

NATIONAL RAILROAD PASSENGER CORPORATION
SUPPLEMENTARY GENERAL PROVISIONS FOR NONCONSTRUCTION CONTRACTS

Contractor shall comply with and insert the following provisions in all subcontracts issued pursuant to this Contract:

1. **Equal Employment Opportunity.** Contractor shall comply with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
2. **Patent Rights; Rights to Inventions.**
 - (a) If any invention, improvement, or discovery of Contractor or any of its subcontractors is conceived or first actually reduced to practice employing financial assistance provided to the Contractor under this Contract, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, Contractor agrees to notify Amtrak immediately and provide a detailed report. The rights and responsibilities of Amtrak, Contractor and the Federal Government with respect to such invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, policies, and any waiver thereof.
 - (b) If the Contract involves the performance of experimental, developmental, or research work, the rights of the Federal Government and Amtrak shall be in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the Federal Railroad Administration (FRA).
3. **Byrd Anti-Lobbying Amendment.** 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", a copy of which is attached hereto. 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 any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to Amtrak.
4. **Debarment and Suspension.** No contract shall be entered into with parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension" and 49 CFR part 29. This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractor will comply with U.S. DOT regulations, "Governmentwide Debarment and Suspension (Nonprocurement)." If this Contract equals or exceeds the small purchase (simplified acquisition) threshold of \$100,000, Contractor shall execute the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion" attached hereto.
5. **Buy American.** Contractor shall comply with the Buy American Act (41 U.S.C. 10a-d), and the implementing regulations set forth at 48 CFR part 25, except for acquisitions in excess of one million dollars (\$1,000,000), in which case Contractor shall comply with Amtrak's domestic buying requirements found at 49 U.S.C. 24305(f).
6. **Cargo Preference--Use of United States-Flag Vessels.** As required by U.S. DOT, Maritime Administration regulations, "Cargo Preference -- U.S.-Flag Vessels," 46 CFR part 381, if equipment, materials or commodities may be transported by ocean vessel in carrying out the activities funded under this Contract, Contractor agrees:
 - (a) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this contract to the extent such vessels are available at fair and reasonable rates.
 - (b) To furnish within 20 days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "On-Board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a) above to Amtrak (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street, S.W., Washington, DC 20590, marked with appropriate identification.
7. **Drug-Free Work Place.** Contractor agrees to comply with U.S. DOT regulations, "Governmentwide Requirements for Drug-Free Workplace (Grants)", 49 CFR part 29 for procurements that are expected to equal or exceed the small purchase (simplified acquisition) threshold of \$100,000.

8. **Participation by Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals.** Contractor is encouraged to utilize small business concerns owned and controlled by socially and economically disadvantaged individuals (as that term is defined in 49 CFR part 26) in carrying out activities funded under this Contract.

9. **Record Retention – Submission of Proceedings, Contracts and Other Documents.** During the course of its activities under this Contract and for three years thereafter, Contractor agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials relating to its performance under this contract as FRA may require. Reporting and record-keeping requirements are set forth in 49 CFR part 19.

10. **Audit and Inspection; Inspection by Federal Officials.** Contractor agrees to permit Amtrak, the Secretary of Transportation and Comptroller General of the United States, or their authorized representatives, to inspect all work, materials, payrolls, and other data, and to audit the books, records, and accounts of Contractor and its subcontractors pertaining to Contractor's activities under this Contract. Contractor will take appropriate steps to ensure that the aforementioned materials are available for inspection in order to ensure compliance with this section.

11. **Environmental Protection.** *This section applies if the Contract exceeds \$100,000.* Contractor will conduct work under this Contract, and will require that work that is conducted as a result of this Contract be in compliance with the following provisions, as modified from time to time, all of which are incorporated herein by reference: the Clean Air Act, 42 U.S.C. 7401 et seq., and the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., and all regulations issued thereunder. Contractor certifies that no facilities that will be used to perform work under this Contract are listed on the List of Violating Facilities maintained by the Environmental Protection Agency (EPA). Contractor will notify Amtrak as soon as it or any subcontractor receives any communication from the EPA indicating that any facility which will be used to perform work pursuant to this Contract is under consideration to be listed on the EPA's List of Violating Facilities; provided, however, that Contractor's duty of notification hereunder shall extend only to those communications of which it is aware, or should reasonable have been aware. Also, where applicable, Contractor shall comply with the **Wild and Scenic Rivers Act** of 1968 (16 U.S.C. 1271 et seq.).

12. **Remedies for Breach.** All subcontracts in excess of the small purchase threshold (currently \$100,000), shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a subcontractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

13. **Contract Termination Provisions.** All subcontracts in excess of the small purchase threshold (currently \$100,000), shall contain suitable provisions for termination by Contractor, including the manner by which termination shall be effected and the basis for settlement. In addition, such subcontracts shall describe conditions under which it may be terminated for default as well as conditions where it may be terminated because of circumstances beyond the control of Contractor.

14. **Allowable Costs.** Contractor's expenditures will be reimbursed only if they conform with Federal guidelines or regulations and Federal cost principles as set forth in Federal Acquisition Regulation, 48 CFR Chapter I, Subpart 31.2, "Contracts with Commercial Organizations", which are incorporated herein by reference. If any costs are disallowed, as determined by an audit by Amtrak or the Federal Government, Contractor agrees to reimburse Amtrak for such disallowed costs within sixty (60) days of advice to Contractor of the determination of disallowance.

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

16. **Davis-Bacon Act.** For construction contracts in excess of \$2,000, Contractor shall comply with the Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7), as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). All laborers and mechanics employed or working upon the site of the Work shall 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 under the Copeland Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3)), the full amount of wages due at time of payment computed at wage rates not less than the aggregate of the basic hourly rates and the rates of payments, contributions, or costs for any fringe benefits contained in the appropriate wage determination decision of the Secretary of Labor which is incorporated into the Contract by reference and made a part hereof, regardless of any contractual relationship which may be alleged to exist between Contractor or the subcontractor and such laborers and mechanics. A copy of such wage determination decision shall be kept posted by Contractor at the site of the Work in a prominent and accessible place where it can be easily seen by the workers. The term "laborers and mechanics" shall be deemed to include apprentices and trainees not covered by an approved program.

The wage determination decision of the Secretary of Labor specifies the minimum hourly rates of wages that shall be paid to laborers and mechanics employed or working directly upon the site of the Work. The rates have been determined by the

Secretary of Labor in accordance with the provisions of the Davis-Bacon Act, as amended, to be the prevailing rates for the corresponding classes of laborers and mechanics employed on contracts of a similar character in the locality where this Work is to be performed.

The wage determination decision of the Secretary of Labor is for the purpose of setting forth the minimum hourly wage rates required to be paid during the life of the Contract and is not to be accepted as a guarantee, warranty or representation as to the wage rates indicated therein. While the wage rates given in the decision are the Contract minimum rates, it is the responsibility of Contractor to inform itself as to local labor conditions such as the prevailing wage rates, the length of the workday and workweek, overtime compensation, health and welfare contributions, available labor supply, and prospective changes or adjustments of wage rates. Contractor shall abide by and conform to all applicable laws, Executive Orders, rules, regulations and orders of Federal agencies authorized to pass upon and determine wage rates. Under no circumstances shall any mistake in complying with the appropriate wage determination decision of the Secretary of Labor and in the wage rates set forth therein entitle Contractor to cancellation of the Contract or to an increase in the Contract Sum or other additional payment or recovery.

Contractor may discharge its obligation under this Section to workers in any classification for which the wage determination decision contains:

- a) Only a basic hourly rate of pay, by making payment at not less than such basic hourly rate, except as otherwise provided in the Copeland Act Regulations (29 CFR part 3); or
- b) Both a basic hourly rate of pay and fringe benefits payments, by making payment in cash, by irrevocably making contributions pursuant to a fund, plan, or program for, and/or by assuming an enforceable commitment to bear the cost of, bona fide fringe benefits contemplated by the Davis-Bacon Act, or by any combination thereof. Contributions made, or costs assumed, on other than a weekly basis shall be considered as having been constructively made or assumed during a weekly period to the extent that they apply to such period. Where a fringe benefit is expressed in a wage determination in any manner other than as an hourly rate and Contractor pays a cash equivalent or provides an alternative fringe benefit, it shall furnish information with its payrolls showing how it determined that the cost incurred to make the cash payment or to provide the alternative fringe benefit is equal to the cost of the wage determination fringe benefit. In any case where Contractor provides a fringe benefit different from any contained in the appropriate wage determination it shall similarly show how it arrived at the hourly rate shown therefor. In the event of disagreement between or among the interested parties as to an equivalent of any fringe benefit, the Contracting Official shall submit the question, together with its recommendation, to the Secretary of Labor for final determination.

The assumption of an enforceable commitment to bear the cost of fringe benefits, or the provision of any fringe benefits not expressly listed in Section 1 (b) (2) of the Davis-Bacon Act or in the wage determination decision forming a part of the Contract may be considered as payment of wages only with the approval of the Secretary of Labor pursuant to a written request by Contractor. The Secretary of Labor may require Contractor to set aside assets, in a separate account, to meet its obligations under any unfunded plan or program.

The Contracting Official shall require that any class of laborers or mechanics, including apprentices and trainees, which is not listed in the wage determination decision and which is to be employed under the Contract shall be classified or reclassified conformably to the wage determination decision and shall report the action taken to the Secretary of Labor. If the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers or mechanics, including apprentices and trainees to be used, the Contracting Official shall submit the question, together with his/her recommendation, to the Secretary of Labor for final determination. Apprentices and trainees may be added under this Section only where they are employed pursuant to an apprenticeship or trainee program.

In the event it is found by the Contracting Official that any laborer or mechanic, including apprentices and trainees, employed by Contractor or any subcontractor directly on the site of the Work covered by this Contract has been or is being paid at a rate of wages less than the rate of wages required by this Section, the Contracting Official may (a) by written notice to Contractor terminate its right to proceed with the Work, or such part of the Work as to which there has been a failure to pay said required wages, and/or (b) prosecute the Work to completion by contract or otherwise, whereupon Contractor and its sureties shall be liable to Amtrak for any excess costs occasioned Amtrak thereby.

The foregoing requirements of this Section and the requirements of the Davis-Bacon Act as amended (40 U.S.C. 276a to a-7) shall be deemed to have been complied with for Work performed under this Contract by employees of railroads operating under collective bargaining agreements subject to the provisions of the Railway Labor Act (45 U.S.C. 151 et seq.).

The rights and remedies of Amtrak provided in this Section are in addition to any other rights and remedies provided under this Contract.