFR 661.3 and 661.5) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder or offeror in accordance with the requirement contained in 43 CFR 661.13(b).

*Certificate of Compliance with Buy America Requirements*

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

*Certificate of Non-Compliance with Buy American Requirements*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. 661.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

If buses or other rolling stock (including train control, communication, and traction power equipment) are being procured, the appropriate certificate as set forth below shall be completed

and submitted by each bidder in accordance with the requirement contained in 49 CFR 661.13 (b).

*Certificate of Compliance with Buy America Rolling Stock Requirements.*

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j) and the applicable regulations at 49 CFR.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

*Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C) Buy American Rolling Stock Requirements*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but may qualify for an exception to the requirement consistent with 49 U.S.C. 5323(j)(2) (C) and the applicable regulations in 49 CFR 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_



## **XXI. DRUG AND ALCOHOL TESTING**

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 655, produce any documentation necessary to establish its compliance with Parts 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Florida, or the Florida Department of Transportation, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 655 and review the testing process. The Florida Department of Transportation will hereafter set the date before which contractor must certify annually its compliance with its compliance with Parts 655 and the date before which it must submit the Management Information System (MIS) reports to

<http://transit-safety.fta.dot.gov/DrugAndAlcohol/DAMIS/default.asp>

and Contractor shall comply with those dates for certification and submitting the MIS reports. To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

## **XXII. SENSITIVE SECURITY INFORMATION**

Contractor must protect, and take measures to ensure that its subcontractors protect, "sensitive security information" made available during the administration of the contract or subcontract to ensure compliance with 49 U.S.C. Section 40119 (b) and implementing DOT regulations, "Protection of Sensitive Security Information," 49 CFR Part 15, and with 49 U.S.C. Section 114 ( r) and implementing Department of Homeland Security regulations, "Protection of Sensitive Security Information," 49 CFR 1520.

## **XXIII. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

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