

Railcar Procurement Request For Information (RFI) Introduction and Overview

INTRODUCTION

The California Department of Transportation (Caltrans), with the assistance of the California Department of General Services (DGS) is developing a Request for Proposal (RFP) for a fleet of bi-level intercity passenger railcars for intercity corridor service.

The Federal Railroad Administration (FRA) has awarded two grants to Caltrans for a total of \$168 million (matched by \$42 million of state funds) for the purchase of 42 passenger cars and 6 locomotives. FRA has also awarded the Illinois Department of Transportation (IDOT) a \$268.2 million grant for the purchase of 48 rail passenger cars and 7 locomotives for the benefit of Illinois and other Midwest States, including Michigan, Missouri, Indiana and Iowa. FRA previously awarded Illinois a \$1,142.4 million grant for the Chicago-St. Louis corridor that contained funding for 30 passenger rail cars and 12 locomotives, and is preparing the award of a \$230 million Chicago-Iowa City corridor grant that will contain funding for an estimated 10 passenger rail cars and 3 locomotives. As a result, a total of 130 bi-level railcars are scheduled to be procured through the proposed RFP (with option assignments and quantity to be determined). The new locomotives will be purchased in a separate agreement. The new bi-level railcars will incorporate numerous design improvements and innovations, making the States' rail passenger service more efficient, cost-effective and attractive to passengers.

JOINT PROCUREMENT

Consistent with the FRA goals for the High-Speed and Intercity Passenger Rail (HSIPR) program, Caltrans intends to enter into an agreement with IDOT to facilitate a single joint procurement for the equipment purchases funded by the FRA grants, to ensure the best price and terms as well as interchangeability of equipment. Caltrans will be the lead agency for the proposed joint procurement. IDOT will represent the Midwestern coalition during the development of the RFP and throughout the course of the resulting contract.

PRIIA SECTION 305 TECHNICAL SPECIFICATIONS

The Passenger Rail Investment and Improvement Act of 2008 (PRIIA) requires the establishment of:

"...a Next Generation Corridor Equipment Pool Committee, comprised of representatives of Amtrak, the Federal Railroad Administration, host freight railroad companies, passenger railroad equipment manufacturers, interested States, and, as appropriate, other passenger railroad operators. The purpose of the Committee shall be to design, develop specifications for, and procure standardized next-generation corridor equipment."

As part of their work the Next Generation Equipment Committee (NGEC) has established the technical specification for the Bi-Level Passenger Railcar which will be used for this procurement.

PROJECT AND RFP SCHEDULE

The Department anticipates releasing a Request for Proposal (RFP) in January 2012. The tentative Notice to Proceed date is August 2012. Delivery of the first car is expected in February 2015, with production expected to be complete by February 2018 (66 months after Notice to Proceed). At least 105 cars must be delivered and paid for no later than September 2017, or the funding available for the procurement of the cars will lapse.

The Preliminary RFP Schedule is:

- RFP released – January 2012
- Bidders Conference – February 2012
- Draft Proposals Due – March 2012
- Confidential Discussions – May 2012
- Final Proposals Due – July 2012
- Award of Contract and NTP – August 2012

OBJECTIVE OF THE RFI

This RFI provides the opportunity for interested manufacturers, other states, and/or rail agencies to assist the State of California in gathering necessary information for a possible multi-state joint procurement contract for manufacturing bi-level intercity passenger railcars.

Responses to this RFI will not be used to qualify proposers under the RFP. A response to this RFI is not a pre-condition to responding to the RFP.

The objectives of this RFI are to:

- Gather information on the current rail car manufacturing industry, including past performance, maximum capacity, and experience
- Gather feedback and comments on the Passenger Rail Investment and Improvement Act of 2008 (PRIIA) 305 Bi-Level Passenger Railcar Technical Specification including scope of work, materials and workmanship, and other rail car requirements
- Gather feedback and comments on the proposed contract Terms and Conditions including warranty period, insurance requirements, payment terms and scheduling
- Gather feedback to determine feasibility of other states and/or rail agencies acquiring rail cars through this procurement via option assignments
- Use the RFI feedback to modify the draft Technical Specifications and Terms and Conditions, wherever appropriate, to attract a pool of qualified vendors who can respond to a Request for Proposal (RFP) with cost effective proposals

RFP INSTRUCTIONS TO PROPOSERS – PRELIMINARY OUTLINE

Although the Instructions to Proposers for the RFP have not yet been developed, the following is some preliminary information that may be useful during the review of the RFI:

- Content and Structure: The Instructions to Proposers will be based on the American Public Transit Association (APTA) Light Rail Vehicle (LRV) RFP template, with modifications to meet the needs of this RFP.
- Proposal Format: Proposers will use a format based on APTA LRV RFP format instructions, with modifications to meet the needs of this RFP.
- Proposal Submission: A two-step process is proposed that includes Draft and Final Proposals, with the opportunity for confidential discussions prior to development of Final Proposals.

CONTENT OF THIS RFI

The following DRAFT documents are included in this RFI for your review:

- Section 3: General Conditions (GC)
- Section 4: Special Provisions (SP)
- Section 5: Federal Clauses (FC)
- Section 7: Warranty (WR)

- Section 8: Quality Assurance (QA)
- Appendix: Sample Forms
- Bi-Level Railcar PRTIA 305 Technical Specification
<http://www.highspeed-rail.org/Pages/DocsSpecs.aspx>
- State of California General Provisions

Manufacturers and other interested parties are requested to review the Rail Car Technical Specifications and the Rail Car Terms and Conditions associated with this RFI. After reviewing these documents, please complete the attachments listed below:

- Attachment A - Respondent Information
- Attachment B - Feedback on Technical Specifications
- Attachment C - Feedback on Terms and Conditions

KEY RFI ACTION DATES

- Release of the RFI: October 18, 2011
- RFI Responses Due: November 4, 2011

RFI QUESTIONS

Should you have any questions about completing the above attachments or this project's objectives, please submit written questions to Shannon Keller at Shannon.keller@dgs.ca.gov.

RESPONDENT'S COST

Neither Caltrans nor its customers will be responsible for any costs or expenses incurred in preparing and submitting information in response to this RFI. The cost of preparing and submitting a response to this request is the responsibility of each respondent and shall not be chargeable to the State of California, the State of Illinois, the Federal Government, or any other public agency. Interested parties are not required to submit a response to this RFI in order to participate in the solicitation process. Additionally, the State does not guarantee that an RFP will be issued.

RFI RESULTS AND CONFIDENTIALITY

It is the intention of DGS, Caltrans, and IDOT to use feedback as appropriate to develop an RFP with Technical Specifications and Terms and Conditions that meets the State's needs, meet manufacturers' abilities and constraints, and support other states or rail agencies participating in the rail car acquisition.

All material submitted will become the property of Caltrans. Submitters are cautioned to clearly label as proprietary and confidential any specific information or other material that is considered to be confidential. Our intent is to use input gathered during the RFI process to refine the RFP that has benefitted from industry input. Caltrans does not intend to publish the results of this RFI; however, information may be subject to the provisions of the California Public Records Act (G.C Section 6250 et. seq.).

Interested parties are requested to complete Attachments A, B and C and submit them via email, facsimile, or U.S. Mail, no later than 5:00 PM (PST) November 4, 2011 to Shannon Keller:

DGS/Procurement Division
707 3rd Street, 2nd Floor
West Sacramento, CA 95605
Email: Shannon.keller@dgs.ca.gov
Telephone: (916) 375-4606
Facsimile: (916) 375-4613

ATTACHMENT "A"

Rail Car Procurement – Respondent Information

SECTION 1 - RESPONDENT CONTACT INFORMATION

Please indicate the type of organization you represent.

- Manufacturer**

 State

 Rail Agency

 Other

Please provide your contact information.

Contact Name: _____

Organization: _____

Address: _____

Phone: _____ **Fax:** _____ **Email:** _____

SECTION 2 - MANUFACTURER QUESTIONNAIRE

We request manufacturers provide the following information.

#	Inquiry	Response
1.	How long has your company been in business?	
2.	How long have you manufactured stainless steel rail cars?	
3.	How many stainless steel rail cars have you completed?	
4.	How long has your company manufactured bi-level rail cars?	
5.	How many bi-level rail cars have you completed?	
6.	How many employees does your company devote to manufacturing rail cars?	
7.	How many manufacturing facilities does your company operate?	
8.	Where are your manufacturing facilities located?	
9.	Which facilities manufacture stainless steel rail cars?	
10.	How many rail cars does your company manufacture annually?	

11.	What is the average manufacturing time per rail car?					
12.	What is your maximum manufacturing capacity?					
13.	What other types of work/equipment does your company develop?					
14.	What is your company's annual revenue related to the manufacture of rail cars?					
15.	Do you have existing rail car manufacturing projects? If so, please provide details below:					
		Customer	Facility	# cars in contract	# of cars completed	Est. End Date

SECTION 3 - ADDITIONAL INFORMATION

If you have other comments, suggestions, or general questions, please use the space provided below. Attach additional sheets if necessary.

Comments and Suggestions	
1	
2	
3	
General Questions	
1	
2	
3	

ATTACHMENT “B” Rail Car Procurement – Technical Specification

SECTION 1 - REQUESTED FEEDBACK

Please provide feedback for the following sections of the Technical Specification, and for any other sections on which you would like to comment. Attach additional sheets if necessary.

Spec #	Title	Technical Specification Excerpt	Question / Comment						
TS 1.4.3.1	Overall Carbody Dimensions	<p>The cars shall be designed and built to conform to the following overall dry weight limitations:</p> <table style="margin-left: 40px;"> <tr> <td>Coach:</td> <td style="text-align: right;">150,000 lbs</td> </tr> <tr> <td>Cab/Baggage:</td> <td style="text-align: right;">154,000 lbs</td> </tr> <tr> <td>Café/Lounge:</td> <td style="text-align: right;">153,000 lbs</td> </tr> </table>	Coach:	150,000 lbs	Cab/Baggage:	154,000 lbs	Café/Lounge:	153,000 lbs	Please comment on the proposed overall car weight limitations, clearly indicating if you can attain the weight limitations or not.
Coach:	150,000 lbs								
Cab/Baggage:	154,000 lbs								
Café/Lounge:	153,000 lbs								
TS 1.4.3.3	Track Geometry	The cars shall be stable while operating at maximum authorized track speed on curves with a cant deficiency of up to 5 in.	Please provide information on the impacts of designing and testing for stability at 5 inches of cant deficiency.						
TS 1.4.16	Cab and Controls	The cab will be designed to allow passengers and crew to pass through the cab area when the cab/baggage car is used as a coach in mid-train. The cab areas will be secured behind partition doors when the cab is configured for pass-through. The design of the partition doors will allow the engineer and assistant engineer to quickly exit the cab in the event of an emergency.	Please comment on the feasibility or challenges of designing a control cab with pass-through to the adjacent car when the cab car is equipped with Crash Energy Management (CEM).						

Spec #	Title	Technical Specification Excerpt	Question / Comment
TS 4.14.2	Thermal Insulation	<p>The floor, roof, sides and ends of the cars shall be insulated. The heat transfer through the carbody, using only the carbody's own floor heaters, shall not exceed 1200 Btu/Hr/ F under the environmental conditions specified in Amtrak specification 963 while carbody is stationary. Contractor to supply thermal analysis of completed car for approval at the design review.</p> <p>(See also Chapter 10, HVAC)</p>	Please comment on the heat transfer rating of no more than 1200 BTU/Hr/degree Fahrenheit. Is this the best criteria to reference thermal transfer requirements for a bi-level stainless steel car?
TS 4.20	Carbody	<p>The carbody shall be designed with Crash Energy Management (CEM) following the guidelines in APTA Standard SS-C&S-34-99, Section 6 Crash Energy Management (CEM). Scenario analysis as described in APTA Standard SS-C&S-034-99 shall not be required.</p>	<p>Please comment on the incorporation of CEM in the design requirements for the carbody structure:</p> <ul style="list-style-type: none"> • How will the inclusion of CEM affect the following? <ul style="list-style-type: none"> ○ Overall project cost ○ Delivery schedule ○ Vehicle weight ○ Compatibility with existing bi-level equipment
TS 5.3	Trucks	<p>Ride quality for all proposed truck designs shall be demonstrated analytically and through actual track testing (at an approved test facility) per the requirements of Chapter 19. Truck designs with proven service history on North American intercity or commuter railroads may be validated analytically, if the validation methodology is approved by the Customer. Some or all portions of the required design validation tests may be waived at the sole discretion of the Customer if design adequacy can be proven by submittal of existing engineering analysis and demonstration of successful service history of the truck design.</p>	Please discuss the ride quality, stability and qualification testing requirements.
TS 5.4.1	Trucks	<p>Truck frame and truck bolster frame (if used) shall be of cast or fabricated steel construction.</p>	<p>Please comment on the long-term availability of cast truck frames, and the history of use of fabricated truck frames in the North American market.</p> <p>What is the availability of compliant fabricated truck assemblies?</p>

Spec #	Title	Technical Specification Excerpt	Question / Comment
TS 8.2.1, 8.3	Doors	<p>Door systems have a demonstrated history of complexity and inconsistent performance that can affect the operation of passenger service and hinder maintenance and repairs. In order to maximize safety, system functionality and equipment availability, while minimizing the potential for degraded service or system performance, the side and end door systems shall be specified, designed and manufactured with an emphasis on addressing the following areas of concern:</p> <ul style="list-style-type: none"> • Unsafe conditions for passengers or crewmembers; • Train delays from malfunctioning side door equipment; • Poor system reliability in adverse operational and environmental conditions; • Accumulation of dust and dirt that affects system performance and cause failures; • System complexity that increases the time and effort required for troubleshooting and repairs; and • Requirement for frequent adjustment and component replacement. <p>The door system shall be designed with great attention to details so that it is safe, very reliable, requires little maintenance, is easy to service, has support parts available and will have a long service life.</p> <p>Trainline-controlled, power operated bi-parting stainless steel side entrance plug or pocket doors (with fixed windows) shall be installed at the quarter points on each side of the car. Door control panels shall be installed on both sides of the B-end entrance of all cars, and in addition, a door control panel-local shall be installed in the A/F-end entrance of the café/lounge and cab/baggage car types. Refer to Figure 8-1.</p>	<p>Please comment on the availability of sustainable design and technology for reliable side door system operations.</p> <p>Please comment on the feasibility and cost and schedule impacts for a side door system using plug door technology.</p>
TS 14.8	Food Service	<p>A screw-driven, fully enclosed elevator shall be provided to convey loaded and empty food service carts and other stock items between the upper and lower levels of the café/lounge car. The elevator system shall be designed to facilitate the movement of loaded and empty carts between the elevator and the side entrance doors on the lower level and between the elevator and the upper level galley cart docking stations. The elevator will be used both when the café/lounge car is stationary as well as when moving at various speeds. The elevator shall operate in a tower enclosure.</p> <p>The design of the elevator system shall incorporate safety features to ensure that the elevator is operated in a safe and efficient manner. Interlocks to prevent movement of the elevator without all elevator doors being closed and latched shall be provided.</p> <p>The elevator drive system shall operate on 208VAC, 3-phase, 60-cycle power. The control circuit for the elevator shall operate on 120VAC, 60-cycle.</p>	<p>What is the availability of sustainable design for a reliable elevator system?</p>

Spec #	Title	Technical Specification Excerpt	Question / Comment
14.10.1	Food Service	<p>The chillers, freezers and POS shall have a backup power supply using a separate battery bank and inverters to provide 208VAC 3-phase and 120VAC single-phase power to keep these appliances functioning during loss of HEP for a period of no less than one hour. The backup battery shall be separate from the main car battery. A 74VDC to 208VAC inverter shall provide power to the chillers. A 74VDC to 120VAC inverter shall provide power to the freezers and POS. The physical dimensions, design and operation of the backup power supply shall be submitted to the Customer at the design review.</p> <p>An indicator light shall be installed on the car's system status panel in the B-end vestibule to indicate whether the inverters are on or not.</p> <ul style="list-style-type: none"> • Green – system working normally (HEP is on and power is being provided to the galley equipment) • Flashing green – HEP is off and inverters are working (power is provided to galley equipment) • Red – HEP is off and inverters are not working (no power to the galley equipment) 	Please comment on the feasibility and recommended technology for the power backup for chillers (including suggested alternatives to the battery and inverter as specified).

SECTION 2 - ADDITIONAL FEEDBACK

Below, please provide additional feedback regarding the Rail Car Technical Specification. Attach additional sheets if necessary.

Spec #	Title	Technical Specification	Question / Comment

ATTACHMENT “C” Rail Car Procurement – Terms and Conditions

SECTION 1 - REQUESTED FEEDBACK

Please provide feedback on all the draft Terms and Conditions, including the following specific topics.

Please answer the following questions in your response to the RFI:

TC#	Title	Question / Comment
GC 2.1	Standardization	<p>The embodiment of standardization in the next-generation passenger equipment will potentially achieve several benefits. The NGENC Standardization Working Group has identified and prioritized a preliminary list of candidates (components, systems) for standardization. Proposers will be requested to develop and present a standardization plan as part of their response to the Request for Proposals.</p> <p>Please read Section GC 2.1 for additional details. Please comment on the approach to the Standardization Plan and the potential evaluation factors used.</p> <p>Please comment on whether or not the industry has the ability to estimate or determine projected volumes and value of spare parts for these standardized systems over the life of the car and if so, how?</p>
GC 6.1	Intellectual Property	<p>The Contractor shall indemnify, defend and hold harmless Caltrans (and its officers, directors, agents, employees or designees) to the maximum extent permitted by law from and against any and all claims, liabilities, losses, damages or expenses (including attorneys’ fees and related costs, whether or not litigation has commenced), whether direct or indirect, arising out of, relating to or in connection with any claim or allegation that the ownership, possession or use of any software, equipment, devices, processes or other materials provided by the Contractor under this Agreement infringe or violate the patent, copyright, trade-secret or other intellectual-property or proprietary rights of any third-party. In case any such software, materials, equipment, devices, processes or other materials are held to constitute an infringement and their use enjoined, then the Contractor, at the Contractor’s sole cost and expense, shall do one of the following:</p> <ul style="list-style-type: none"> • Secure for Caltrans or designees the right to continue using the software, materials, equipment, devices or processes by suspension of the injunction or by procuring a royalty-free license, or licenses. • Replace such software, materials, equipment, devices or processes with non-infringing software, materials, equipment, devices or processes. • Modify them so that they become non-infringing. • Remove the enjoined software materials, equipment, devices or processes and refund the sums paid for them without prejudice to any other rights of Caltrans or designees. <p>Please review the entire section and comment.</p> <p>In addition, please comment on the following. Please rate the following methods of acquiring intellectual property for its adoption as a standard for use in the United States- as</p> <p>A- Acceptable B- Reasonable concept – details required C- Unreasonable – company unlikely to participate (note- If an approach is deemed unreasonable, please provide an explanation and any suggestions you might have for successfully improving the approach.)</p> <p><input type="checkbox"/> License intellectual property (IP) for design as part of a rolling stock order. <input type="checkbox"/> One time upfront licensing fee – separate from a rolling stock order <input type="checkbox"/> Per unit licensing fee – separate from a rolling stock order <input type="checkbox"/> Acquire existing IP for design as a separate procurement <input type="checkbox"/> Acquire new design as a separate procurement</p> <p>For items for which interfaces are identified, will you provide interface drawings for uncontrolled use by Caltrans and/or designee?</p>

TC#	Title		Question / Comment
GC 6.3	Tooling Rights	<p>The Contractor, its Subcontractors, Suppliers, and Manufacturers shall not sell, destroy or otherwise dispose of their rights to the use of, the unique castings, patterns, and forming or extrusion dies after their use in the production of the vehicles without first offering them to Caltrans, with reasonable costs associated with the transfer to be borne by Caltrans, or, in the case of a proposed sale to another, without first offering them for sale to Caltrans at a fair market price. The Contractor shall be liable to Caltrans to the extent that the failure of the Contractor, its Subcontractor, Supplier or Manufacturer to comply with Section SP 12.1 "Parts Availability Guarantee" causes Caltrans to incur costs to have the tooling replicated.</p> <p>For purposes of Section SP 12.1 "Parts Availability Guarantee," the terms "sell" and "sale" shall not include transfer of these assets to a successor corporation or other entity that assumes the business and obligations of any Contractor, Subcontractor, Supplier or Manufacturer herein, including obligations arising under this Contract.</p> <p>Upon Contractor's offer of any of the materials described above and Caltrans' or designee's refusal, the Contractor's obligation under SP 12.1 "Parts Availability Guarantee" as it relates to the specific materials offered and refused, shall cease.</p>	Do you have any issues, comments or concerns with the tooling rights requirements as stated? If so, please explain.
GC 8	Changes	General Conditions Section 8 includes Contractor and Agency Change Order language.	Please review carefully and comment.

TC#	Title		Question / Comment																																						
SP 3.1 and SP 3.2	Period of Performance and Delivery Schedule	<p>The period of performance, excluding warranty, is from the date of Notice to Proceed through Notice of Completion (as defined in SP 4.7 "Final Completion," below). Time is of the essence in this Contract.</p>	<p>Please review the periods of performance for major car building activities and note any periods that are too long, too short, or otherwise problematic, confusing or unattainable.</p>																																						
		<p>Bi-Level Passenger Railcar Procurement: Schedule and Mandatory Milestones</p> <table border="1" data-bbox="533 334 1255 1382"> <thead> <tr> <th data-bbox="533 334 863 370">Milestone</th> <th data-bbox="863 334 1255 370">Completion Date</th> </tr> </thead> <tbody> <tr> <td data-bbox="533 370 863 440">Insurance Certification</td> <td data-bbox="863 370 1255 440">No later than 10 days after Notice of Award</td> </tr> <tr> <td data-bbox="533 440 863 509">Performance Bond</td> <td data-bbox="863 440 1255 509">No later than 10 days after Notice of Award</td> </tr> <tr> <td data-bbox="533 509 863 545">Project Kick Off Meeting</td> <td data-bbox="863 509 1255 545">No later than 30 days after NTP</td> </tr> <tr> <td data-bbox="533 545 863 581">Preliminary Design Review</td> <td data-bbox="863 545 1255 581">No later than 7 months after NTP</td> </tr> <tr> <td data-bbox="533 581 863 617">Intermediate Design Review</td> <td data-bbox="863 581 1255 617">No later than 10 months after NTP</td> </tr> <tr> <td data-bbox="533 617 863 652">Mock-ups</td> <td data-bbox="863 617 1255 652">No later than 13 months after NTP</td> </tr> <tr> <td data-bbox="533 652 863 688">Carshell Structural Analysis</td> <td data-bbox="863 652 1255 688">No later than 15 months after NTP</td> </tr> <tr> <td data-bbox="533 688 863 724">Final Design Review</td> <td data-bbox="863 688 1255 724">No later than 16 months after NTP</td> </tr> <tr> <td data-bbox="533 724 863 794">First Subsystems First Article Inspection (FAI)</td> <td data-bbox="863 724 1255 794">No later than 18 months after NTP</td> </tr> <tr> <td data-bbox="533 794 863 829">First Carshell Completed</td> <td data-bbox="863 794 1255 829">No later than 20 months after NTP</td> </tr> <tr> <td data-bbox="533 829 863 899">First pilot vehicle and FAI Completed</td> <td data-bbox="863 829 1255 899">No later than 24 months after NTP</td> </tr> <tr> <td data-bbox="533 899 863 969">Pilot vehicle testing Completed at Manufacturer Facility</td> <td data-bbox="863 899 1255 969">No later than 30 months after NTP</td> </tr> <tr> <td data-bbox="533 969 863 1039">Contractual acceptance of first pilot vehicle</td> <td data-bbox="863 969 1255 1039">No later than 32 months after NTP</td> </tr> <tr> <td data-bbox="533 1039 863 1075">At Independent Facility testing</td> <td data-bbox="863 1039 1255 1075">No later than 36 months after NTP</td> </tr> <tr> <td data-bbox="533 1075 863 1144">On-Corridor testing at each agency</td> <td data-bbox="863 1075 1255 1144">No later than 36 months after NTP</td> </tr> <tr> <td data-bbox="533 1144 863 1180">Pilot train testing</td> <td data-bbox="863 1144 1255 1180">No later than 35 months after NTP</td> </tr> <tr> <td data-bbox="533 1180 863 1250">Contractual acceptance of pilot train (first 3 cars, one car of each type)</td> <td data-bbox="863 1180 1255 1250">No later than 36 months after NTP</td> </tr> <tr> <td data-bbox="533 1250 863 1382">Contractual delivery of the last (132nd) car (Approx. four (4) cars/month)</td> <td data-bbox="863 1250 1255 1382">No later than 66 months after NTP</td> </tr> </tbody> </table>		Milestone	Completion Date	Insurance Certification	No later than 10 days after Notice of Award	Performance Bond	No later than 10 days after Notice of Award	Project Kick Off Meeting	No later than 30 days after NTP	Preliminary Design Review	No later than 7 months after NTP	Intermediate Design Review	No later than 10 months after NTP	Mock-ups	No later than 13 months after NTP	Carshell Structural Analysis	No later than 15 months after NTP	Final Design Review	No later than 16 months after NTP	First Subsystems First Article Inspection (FAI)	No later than 18 months after NTP	First Carshell Completed	No later than 20 months after NTP	First pilot vehicle and FAI Completed	No later than 24 months after NTP	Pilot vehicle testing Completed at Manufacturer Facility	No later than 30 months after NTP	Contractual acceptance of first pilot vehicle	No later than 32 months after NTP	At Independent Facility testing	No later than 36 months after NTP	On-Corridor testing at each agency	No later than 36 months after NTP	Pilot train testing	No later than 35 months after NTP	Contractual acceptance of pilot train (first 3 cars, one car of each type)	No later than 36 months after NTP	Contractual delivery of the last (132nd) car (Approx. four (4) cars/month)	No later than 66 months after NTP
		Milestone		Completion Date																																					
		Insurance Certification		No later than 10 days after Notice of Award																																					
		Performance Bond		No later than 10 days after Notice of Award																																					
		Project Kick Off Meeting		No later than 30 days after NTP																																					
		Preliminary Design Review		No later than 7 months after NTP																																					
		Intermediate Design Review		No later than 10 months after NTP																																					
		Mock-ups		No later than 13 months after NTP																																					
		Carshell Structural Analysis		No later than 15 months after NTP																																					
		Final Design Review		No later than 16 months after NTP																																					
		First Subsystems First Article Inspection (FAI)		No later than 18 months after NTP																																					
		First Carshell Completed		No later than 20 months after NTP																																					
		First pilot vehicle and FAI Completed		No later than 24 months after NTP																																					
		Pilot vehicle testing Completed at Manufacturer Facility		No later than 30 months after NTP																																					
		Contractual acceptance of first pilot vehicle		No later than 32 months after NTP																																					
		At Independent Facility testing		No later than 36 months after NTP																																					
		On-Corridor testing at each agency		No later than 36 months after NTP																																					
		Pilot train testing		No later than 35 months after NTP																																					
		Contractual acceptance of pilot train (first 3 cars, one car of each type)		No later than 36 months after NTP																																					
Contractual delivery of the last (132nd) car (Approx. four (4) cars/month)	No later than 66 months after NTP																																								

TC#	Title		Question / Comment
SP 3.3	Liquidated Damages	<p>Caltrans and designees will sustain significant damages as a result of the Contractor's failure to construct equipment which meets weight restrictions and/or complete the Work within the time periods stated in the approved Master Schedule...</p> <p>The total amount for LDs in this Section shall not exceed ten percent (10%) of the Total Contract Price. Caltrans may deduct the sum of LDs from progress payments due or to become due under this Contract. The parties agree that LDs shall be the sole and exclusive remedy for the issue they address.</p> <p>It is therefore agreed that the Contractor will pay the Caltrans the sum of \$500.00 per vehicle per day for each day the work remains uncompleted or unaccepted...</p> <p>The same payment for damages shall apply in the event that vehicles previously accepted by Caltrans are out of service due to contractor-caused delays as described in WR 1.1.12 "Extension of Warranty."</p>	Please read the entire section and provide comments.
SP 4.2	Milestone Payment Schedule	Please see the Milestone Payment Schedule in SP 4,2	The Milestone payment requirements and Payment Table are extensive. Will you please review the language and the table and let us know if the expectations are clear and achievable?
SP 5.1	Performance Bond/ Security Requirements	<p>The Contractor shall furnish, at its own expense, a performance guarantee in the form of a performance bond from a surety duly licensed to do business in the state of State of California having a financial rating from A.M. Best Company of "A VIII" or better, in the amount of fifty percent (50%) of the total Contract amount.</p> <p>The security shall cover all of the Contractor's obligations under the Contract, except for the warranty, and shall remain in force until said obligations have been fulfilled. The security amount may be reduced as follows:</p> <ol style="list-style-type: none"> 1. To sixty-five percent (65%) of the original amount when fifty percent (50%) of the required number of vehicles are finally accepted; 2. To thirty percent (30%) of the original amount when seventy-five percent (75%) of the required number of vehicles are finally accepted; and 3. To zero percent (0%) of the original amount when one-hundred percent (100%) of the required number of vehicles are finally accepted. 	Please review and comment.

TC#	Title		Question / Comment
SP 5.2, 5.2.3	Insurance Requirements	<p>When performing any and all work under this Contract, on property in the care, custody or control of the State, Contractor shall maintain all commercial general liability insurance, workers' compensation insurance and any other insurance Caltrans deems appropriate under the contract.</p> <p>Contractor shall deliver to Caltrans, within ten (10) days after receiving Notice of Award of this Contract, an ACORD form (Certificate of Liability Insurance) evidencing the required insurance coverage. A Notice to Proceed will not be issued until all required insurance documentation is in place.</p> <p>Contractor is responsible for any deductible or self-insured retention contained within their insurance program.</p> <p>All insurance companies must carry a rating acceptable to the State of California Department of General Services Office of Risk and Insurance Management.</p> <ul style="list-style-type: none"> • <u>Commercial General Liability Insurance:</u> Contractor shall maintain general liability on an occurrence form with limits not less than \$10,000,000 per occurrence for bodily injury, property damage and product liability combined with a \$10,000,000 annual policy aggregate. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal/advertising injury and liability assumed under an insured contract. This insurance shall apply separately to each insured against who claim is made or suit is brought subject to the Contractor's limit of liability. The Commercial General Liability Insurance policy shall not contain "X, C and U" (explosion, collapse, and underground) exclusions. • <u>Product liability:</u> \$5,000,000 per occurrence, \$10,000,000 annual aggregate for a period of five (5) years after acceptance of the last vehicle delivered under this Contract. • <u>Automobile Liability Insurance:</u> Bodily Injury and Property Damage, \$1,000,000 combined single limits per occurrence. Such insurance shall cover liability arising out of a motor vehicle including owned, hired and non-owned motor vehicles. • <u>Workers Compensation and Employers Liability:</u> Contractor shall maintain statutory worker's compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Contract. Employer's liability limits of \$1,000,000 are required. 	Please review the basic insurance requirements and respond with any questions or concerns.
SP 6.7.1	Conditional Acceptance	Conditional Acceptance of a vehicle is defined as a completely assembled vehicle on Caltrans or designee property subject to the provisions outlined below. The vehicle shall have successfully completed all tests in accordance with Technical Specifications Chapter 19, and be ready-to-run in revenue service except for minor defects that require corrective action but will not materially affect revenue service operations. Conditional Acceptance requires that all documentation for the vehicle, including the Vehicle History Book, per Technical Specifications Chapter 22, has been delivered to and accepted by Caltrans or designee.	How do the Conditional Acceptance standards compare to your standard practices? Do you see any problems with your ability to comply with these provisions? What suggestions would you make (if any) to modify these requirements?

TC#	Title		Question / Comment
SP 6.7.2	Final Acceptance	<p>Caltrans or designee will issue a Vehicle Final Acceptance Form to the Contractor for each vehicle when the following have been achieved: (See Appendix F, Form 5).</p> <ul style="list-style-type: none"> The parties jointly verify completion of all items documented on a Final Acceptance Checklist jointly developed and signed by a Caltrans Project Manager or designee and the Contractor. The vehicle has run "failure-free" for thirty (30) consecutive days from the date of Conditional Acceptance and has demonstrated no problem which would cause the vehicle to be unacceptable for revenue service or otherwise unavailable/unusable for the traveling public. The Contractor has provided to Caltrans or designee, when presenting the vehicle for Final Acceptance, documentation indicating that all defects, open items, inspections, engineering changes and other items identified at or since Conditional Acceptance have been completed, and are signed off and closed by Caltrans or designee. All required documentation for the vehicle has been received and approved by Caltrans. <p>The vehicle Final Acceptance Form shall be attached to the Contractor's invoice for the Final Acceptance payment for each vehicle. In addition, final payment for the last vehicle shall not be made until all contractual deliverables are delivered to and accepted by Caltrans.</p>	How do the Final Acceptance standards compare to your standard practices? Do you see any problems with your ability to comply with these provisions? What suggestions would you make (if any) to modify these requirements?
SP 8.1	Options for Additional Bi-Level Passenger Railcars	<p>The Contractor hereby grants Caltrans and designee Options to purchase up to two-hundred (200) additional vehicles of any of the three (3) vehicle configurations provided for in the base order. The Options shall be valid for the period of the Contract. There shall be no minimum order quantity for any Option exercised prior to delivery of the mid-point vehicle of the production run in the base order. Any option exercised after delivery of the middle car in the base order shall be subject to a minimum order quantity agreed to by the Contractor and Caltrans or designee. Caltrans may exercise or assign some or all of the Options for additional vehicles at its sole and absolute discretion. Caltrans or designee and the Contractor will mutually establish the delivery schedule for vehicles and other deliverables under the Option assignments. Absent a mutual agreement of such schedule within thirty (30) days, Caltrans will establish the schedule within sixty (60) days.</p>	Do you see any issues with the option assignment language in Special Provisions Section 8.1? If so, please comment.
SP 12.1	Parts Availability Guarantee	<p>The Contractor agrees to cooperate in good faith with Caltrans or designee to provide spare parts and all equipment necessary to maintain and repair the vehicles supplied under this Contract during the life of the vehicles. Parts shall meet form, fit and function of the original equipment. If the Contractor is unable to provide requested parts or any equipment necessary to maintain and repair the vehicles, then the Contractor shall provide Caltrans with sufficient detail that would allow Caltrans to have these parts specially manufactured, including any drawings, design and material information, and proprietary documentation.</p>	Please review the requirements and provide feedback on any issues you see.
FC 18.12	FRA Flow Down Provisions	See FC 18.12 for FRA's Flow Down Provisions for this procurement.	Please review and provide feedback. Note: Caltrans has incorporated all of the FRA's Flow Down provisions in this section. Some of these Flow Down Provisions are duplicated in other federal clauses. For ease of your review, Caltrans has italicized the duplicates.

TC#	Title		Question / Comment
FC 18.13	Buy America	See FC 18.13 for FRA's Buy America provisions and worksheet for this procurement.	<p>Please carefully review the FRA Buy America Language for Bi-Level Railcar Procurement and complete the associated components table for all three railcar types (one table for each car type).</p> <p>Do you see any significant barriers to your firm in complying with these Buy America provisions? If so, please explain.</p> <p>How do contractors typically certify their compliance with these Buy America provisions?</p> <p>How would you propose that pre-award and post-production audits be conducted in order to verify compliance with Buy America provisions?</p> <p>Please add any other comments or questions.</p>
WR 1.1.2, 1.1.11	Complete Vehicle/Equipment Basic Warranty	<p>The complete vehicle shall be warranted to be free from defects and related defects for two (2) years unless specified below. The warranty period shall begin at Conditional Acceptance except for parts and systems on the vehicle which requires corrective action on the open items list on Section 10, Appendix F, Form 4: Vehicle Conditional Acceptance and Certificate of Title. Conditional Acceptance of each vehicle for revenue service does not relieve the Contractor of the responsibility to correct defects as required by the Contract. The warranty is based on regular operation of the vehicle under normal operating conditions (see Amtrak Environmental Conditions defined in the Technical Specification).</p> <p>The following major subsystems shall be warranted to be free from defects and related defects for more than two (2) years:</p> <ul style="list-style-type: none"> • Truck structural parts (frame and bolster) and suspension: five (5) years • Carshell including Crash Energy Management (CEM) and flooring systems (excluding carpet): 10 (ten) years 	Do these basic warranty requirements differ from your standard practices? If so, how? Do you have suggestions or comments about these requirements?
WR 1.1.12	Extension of Warranty	If, during the warranty period, repairs or modifications on any vehicle are made necessary due to defective design, materials or workmanship, written notice must be given to the Contractor. If repairs are not completed within 10 (ten) days of the notice or an agreed upon timeline, the warranty period will be suspended until such time that the repairs are fully completed and the warranty will be extended for that component on a day-for-day basis. Once repairs are completed, the warranty timeline commences and the remaining warranty will continue to be in effect. If the repairs are not completed within the agreed upon timeline, resulting in the vehicle being unavailable for revenue service, liquidated damages will commence in accordance with SP 3.3.2 "Liquidated Damages: Warranty" and will accrue on a day-for-day basis starting at the end of the agreed upon timeline.	Does this extension of the warranty differ from your standard practices? If so, how? Do you have suggestions or comments on the requirements?

SECTION 2 - ADDITIONAL FEEDBACK

Please provide additional feedback for other Rail Car Terms and Conditions. Attach additional sheets if necessary.

TC#	Title	Language	Question / Comment

For the Purchase of Bi-Level Passenger Railcars

Section 3: General Conditions (DRAFT)

October 18, 2011

DRAFT

Table of Contents

GC 1. Definitions	4
GC 2. Materials and Workmanship	7
GC 2.1 Standardization	7
GC 3. Conformance with Specifications and Drawings	8
GC 4. Inspection, Testing and Acceptance	9
GC 4.1 General	9
GC 4.2 Non-Conforming Work	9
GC 4.3 Risk of Loss	10
GC 5. Certificate of Title	10
GC 6. Intellectual Property	10
GC 6.1 Intellectual Property Indemnification	10
GC 6.2 Intellectual Property Warranty	11
GC 6.3 Tooling Rights	11
GC 7. Data Rights	11
GC 7.1 Proprietary Rights/Rights in Data	11
GC 7.1.1. Uses	11
GC 7.1.2. Limits	12
GC 7.2 Software Escrow Account	12
GC 8. Changes	12
GC 8.1 Contractor Changes	12
GC 8.2 Caltrans Changes	12
GC 9. Legal Clauses	13
GC 9.1 Indemnification	13
GC 9.1.1. Indemnitee Negligence	13
GC 9.2 Limitation of Liability	13
GC 9.3 Suspension of Work	13
GC 9.4 Notice of Labor Dispute	14
GC 9.5 Force Majeure	14
GC 9.6 Termination	15
GC 9.6.1. Termination for Convenience	15
GC 9.6.2. Termination for Non-Appropriation of Funds	15
GC 9.6.3. Termination for Default	16
GC 9.7 Compliance with Laws and Regulations	16
GC 9.8 Changes of Law	16
GC 9.9 Governing Law and Choice of Forum	16
GC 9.10 Claims	16
GC 9.10.1. Notice of Intent to Claim	16
GC 9.10.2. Claim Submittal	17
GC 9.10.3. Claims Process	17
GC 9.10.4. No Claims After Final Payment	18
GC 9.11 Disputes	18

GC 9.12 Maintenance of Records; Access by Caltrans; Right to Audit Records 18

GC 9.13 Confidential Information 18

GC 9.14 Conflicts of Interest; Gratuities 19

GC 9.15 General Nondiscrimination Clause..... 19

GC 9.16 Amendment and Waiver 20

 GC 9.16.1. Amendment..... 20

 GC 9.16.2. Waiver..... 20

GC 9.17 Remedies Not Exclusive..... 20

GC 9.18 Counterparts 20

GC 9.19 Severability..... 20

GC 9.20 Third-Party Beneficiaries 20

GC 9.21 Assignment of Contract..... 20

GC 9.22 Independent Parties 20

GC 10. Survival.....21

GC 11. Agency-Specific Provisions21

GC 11.1 Publicity..... 21

GC 11.2 Plastic Trash Bag Certification Violations..... 21

GC 11.3 Air or Water Pollution Violations..... 21

GC 11.4 Fair Employment and Housing Commission Regulations 22

GC 11.5 Seller’s Permit..... 22

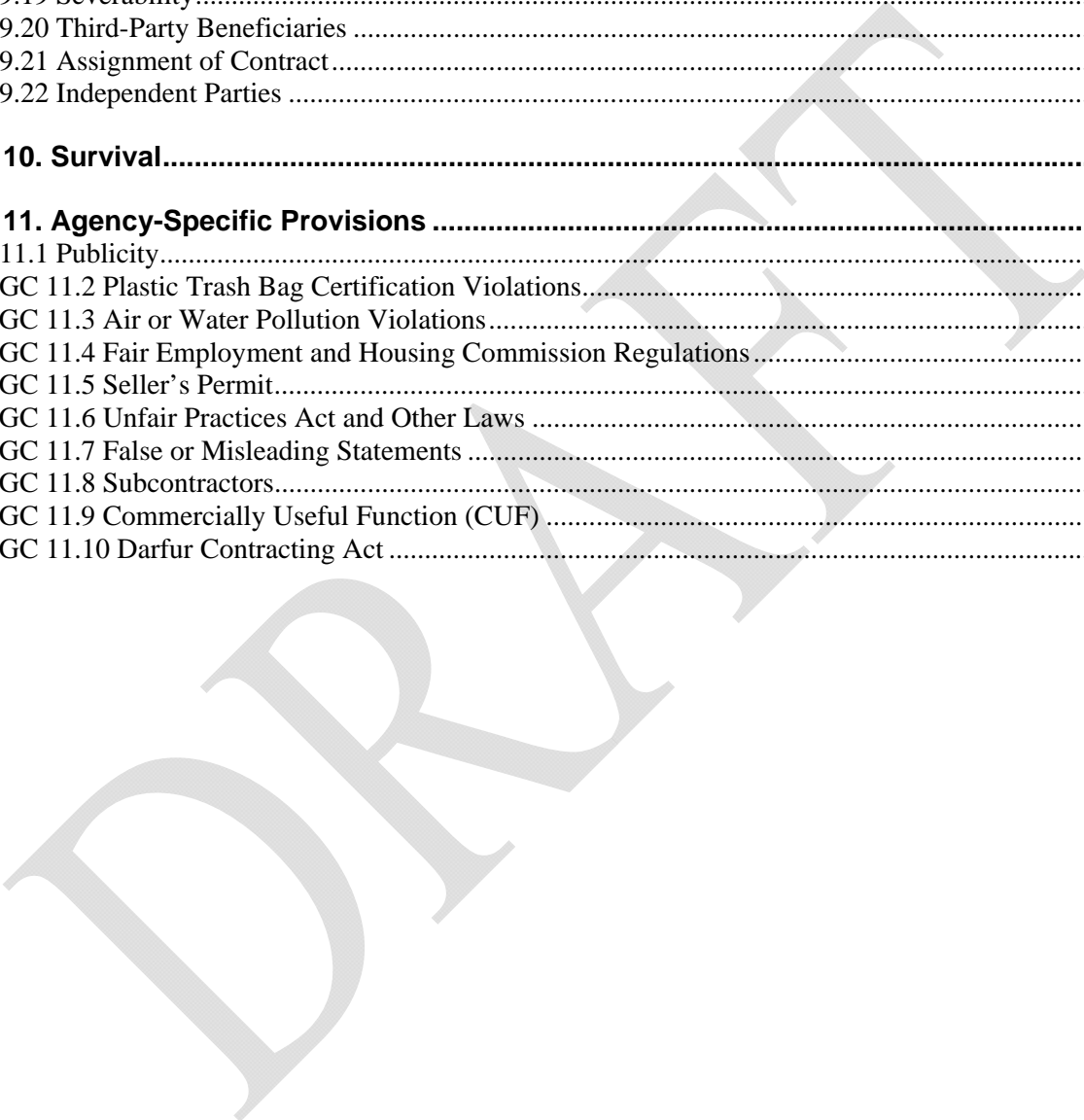
GC 11.6 Unfair Practices Act and Other Laws 22

GC 11.7 False or Misleading Statements 22

GC 11.8 Subcontractors..... 22

GC 11.9 Commercially Useful Function (CUF) 22

GC 11.10 Darfur Contracting Act 22



SECTION 3: GENERAL CONDITIONS

IMPORTANT NOTE – STATE OF CALIFORNIA GENERAL PROVISIONS: SEE THE STATE OF CALIFORNIA GENERAL PROVISIONS (SEE ATTACHED) NUMBERS 1 THROUGH 56 (FORM GSPD-401 NON-IT COMMODITIES, REVISED 06-08-2010) FOR GENERAL PROVISIONS APPLICABLE TO THIS RFP. SUCH PROVISIONS HAVE BEEN REFERENCED WITHIN THE BODY OF THIS RFP AS “STATE OF CALIFORNIA GENERAL PROVISION NUMBER X” AND TAKE PRECEDENCE OVER THE LANGUAGE IN THAT RFP SECTION.

GC 1. Definitions

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

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

Agency: California Department of Transportation (Caltrans)

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

Amtrak: Contracted service and maintenance provider for intercity passenger rail service.

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

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

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

AWCR: Amtrak Warranty Claim Request, the form used in the reporting and tracking of warranty claims.

Caltrans: California Department of Transportation

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

Component: A Component of any vehicle or any other Equipment to be delivered under this Contract. It may also be referred to in this Contract as a unit, part, product, module, subcomponent, component, system, subsystem, assembly, subassembly, software, firmware, structure or other term indicating a part or portion of the Equipment.

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

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

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

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

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

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

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

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

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

Days: Calendar days unless otherwise indicated.

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

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

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

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

Draft Proposal: The initial proposal in response to the RFP.

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

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

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

Final Proposal: The last Proposal made by a Proposer. If a Final Proposal is not specifically requested by Caltrans, or if the Proposer does not promptly respond to a request for a Final Proposal, the most recent, current Draft Proposal is the Final Proposal.

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

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

FRA: Federal Railroad Administration

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

Joint: Involving mutually the Contractor and Caltrans or designee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

GC 2. Materials and Workmanship

See State of California General Provision number 32.

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

All Materials and parts furnished by the Contractor shall be new and free from Defects.

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

GC 2.1 Standardization

The embodiment of standardization in the next-generation passenger equipment will potentially achieve several benefits, including:

- Reduction in life-cycle costs,
- Reduction in part inventories,
- Reduction in training needs with respect to maintenance activities,
- Reduction in risk of human error during service and maintenance operations,
- Reduction in tools and tooling requirements from both maintenance and manufacturing perspectives,
- Contribution to the sustainability of the passenger rail manufacturing industry in the US, and
- Consistency in the design, manufacture, operation and maintenance practices for intercity passenger rail equipment.

The NGENC Standardization Working Group has identified and prioritized a preliminary list of candidates (components, systems) for standardization as follows:

- Wheelsets (and/or key components including but not limited to wheels, axles, bearings)
- Brake systems (and/or key components including but not limited to shoes, discs, valves)
- Truck/carbody interface (dimensions & design loads)
- HVAC interfaces and performance
- Door systems (or door system interfaces)
- Window sizes and interfaces
- Seat track design and location

APPROACH: Proposers will be requested to develop and present a standardization plan as part of their response to the Request for Proposals. This plan shall address:

- Systems/components that are being offered as part of their primary bid (included in the pricing).
- Systems/components that are being offered as part of their 'Optional' bid, along with the pricing model and values proposed.
- A justification for selecting the proposed systems/components as the standard choice, with consideration of the potential benefits identified above.
- Life-cycle cost/benefit analysis of the items offered for standardization, from the proposer's perspective.
- A narrative outlining the intangible/qualitative benefits of standardization for the systems and components proposed by the proposer.

Proposers' Standardization proposals will be ranked using a common set of evaluation factors and will influence the proposal's total score. The metrics for the evaluation are being developed, but might include factors such as:

- Expected reduction in life cycle costs
- Appropriateness/Applicability of the candidate (components, systems) outside the current procurement
- Expected reduction in part inventories
- Expected reduction in training needs with respect to maintenance activities
- Reduction in risk of human error during service and maintenance operations

GC 3. Conformance with Specifications and Drawings

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

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

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

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

GC 4. Inspection, Testing and Acceptance

GC 4.1 General

See State of California General Provision number 17.

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

The Contractor shall test and inspect all materials, supplies, and equipment that are to be used, or incorporated in the Work. In addition, the Contractor shall conduct a continuous program satisfactory to Caltrans Project Manager of quality control for all Work performed under this Contract. The Contractor shall have the primary responsibility for inspecting the Work. The Caltrans Project Manager's inspection is conducted to verify that the Contractor has performed its inspections properly. Any observation, verification, inspection, or acceptance of the Work by Caltrans shall not relieve the Contractor of any of its obligations to perform the Contract as prescribed. If, in the opinion of the Caltrans' Project Manager, the Contractor fails to execute its responsibility for quality control and inspection on any part of the Work, Caltrans may, at its option, conduct quality control and inspection activities in lieu of the Contractor at the Contractor's expense. Such inspection shall not relieve the Contractor of its liability for defective or non-conforming Work, as described in GC 4.2 "Non-Conforming Work." Work not meeting the requirements of the Contract shall be made acceptable, and non-conforming Work may be rejected and will not be paid until corrected to the satisfaction of the Caltrans Project Manager. A deduction may be made from subsequent progress payments and withheld until such time as the correction of such non-conforming Work.

Inspections to be made by Caltrans will be performed in a timely fashion in accordance with the project schedule and will not unduly delay the work.

GC 4.2 Non-Conforming Work

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

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

Caltrans' inspection of the Work or right to reject non-conforming Work shall not relieve the Contractor of its full responsibility for performing the Work in full conformance with the Contract Documents. No failure or forbearance of Caltrans in notifying the Contractor of non-conforming Work shall relieve the Contractor of its Contract responsibility to ensure that the Work is performed in accordance with the Contract Documents.

GC 4.3 Risk of Loss

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

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

GC 5. Certificate of Title

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

GC 6. Intellectual Property

GC 6.1 Intellectual Property Indemnification

See State of California General Provision number 36.

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

- Secure for Caltrans or designees the right to continue using the software, materials, equipment, devices or processes by suspension of the injunction or by procuring a royalty-free license, or licenses.
- Replace such software, materials, equipment, devices or processes with non-infringing software, materials, equipment, devices or processes.
- Modify them so that they become non-infringing.
- Remove the enjoined software materials, equipment, devices or processes and refund the sums paid for them without prejudice to any other rights of Caltrans or designees.

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

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

GC 6.2 Intellectual Property Warranty

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

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

GC 6.3 Tooling Rights

The Contractor, its Subcontractors, Suppliers, and Manufacturers shall not sell, destroy or otherwise dispose of their rights to the use of, the unique castings, patterns, and forming or extrusion dies after their use in the production of the vehicles without first offering them to Caltrans, with reasonable costs associated with the transfer to be borne by Caltrans, or, in the case of a proposed sale to another, without first offering them for sale to Caltrans at a fair market price. The Contractor shall be liable to Caltrans to the extent that the failure of the Contractor, its Subcontractor, Supplier or Manufacturer to comply with Section SP 12.1 “Parts Availability Guarantee” causes Caltrans to incur costs to have the tooling replicated.

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

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

GC 7. Data Rights

GC 7.1 Proprietary Rights/Rights in Data

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

GC 7.1.1. Uses

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

1. Evaluation and qualification for the purposes of future Material and/or Equipment procurements of systems, subsystems and components of subsystems on the Material and/or Equipment to be delivered under this Contract;

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

GC 7.1.2. Limits

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

GC 7.2 Software Escrow Account

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

GC 8. Changes

GC 8.1 Contractor Changes

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

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

Any Change Order issued by Caltrans must be formalized in writing utilizing the Change Order Form (to be developed) approved by Caltrans. Verbal Change Orders are not permitted.

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

GC 8.2 Caltrans Changes

Caltrans may obtain changes to the Contract by notifying the Contractor in writing.

Caltrans may issue a Proposed Change Order. Upon receipt of the Proposed Change Order and as soon as possible but no later than thirty (30) days, or a date agreed to by the parties, the Contractor shall submit to

Caltrans' Project Manager a detailed price and schedule proposal for the Work to be performed. The Contractor's Proposal shall set forth any changes to the Total Contract Price, Contract Delivery Schedule, or any technical requirements of the Contract. This Proposal shall be accepted or modified by negotiations between the Contractor and the Caltrans Project Manager. At that time, a Change Order shall be executed in writing by both parties.

Verbal Change Orders are not permitted.

GC 9. Legal Clauses

GC 9.1 Indemnification

See State of California General Provision number 28.

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

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

GC 9.1.1. Indemnitee Negligence

The obligations of the Contractor under Section 9.1 shall not extend to circumstances in which the injury, death or damages are caused solely by the negligent acts of the Indemnitees.

GC 9.2 Limitation of Liability

Not applicable.

GC 9.3 Suspension of Work

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

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

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

GC 9.4 Notice of Labor Dispute

See State of California General Provision number 43.

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

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

GC 9.5 Force Majeure

See State of California General Provision number 25.

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

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

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

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

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

GC 9.6 Termination

GC 9.6.1. Termination for Convenience

See State of California General Provision numbers 23 and 39.

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

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

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

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

GC 9.6.2. Termination for Non-Appropriation of Funds

See State of California General Provision number 22.

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

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

It is mutually agreed that if the United States Government, the California State Legislature, other state legislatures, or other government agencies, as appropriate, do not appropriate sufficient funds for the program,

this contract shall be amended to reflect any reduction in funds or terminated per the “Termination for the Convenience of the State” clause in section General Conditions 9.6.1.

GC 9.6.3. Termination for Default

See State of California General Provision number 24.

Prior to termination, a Cure Notice shall be issued by Caltrans. The Cure Notice will identify the problems and deadlines that need to be met to remedy the problems to avoid termination for default. If the Contractor does not respond with an acceptable action plan to remedy the default or commence to remedy the default within a period of fourteen (14) days (or such longer period as Caltrans may authorize in writing) after receipt of notice from Caltrans specifying such failure, Caltrans may issue termination for default. If the Contract is terminated in whole or in part for default, Caltrans may procure, upon such terms and in such manner as Caltrans may deem appropriate, supplies or services similar to those so terminated. The Contractor shall be liable to Caltrans for any excess costs for such similar supplies or services, and shall continue the performance of this Contract to the extent not fully terminated under the provisions of this clause.

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

GC 9.7 Compliance with Laws and Regulations

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

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

GC 9.8 Changes of Law

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

GC 9.9 Governing Law and Choice of Forum

See State of California General Provision number 6.

GC 9.10 Claims

GC 9.10.1. Notice of Intent to Claim

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

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

1. The reasons the Contractor believes additional compensation and/or allowance of additional time may be due;

2. The nature of the costs involved or time needed;
3. The Contractor's plan for mitigating such cost and delay; and
4. The Contractor's best estimate of the amount of potential claim and time extension, and basic facts supporting the amount and time claimed.

GC 9.10.2. Claim Submittal

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

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

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

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

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

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

GC 9.10.3. Claims Process

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

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

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

Caltrans may at its discretion, unilaterally or in agreement with the Contractor, make payments or grant extensions of time on any part of a Claim it determines to have been substantiated to its satisfaction. If the Contractor agrees to a final payment or extension of time related to a certain, described portion of its Claim, such agreements shall constitute an unconditional release of Caltrans from any further obligations related to that described portion of the Claim.

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

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

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

GC 9.10.4. No Claims After Final Payment

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

GC 9.11 Disputes

See State of California General Provision number 38.

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

See State of California General Provision number 37.

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

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

GC 9.13 Confidential Information

Access to government records is governed by federal law and the laws of the State of California. Except as otherwise required by the Federal Government or the State of California, Caltrans will exempt from disclosure proprietary information, trade secrets and confidential commercial and financial information submitted or disclosed during the Contract period. Any such proprietary information, trade secrets, or confidential commercial and financial information that a Contractor believes should be exempted from disclosure, shall be specifically identified and marked as such. Blanket-type identification by designating whole pages or sections as containing proprietary information, trade secrets, or confidential commercial and financial information will not ensure confidentiality. The specific proprietary information, trade secrets, or confidential commercial and financial information must be clearly identified as such.

Upon a request for records from a third-party regarding the Contract, Caltrans will notify the Contractor in writing. The Contractor must respond within twenty (20) days with the identification of any and all “proprietary, trade secret, or confidential commercial or financial” information, and the Contractor shall indemnify, defend, and hold harmless Caltrans for any refusal to produce such identified information; otherwise, the requested information may be released.

Caltrans shall employ sound business practices no less diligent than those used for Caltrans’ own confidential information to protect the confidence of all licensed technology, software, documentation, drawings, schematics, manuals, data, and other information and material provided by the Contractor pursuant to the Contract that contain confidential commercial or financial information, trade secrets, or proprietary information as defined in or pursuant to the laws of the Federal Government or the State of California against

disclosure of such information and material to third parties except as permitted by the Contract. The Contractor shall be responsible for ensuring that confidential commercial or financial information, trade secrets, or proprietary information, with such determinations to be made by Caltrans at its sole discretion, bears appropriate notices relating to its confidential character.

During the performance of the Work under the Contract, it may be necessary for either party (the “Discloser”) to make confidential information available to the other party (the “Recipient”). The Recipient agrees to use all such information solely for the performance of the Work under the Contract and to hold all such information in confidence and not to disclose same to any third-party without the prior written consent of the Discloser. Likewise, the Recipient agrees that all information developed in connection with the Work under the Contract shall be used solely for the performance of the Work under the Contract, and shall be held in confidence and not disclosed to any third-party without the prior written consent of the Discloser.

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

GC 9.14 Conflicts of Interest; Gratuities

See State of California General Provision number 41.

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

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

Current State Employees (Public Contract Code §10410):

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

Former State Employees (Public Contract Code §10411):

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

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

GC 9.15 General Nondiscrimination Clause

See State of California General Provision number 42.

In connection with the performance of Work provided for under this Contract, the Contractor agrees that it will not, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, medical

condition, marital status, sex, sexual orientation or age, discriminate or permit discrimination against any person or group of people in any manner prohibited by Federal, state or local laws.

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

GC 9.16 Amendment and Waiver

GC 9.16.1. Amendment

See State of California General Provision number 33.

GC 9.16.2. Waiver

See State of California General Provision number 10.

GC 9.17 Remedies Not Exclusive

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

GC 9.18 Counterparts

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

GC 9.19 Severability

See State of California General Provision number 4.

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

GC 9.20 Third-Party Beneficiaries

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

GC 9.21 Assignment of Contract

See State of California General Provision number 9.

GC 9.22 Independent Parties

See State of California General Provision number 5.

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

GC 10. Survival

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

- “Intellectual Property Warranty”
- “Data Rights”
- “Indemnification”
- “Governing Law and Choice of Forum”
- “Disputes”
- “Confidential Information”
- “Training”
- “Parts Guarantee”
- “Access to Records”
- “Superior Warranty”

GC 11. Agency-Specific Provisions

GC 11.1 Publicity

See State of California General Provision number 35.

Caltrans reserves the right to review and approve all project-related copy prior to publication. The Contractor agrees not to allow project-related copy to be published without prior written approval from Caltrans. The Contractor agrees that published information on Caltrans or Caltrans’ programs shall be factual and in no way implies that Caltrans endorses the Contractor’s firm, service, or product.

GC 11.2 Plastic Trash Bag Certification Violations

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

GC 11.3 Air or Water Pollution Violations

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

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

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

GC 11.4 Fair Employment and Housing Commission Regulations

The California Government Code Section 12990 requires all State contractors to have implemented a Nondiscrimination Program before entering into any contract with the State. The Department of Fair Employment and Housing (DFEH) randomly selects and reviews State contractors to ensure their compliance with the law. DFEH periodically disseminates a list of suppliers who have not complied. Any supplier so identified is ineligible to enter into any State contract.

GC 11.5 Seller's Permit

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

GC 11.6 Unfair Practices Act and Other Laws

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

GC 11.7 False or Misleading Statements

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

GC 11.8 Subcontractors

Any subcontractor that the proposer chooses to use in fulfilling the requirements of this RFP, and which is expected to receive more than ten (10) percent of the value of the contract, must also meet all Administrative and Technical Requirements of the RFP, as applicable.

GC 11.9 Commercially Useful Function (CUF)

Suppliers, whether the proposer or a subcontractor, who have a California certification for one (1) or more of the socio-economic programs (e.g., small business or DVBE), must perform a commercially useful function (CUF) in the resulting contract. CUF is defined in the Military and Veterans Code Section 999(b)(5)(B) for DVBEs and in the Government Code Section 14837(d)(4)(A) for small business. At Caltrans' option, proposers may be required to submit additional written clarifying information regarding CUF. Failure to submit the requested written information as specified may be grounds for bid rejection.

GC 11.10 Darfur Contracting Act

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

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

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

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

DRAFT

For the Purchase of Bi-Level Passenger Railcars

Section 4: Special Provisions (DRAFT)

October 18, 2011

DRAFT

Table of Contents

SP 1. General	4
SP 1.1 Correspondence Control.....	4
SP 2. Sustainability	4
SP 3. Schedule	4
SP 3.1 Period of Performance and Delivery Schedule.....	4
SP 3.1.1 Period of Performance.....	4
SP 3.2 Master Schedule and Progress Reports.....	5
SP 3.2.1 Master Schedule – Critical Path Method (CPM).....	6
SP 3.2.2 Project Kick-Off Meeting.....	6
SP 3.2.3 Monthly Progress Report.....	7
SP 3.3 Liquidated Damages (LDs).....	7
SP 3.3.1 Liquidated Damages for Late Delivery.....	7
SP 3.3.2 Liquidated Damages: Warranty.....	8
SP 4. Payment	8
SP 4.1 Payment Terms/Procedures.....	8
SP 4.1.1 General.....	8
SP 4.1.2 Advance Payment.....	8
SP 4.1.3 Retention.....	9
SP 4.1.4 Use of Retained Funds.....	9
SP 4.2 Milestone Payment Schedule.....	9
SP 4.3 Prompt Payments.....	10
SP 4.3.1 Caltrans Prompt Payment.....	10
SP 4.3.2 Subcontractor Prompt Payment.....	10
SP 4.4 Units of Currency.....	10
SP 4.5 Economic Price Adjustment.....	10
SP 4.6 Payment of Taxes.....	10
SP 4.7 Final Completion.....	11
SP 4.8 Final Payment and Claims.....	11
SP 5. Performance Security/Insurance	11
SP 5.1 Performance Security Requirements.....	11
SP 5.2 Insurance.....	12
SP 5.2.1 Evidence of Coverage.....	12
SP 5.2.2 Continuation or Change in Coverage.....	12
SP 5.2.3 Endorsements.....	12
SP 6. Shipping, Delivery and Acceptance	13
SP 6.1 Shipment Authorization.....	13
SP 6.2 Shipment.....	14
SP 6.3 Evidence of Delivery and Shipping Destination (FOB point).....	14
SP 6.4 Unloading.....	15
SP 6.5 Acceptance Testing.....	15
SP 6.6 Delivery of Special Tools, Diagnostic Equipment, Spare Parts and Manuals.....	15
SP 6.7 Conditional Acceptance, Final Acceptance and Non-Acceptance.....	16
SP 6.7.1 Conditional Acceptance.....	16
SP 6.7.2 Final Acceptance.....	17
SP 6.7.3 Non-Acceptance and Repairs after Non-Acceptance.....	17

SP 7. Project Management 17

SP 7.1 Contractor’s Personnel 17

 SP 7.1.1 Contractor’s Representative 17

 SP 7.1.2 Other Key Personnel 18

SP 7.2 Subcontractors and Suppliers 18

SP 7.3 Caltrans Project Manager 18

SP 7.4 Project Meetings 18

SP 7.5 Pre-Award and Post-Delivery Buy America Certification 18

SP 7.6 Ownership and Use of Caltrans Documents 19

SP 7.7 Review of Drawings, Data, and Designs 19

SP 7.8 Partnering 19

SP 7.9 Value Engineering 19

SP 8. Options 19

SP 8.1 Options for Additional Bi-Level Passenger Vehicles 19

SP 8.2 Prices of Optional Vehicles 19

SP 8.3 Milestone Payments for Optional Vehicles 19

SP 8.4 Options for Additional Spare Parts, Tools and Materials 20

SP 8.5 Prices for Additional Spare Parts, Tools and Materials 20

SP 8.6 Milestone Payments for Additional Spare Parts, Tools and Materials 21

SP 8.7 Assignability of Options 21

SP 9. Testing 21

SP 9.1 General 21

SP 9.2 Use of Caltrans or Designee Facilities 21

 SP 9.2.1 Care of Premises 21

SP 10. Safety and Security Requirements 21

SP 10.1 Contractor Safety Training 21

SP 10.2 Safety Compliance 21

SP 10.3 Pre-Employment Background Requirements 22

SP 11. Disadvantaged Business Enterprises (DBE) 22

SP 12. Service and Parts 22

SP 12.1 Parts Availability Guarantee 22

SP 12.2 Interchangeability 22

SP 12.3 Agency-Furnished Property 22

SP 12.4 Agency-Specific Provisions 22

SECTION 4: SPECIAL PROVISIONS

For definitions and acronyms please see Section 3: General Conditions.

SP 1. General

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

SP 1.1 Correspondence Control

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

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

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

SP 2. Sustainability

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

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

SP 3. Schedule

SP 3.1 Period of Performance and Delivery Schedule

SP 3.1.1 Period of Performance

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

Bi-Level Passenger Vehicle Procurement: Schedule and Mandatory Milestones

#	Milestone	Completion Date
1.	Insurance Certification	No later than ten (10) days after Notice of Award
2.	Performance Bond	No later than ten (10) days after Notice of Award
3.	Project Kick Off Meeting	No later than thirty (30) days after NTP
4.	Preliminary Design Review	No later than seven (7) months after NTP
5.	Intermediate Design Review	No later than ten (10) months after NTP
6.	Mock-ups	No later than thirteen (13) months after NTP
7.	Carshell Structural Analysis	No later than fifteen (15) months after NTP
8.	Final Design Review	No later than sixteen (16) months after NTP
9.	First Subsystems First Article Inspection (FAI)	No later than eighteen (18) months after NTP
10.	First Carshell Completed	No later than twenty (20) months after NTP
11.	First pilot vehicle and FAI Completed	No later than twenty-four (24) months after NTP
12.	Pilot vehicle testing Completed at Manufacturer Facility	No later than thirty (30) months after NTP
13.	Contractual acceptance of first pilot vehicle	No later than thirty-two (32) months after NTP
16.	Pilot train testing	No later than thirty-five (35) months after NTP
14.	Independent Facility testing	No later than thirty-six (36) months after NTP
15.	On-Corridor testing at each agency	No later than thirty-six (36) months after NTP
17.	Contractual acceptance of pilot train (first 3 cars one car of each type)	No later than thirty-six (36) months after NTP
18.	Contractual delivery of the last (130th) car (Approx. four (4) cars/month)	No later than sixty-six (66) months after NTP

SP 3.2 Master Schedule and Progress Reports

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

SP 3.2.1 Master Schedule – Critical Path Method (CPM)

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

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

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

- NTP
- Contractor and subcontractor/Supplier submittals including review cycles
- Design review meetings
- Mockup review
- Drawing packages requiring approval
- Major off-site inspections and acceptance tests
- Major steps of carbody fabrication
- Major subsystem deliveries
- Assembly milestones
- First Article Inspection (FAI)
- Pilot Vehicle/Pilot Train
- FEA/Structural Analysis
- Carshell CEM Testing
- Truck Testing
- Door Reliability Testing
- HVAC Testing
- Ride Quality Testing
- Noise/Vibration Testing
- Proof of Design/Vehicle Performance Testing
 - At a Manufacturer's Facility
 - At an Independent Facility
 - On-Corridor at each agency
- Reliability Testing
- Production and Delivery of remaining cars
- Conditional Acceptance
- Final Acceptance
- Warranty Period
- End of Warranty Period
- Final Completion

SP 3.2.2 Project Kick-Off Meeting

Within thirty (30) days after NTP at a time and location designated by Caltrans, the Contractor will hold a Project Kick-Off Meeting. During this meeting, the Contractor will present the project team, discuss the

project approach and demonstrate an understanding of the contract. The Contractor will accept questions and feedback from Caltrans and adjust the project approach and progress schedule accordingly. At this meeting the Contractor shall submit the Master Schedule (including CPM), the Warranty Plan, Quality Assurance Plan, Preliminary Test Plan Outline, Project Organization Chart, Monthly Progress Report Format, and a sample invoicing format for Caltrans approval. **CDRL**

In addition, the Contractor will confirm the identity of the subcontractor for each system and shall submit the Warranty and Quality Assurance plans from all primary subcontractors. At this meeting the Contractor shall also introduce key personnel (and provide complete contact information for each), including subcontractors to Caltrans.

SP 3.2.3 Monthly Progress Report

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

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

SP 3.3 Liquidated Damages (LDs)

Caltrans and designees will sustain significant damages as a result of the Contractor's failure to construct equipment which meets weight restrictions, and/or contractor failure to complete the Work within the time periods stated in the approved Master Schedule (See SP 3.2). These damages may include, but are not necessarily limited to, the following:

- Delays in rail service expansion due to lack of equipment
- Increased costs of Contract Administration
- Cost to lease equipment to provide revenue capacity in lieu of delivered cars
- Loss of revenue

SP 3.3.1 Liquidated Damages for Late Delivery

The parties to this agreement acknowledge that the Caltrans and designees shall incur actual damages should the Contractor fail to perform the Work as called out in the contract and specification and per the dates set forth in the Master Schedule. The parties, therefore, have agreed to late delivery charges in the amount of \$500.00 per vehicle per day.

The Contractor will pay Caltrans the sum of \$500.00 per vehicle per day for each day the work remains uncompleted or unaccepted by the Caltrans or designee, provided that the total late delivery charges assessed against the Contractor shall in no event exceed ten percent (10%) of the total value of the Contract. The Contractor agrees to pay said LDs as herein provided. Caltrans may deduct the damages from any monies due or that may become due the Contractor.

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

SP 3.3.2 Liquidated Damages: Warranty

The same payment for damages (\$500.00 per vehicle per day) shall apply in the event that vehicles previously accepted by Caltrans are out of service due to contractor-caused delays beyond the agreed upon timeline as described in WR 1.1.12 "Extension of Warranty."

SP 4. Payment

SP 4.1 Payment Terms/Procedures

SP 4.1.1 General

See State of California General Provision numbers 29 and 30.

Caltrans shall pay and the Contractor shall accept the amounts set forth in this contract as full compensation for all costs and expenses of completing the Work in accordance with the Contract, including but not limited to all labor, equipment and material required, overhead, expenses, storage and shipping, risks and obligations, taxes (as applicable), fees and profit, and any unforeseen costs.

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

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

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

Invoices shall be submitted to the following address:

P.O Box 942874 – MS 74, Sacramento, CA 94274-0001 Each invoice shall be accompanied by Conditional and Final Acceptance forms, Contract Deliverable Requirements List (CDRL) approvals or other back up documents required by Caltrans. Incomplete or inaccurate invoices shall be returned unapproved to the Contractor for correction.

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

SP 4.1.2 Advance Payment

Not Applicable.

SP 4.1.3 Retention

Caltrans shall deduct and retain from each milestone payment an amount equal to five percent (5%) of the total amount payable under the invoice. Retention shall be held by Caltrans to secure the Contractor's obligations to perform in accordance with Contract Requirements. At the Contractor's request, the retention amount shall be held in an interest-bearing escrow account with interest earned on the account paid to the Contractor. Costs of the escrow account will be borne by the Contractor. Retention for all Vehicles will be released at issuance of Notice of Completion as referenced in SP 4.7 "Final Completion," unless any portion of the retention has been used for warranty repairs or correction of open items.

SP 4.1.4 Use of Retained Funds

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

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

SP 4.2 Milestone Payment Schedule

#	Description of Work	Percentage of Total Bid Price	Cumulative Percentage of Total Bid Price
A	Notice to Proceed (NTP) and approved Master Schedule (including CPM), Quality Assurance (QA) Plan, Project Management Plan, Warranty Plans, Evidence of Insurance, Evidence of Performance Bond, Organizational Chart, Preliminary Test Plan Outline, Monthly Progress Report Format, and Sample Invoice Format, plus associated CDRLs	5.0%	5.0%
B	Approved Preliminary Design Review (PDR) plus associated CDRLs	2.0%	7.0%
C	Approved Intermediate Design Review (IDR) plus associated CDRLs	2.0%	9.0%
D	Approved Mockups plus associated CDRLs	1.0%	10.0%
E	Approved Final Design Review (FDR) plus associated CDRLs	3.0%	13.0%
F	Placement of Purchase Order(s) for Primary (major) subcontracts and Suppliers plus associated CDRLs — Major Systems: Carshell, Trucks, Brakes, Door Control, Air comfort, Lighting, Couplers and Draft Gear, and Communications.	3.0%	16.0%
G	Placement of Purchase Order(s) for Secondary (subsystem) subcontracts and Suppliers plus associated CDRLs — Subsystems: Windows, Doors, Flooring, Interiors including: Toilet Rooms, Seat Gangways, Water and Sanitary Systems, Cab Console, Battery, and LVPS	2.0%	18.0%
H	Approved Subsystem First Article Inspections	1.0%	19.0%
I	Approved Pilot Vehicle First Article Inspection	2.0%	21.0%
J	Completion of Contract Conformance Testing	2.0%	23.0%
K	The establishment of a warranty field office(s) with staff, spare parts and manuals plus associated CDRLs	2.0%	25.0%

#	Description of Work	Percentage of Total Bid Price	Cumulative Percentage of Total Bid Price
L	Delivery and Conditional Acceptance of pilot cars plus associated CDRLs and approved Change Orders Total number of pilot cars = 3	12.0%	37.0%
	Payment per pilot vehicle	4.0%	
M	Final Acceptance of pilot train set plus associated CDRLs	3.0%	40.0%
N	Delivery and Conditional Acceptance of production cars plus associated CDRLs and approved Change Orders Total number of production cars = 127	27.5%	67.5%
	Payment per production vehicle	0.2132%	
O	Final Acceptance of all production cars plus associated CDRLs	27.5%	95.0%
P	Delivery and acceptance of all the spare parts, special test equipment, training/manuals, and final associated CDRLs	5.0%	100.0%
Q	End of warranty period and retention	Up to 100% of the retention collected for each vehicle	

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

SP 4.3 Prompt Payments

SP 4.3.1 Caltrans Prompt Payment

See State of California General Provision number 30.

SP 4.3.2 Subcontractor Prompt Payment

Not Applicable.

SP 4.4 Units of Currency

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

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

SP 4.5 Economic Price Adjustment

Not Applicable.

SP 4.6 Payment of Taxes

See State of California General Provision number 31.

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

SP 4.7 Final Completion

The Contractor shall complete and shall deliver to Caltrans all designated portions of the Work and all parts and requirements within the number of days set forth in the Contract milestones as defined in SP 3.1.1 “Period of Performance,” above. When all the Work has been performed and delivered in the quantities designated, the Work will be inspected by Caltrans’ Project Manager. If Caltrans’ Project Manager finds that the Work has been completed in all aspects and all documents have been submitted and all training has been completed, all in accordance with the approved Master Schedule, then Caltrans will issue a Notice of Completion.

Final Completion of the work shall occur when all of the vehicles have reached Final Acceptance, the full warranty period for each vehicle has come to successful conclusion, and when the Contractor has: (a) corrected any and all Fleet Defects; (b) completed previously identified warranty work; (c) delivered written releases of liens from all subcontractors and Suppliers; and (d) provided all training, technical support, spare parts, Special Tools, Vehicle History Books, manuals and other CDRLs required under the contract documents.

SP 4.8 Final Payment and Claims

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

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

SP 5. Performance Security/Insurance

SP 5.1 Performance Security Requirements

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

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

1. To sixty-five percent (65%) of the original amount when fifty percent (50%) of the required number of vehicles have achieved final acceptance;
2. To thirty percent (30%) of the original amount when seventy-five percent (75%) of the required number of vehicles have achieved final acceptance; and
3. To zero percent (0%) of the original amount when one-hundred percent (100%) of the required number of vehicles have achieved final acceptance.

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

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

The Contractor shall deliver the Performance Bond to Caltrans within ten (10) days after Notice of Award.

SP 5.2 Insurance

SP 5.2.1 Evidence of Coverage

See State of California General Provision number 21.

When performing any and all work under this Contract, on property in the care, custody or control of the State, Contractor shall maintain all commercial general liability insurance, workers' compensation insurance and any other insurance Caltrans deems appropriate under the contract.

Contractor shall deliver to Caltrans, within ten (10) days after receiving Notice of Award of this Contract, an ACORD form (Certificate of Liability Insurance) evidencing the required insurance coverage. A Notice to Proceed will not be issued until all required insurance documentation is in place.

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

All insurance companies must carry a rating acceptable to the State of California Department of General Services Office of Risk and Insurance Management.

SP 5.2.2 Continuation or Change in Coverage

The Contractor shall maintain in effect during the term of this Contract, including any warranty period, at its own expense, at least the coverage and limits of insurance set forth below. Prior to the cancellation, modification or expiration of any insurance during the Contract term, the Contractor shall furnish evidence of such to the Caltrans Project Manager.

Insurance policies shall contain a provision stating coverage will not be cancelled without thirty (30) days written notice to the Caltrans Project Manager. In the event the Contractor fails to keep in effect at all time the specified insurance coverage, Caltrans may, in addition to any other remedies it may have, terminate this Contract upon the occurrence of such event, subject to the provisions of this Contract.

If insurance expires during the term of the contract, a new certificate of insurance must be received by the Caltrans Project Manager at least ten (10) days prior to the expiration of this insurance. Any new insurance must still comply with the original terms of the contract.

SP 5.2.3 Endorsements

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

- Commercial General Liability Insurance: Contractor shall maintain general liability on an occurrence form with limits not less than \$10,000,000 per occurrence for bodily injury, property damage and product liability combined with a \$10,000,000 annual policy aggregate. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal/advertising injury and liability assumed under an insured contract. This insurance shall apply separately to each insured against who claim is made or suit is brought subject to the Con-

tractor's limit of liability. The Commercial General Liability Insurance policy shall not contain "X, C and U" (explosion, collapse, and underground) exclusions.

- Product liability: \$5,000,000 per occurrence, \$10,000,000 annual aggregate for a period of five (5) years after acceptance of the last vehicle delivered under this Contract.
- Automobile Liability Insurance: Bodily Injury and Property Damage, \$1,000,000 combined single limits per occurrence. Such insurance shall cover liability arising out of a motor vehicle including owned, hired and non-owned motor vehicles.
- Workers Compensation and Employers Liability: Contractor shall maintain statutory worker's compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Contract. Employer's liability limits of \$1,000,000 are required.
- Professional Liability: Contractor shall maintain Professional Liability at \$1,000,000 covering any damages caused by a negligent error, act or omission. The policy's retroactive date must be displayed on the certificate of insurance and must be before the date this contract was executed or before the beginning of contract work. The Contractor is responsible to maintain continuous coverage for up to three (3) years after the notice of completion.

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

1. Caltrans, its agents, officers, officials, representatives, employees and designees are named as additional insureds, as applicable, with respect to the Contractor's operations, products and completed operations in connection with the Contract.
2. Stipulation that the Insurance is primary insurance and that no insurance or self-insurance of Caltrans will be called upon to contribute to a loss. Any insurance or self-insurance maintained by Caltrans shall be excess of the Contractor's insurance and shall not contribute with it.

Coverage applicable to Products and Completed Operations as required in this Section shall be maintained for a period of two (2) years after the completion of all Work performed under this Contract.

SP 6. Shipping, Delivery and Acceptance

SP 6.1 Shipment Authorization

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

SP 6.2 Shipment

See State of California General Provision number 12.

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

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

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

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

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

Vehicles shall be fully prepared by the Contractor for railroad interchange movement, including bracing and component securement as required by the originating carrier. All vehicles shall be shipped via passenger train while in North America unless otherwise approved by Caltrans. All vehicles shall be supplied with potable water and with all systems fully functional to support an onboard escort during shipping. Units shipped separately shall be prepared in such manner as to protect them from damage in transit and at the delivery site. All components which will not be exposed to weather in normal operation shall be protected with weatherproof covering unless enclosed in the vehicle body. Heavy parts shall be crated or mounted on skids. Smaller parts shall be boxed or wired in bundles. If necessary for handling at a particular destination, provisions shall be made for the ready attachment of slings. Unless otherwise approved, no loose or boxed equipment shall be permitted to be shipped in the cars.

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

See State of California General Provision number 13.

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

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

- Oakland, California and Chicago, Illinois

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

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

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

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

- Sacramento, California and Chicago, Illinois

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

SP 6.4 Unloading

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

After arrival at Caltrans' or designee's designated facility, each vehicle shall be examined jointly by Caltrans or designee, and the Contractor for shipping damage. Caltrans or designee then will issue a receiving notice to the Contractor, which will acknowledge receipt of the vehicle and describe any missing parts or visible damage that may have occurred during shipment.

SP 6.5 Acceptance Testing

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

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

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

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

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

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

Delivery of manuals shall be made in two stages to ensure that manuals remain up-to-date with vehicle production and delivery. The initial delivery of draft manuals is shown in the Milestone Payment Schedule

and shall consist of full sets of all manuals in the quantities indicated. The final delivery shall consist of the complete updated manuals and the electronic media in the quantities indicated. Acceptance of the manuals will be deemed to have occurred upon written notification of acceptance by Caltrans or designee.

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

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

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

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

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

SP 6.7 Conditional Acceptance, Final Acceptance and Non-Acceptance

SP 6.7.1 Conditional Acceptance

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

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

- All post-production and pre-delivery testing has been successfully completed and documented.
- Any damage occurring while in transit has been corrected.
- The Contractor has provided documentation identifying all known defects, open items, engineering changes and/or other required work items, and has submitted a Caltrans-approved Corrective Action Plan and schedule to complete the identified work. If the Contractor fails to complete the work as identified herein, Final Acceptance of the vehicle will be delayed.
- The Contractor has inspected and certified that the vehicle is ready for its thirty (30) consecutive day “failure-free” period.
- All systems operate as specified and have been verified in a joint inspection, documented on Vehicle Conditional Acceptance and Certificate of Title form, (see Appendix, Form 4), jointly developed and signed by the Caltrans Project Manager or designee and the Contractor. **CDRL**

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

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

SP 6.7.2 Final Acceptance

Caltrans or designee will issue a Vehicle Final Acceptance Form to the Contractor for each vehicle when the following have been achieved: (See Appendix, Form 5).

- The parties jointly verify completion of all items documented on a Final Acceptance Checklist jointly developed and signed by a Caltrans Project Manager or designee and the Contractor. **CDRL**
- The vehicle has run “failure-free” for thirty (30) consecutive days from the date of Conditional Acceptance and has demonstrated no problem which would cause the vehicle to be unacceptable for revenue service or otherwise unavailable/unusable for the traveling public.
- The Contractor has provided to Caltrans or designee, when presenting the vehicle for Final Acceptance, documentation indicating that all defects, open items, inspections, engineering changes and other items identified at or since Conditional Acceptance have been completed, and are signed off and closed by Caltrans or designee.
- All required documentation for the vehicle has been received and approved by Caltrans.

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

SP 6.7.3 Non-Acceptance and Repairs after Non-Acceptance

If a vehicle fails any inspection or test, Caltrans or designee shall provide Contractor with notice of non-acceptance. Such notice shall be effective until Contractor corrects the deficiencies and Caltrans or designee accepts the vehicle after retest and inspection.

1. **Responsibility:** The Contractor shall at all times be responsible for correction of the deficiencies.
2. **Time for correction:** If a vehicle is delivered but not accepted because of a deficiency, then Caltrans or designee shall issue a Notice of Non-Acceptance, and the Contractor shall have two (2) days to correct the deficiency or to request, in writing, an extension of time including a definition of the problem, solution and a time line to correct the deficiency.

SP 7. Project Management

SP 7.1 Contractor’s Personnel

SP 7.1.1 Contractor’s Representative

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

With Notice to Proceed, the candidate submitted with the Proposer’s Offer shall become the Contractor’s Representative. If for any reason, and at any time, the candidate submitted by the Contractor is not acceptable to Caltrans, or becomes unacceptable, the issue will be referred to the Contractor’s senior management. If the Contractor wishes to replace its Representative at any time during the performance of this Contract, it first shall submit the resume of its new candidate to Caltrans for Caltrans approval and shall not make the substitution without Caltrans approval.

SP 7.1.2 Other Key Personnel

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

SP 7.2 Subcontractors and Suppliers

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

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

Any subcontract in excess of \$25,000, entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subcontractors.

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

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

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

SP 7.3 Caltrans Project Manager

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

Caltrans' Project Manager is hereby designated to be [insert name and contact information].

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

SP 7.4 Project Meetings

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

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

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

SP 7.6 Ownership and Use of Caltrans Documents

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

SP 7.7 Review of Drawings, Data, and Designs

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

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

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

SP 7.8 Partnering

Not applicable.

SP 7.9 Value Engineering

Not applicable.

SP 8. Options

SP 8.1 Options for Additional Bi-Level Passenger Vehicles

The Contractor hereby grants Caltrans and designee Options to purchase up to two-hundred (200) additional vehicles of any of the three (3) vehicle configurations provided for in the base order. The Options shall be valid for the period of the Contract. There shall be no minimum order quantity for any Option exercised prior to delivery of the mid-point vehicle of the production run in the base order. Any option exercised after delivery of the middle car in the base order shall be subject to a minimum order quantity agreed to by the Contractor and Caltrans or designee. Caltrans may exercise or assign some or all of the Options for additional vehicles at its sole and absolute discretion. Caltrans or designee and the Contractor will mutually establish the delivery schedule for vehicles and other deliverables under the Option assignments. Absent a mutual agreement of such schedule within thirty (30) days, Caltrans will establish the schedule within sixty (60) days.

SP 8.2 Prices of Optional Vehicles

Prices of Optional Vehicles will be subject to the terms of the signed contract.

SP 8.3 Milestone Payments for Optional Vehicles

Milestone payments for the option vehicles and associated deliverables will be made upon satisfactory completion and acceptance of each milestone in accordance with the milestone allocation percentages listed below:

#	Description of Work	Percentage of Total Bid Price	Cumulative Percentage of Total Bid Price

#	Description of Work	Percentage of Total Bid Price	Cumulative Percentage of Total Bid Price
A	Notice to Proceed (NTP) and all necessary revisions to schedules and plans noted herein, approved Master Schedule (including CPM), Quality Assurance (QA) Plan, Project Management Plan, Warranty Plan, Evidence of Insurance, Evidence of Performance Bond, Organizational Chart, Preliminary Test Plan Outline, Monthly Progress Report Format, and Sample Invoice Format plus associated CDRLs.	5.0%	5.0%
B	Placement of Purchase Order(s) for Primary (major) subcontracts and Suppliers plus associated CDRLs — Major Systems: Carshell, Trucks, Brakes, Door Control, Air comfort, Lighting, Couplers and Draft Gear, and Communications.	5.0%	10.0%
C	Placement of Purchase Order(s) for Secondary (subsystem) subcontracts and Suppliers plus associated CDRLs — Subsystems: Windows, Doors, Flooring, Interiors including: Toilet Rooms, Seat Gangways, Water and Sanitary Systems, Cab Console, Battery, and LVPS	5.0%	15.0%
D	The establishment (if necessary) of a warranty field office(s) with staff, spare parts and manuals plus associated CDRLs	5.0%	20.0%
E	Pre-vehicle delivery FRA safety certification	5.0%	25.0%
F	Delivery and Conditional Acceptance of production cars plus associated CDRLs and approved Change Orders	TBD	30.0%
G	Final Acceptance of all production cars plus associated CDRLs		35.0%
H	Delivery and acceptance of all the spare parts, special test equipment, training/manuals, and final associated CDRLs	10.0%	90.0%
I	End of warranty period and retention	Up to 100% of the retention collected for each vehicle	

SP 8.4 Options for Additional Spare Parts, Tools and Materials

At the option of Caltrans, the Contractor shall provide additional spare parts, special tools, diagnostic test equipment and manuals, drawings, training and training materials, illustrated parts catalog and publications to be used for any Option orders and shall be as set forth in the Schedule of Prices. The Contractor shall provide a listing of the additional recommended spare parts, special tools and diagnostic test equipment when the design of the first vehicle is completed.

Caltrans shall order additional quantities of these items by written notice to the Contractor. An Option to order additional items to be delivered with the base vehicle order may be exercised at any time by Caltrans up to the date of delivery of the last vehicle purchased under this Contract. The notice shall specify the quantity of additional materials being ordered. Caltrans may place one or more such orders for additional materials, or none.

SP 8.5 Prices for Additional Spare Parts, Tools and Materials

Pricing for any additional spare parts, tools, and materials developed beyond those included in the original signed contract will be negotiated.

SP 8.6 Milestone Payments for Additional Spare Parts, Tools and Materials

Milestone Payments for additional spare parts, tools, and materials will be per the table in Section 8.3 above and in accordance with the original contract terms.

SP 8.7 Assignability of Options

Caltrans reserves the right to assign options to other public agencies.

SP 9. Testing

SP 9.1 General

The Contractor shall prepare an Inspection and Test Plan (“Test Plan”) consistent with Technical Specifications, Chapter 19.

SP 9.2 Use of Caltrans or Designee Facilities

The Contractor shall furnish all personnel, supplies and tools for vehicle commissioning at Caltrans’ or designee’s facilities. The contractor shall also furnish all equipment and other requirements for the vehicle pre-delivery not made available to the Contractor by Caltrans.

The Contractor shall provide the Caltrans Project Manager with a minimum of three (3) days’ notice of the scheduled date and time of each post-shipment vehicle test, so that the Caltrans Project Manager or designee may witness each such test.

The Contractor shall cooperate with Caltrans in scheduling and coordinating the Contractor’s Work on Caltrans’ or designee’s property with the Work and operations of Caltrans, designee, contracted service and maintenance providers, or host railroads.

SP 9.2.1 Care of Premises

At all times the Contractor shall maintain its premises on Caltrans’, designee’s, contracted service and maintenance provider’s, or host railroad’s property in a neat and orderly condition. Upon completion of the entire project, the Contractor shall remove all temporary buildings, structures, fences, scaffolding, surplus materials, and rubbish of every kind from the site of the Contractor’s Work on Caltrans’, designee’s, contracted service and maintenance provider’s, or host railroad’s property.

SP 10. Safety and Security Requirements

SP 10.1 Contractor Safety Training

All Contractor and subcontractor personnel and/or their technical representatives or assistants performing onsite Work, inspection or testing shall have successfully completed all required safety training courses administered by Caltrans, designee, contracted service and maintenance provider, and host railroads.

It is incumbent upon the Contractor and its employees to work in a safe manner at all times due to the nature of rail service. The Contractor while performing work around rail facilities shall be alert for train movement through the facility to ensure a safe operation.

SP 10.2 Safety Compliance

See State of California General Provision number 20.

The Contractor shall be responsible for ensuring compliance with the most stringent safety provisions of the applicable statutes and regulations related to state, federal and local safety requirements. The Contractor shall flow down all these requirements to any subcontractor and Supplier performing Work under the Contract.

Upon the failure of the Contractor to comply with any of these requirements, Caltrans shall have the authority to stop any and all operations of the Contractor affected by such failure until such failure is remedied. No part of the time lost due to any such stop orders shall be made subject to a claim or extension of time or increase in compensation.

The Contractor shall be fully liable for all fines, penalties, claims, and repairs incurred by Caltrans and its contractors resulting from failures to comply with this section.

SP 10.3 Pre-Employment Background Requirements

See State of California General Provisions number 45.

SP 11. Disadvantaged Business Enterprises (DBE)

See Federal requirements related to DBE in Section 5 Federal Clauses FC 8.

SP 12. Service and Parts

SP 12.1 Parts Availability Guarantee

The Contractor agrees to cooperate in good faith with Caltrans or designee to provide spare parts and all equipment necessary to maintain and repair the vehicles supplied under this Contract during the life of the vehicles. Parts shall meet form, fit and function of the original equipment.

If the Contractor is unable to provide requested parts or any equipment necessary to maintain and repair the vehicles, then the Contractor shall provide Caltrans with sufficient detail that would allow Caltrans to have these parts specially manufactured, including any drawings, design and material information, and proprietary documentation.

SP 12.2 Interchangeability

Unless otherwise agreed, all units and components procured under this Contract, whether provided by Suppliers or manufactured by the Contractor, shall be duplicates in design, manufacture and installation to ensure interchangeability among vehicles in this procurement.

In the event that the Contractor is unable to comply with the interchangeability requirement, the Contractor must notify Caltrans and obtain Caltrans' prior written approval, including any change in pricing.

Caltrans shall review proposed product changes on a case-by-case basis and shall have the right to ensure that product changes perform at least as well as the originally supplied products.

SP 12.3 Agency-Furnished Property

Not applicable.

SP 12.4 Agency-Specific Provisions

Not applicable.

For the Purchase of Bi-Level Passenger Railcars

Section 5: Federal Clauses (DRAFT)

October 18, 2011

DRAFT

Table of Contents

FC 1. Access to Records	5
FC 1.1 Local Governments.....	5
FC 1.2 State Governments.....	5
FC 2. Federal Funding, Incorporation of FRA Terms and Federal Changes	5
FC 2.1 Application of Federal, State, and Local Laws and Regulations.....	5
FC 2.2 Inspection by Federal Officials.....	6
FC 3. Federal Energy Conservation Requirements	6
FC 4. Civil Rights Requirements	6
FC 4.1 Civil Rights.....	7
FC 5. No Government Obligation to Third Parties	7
FC 6. Program Fraud and False or Fraudulent Statements or Related Acts	8
FC 7. Suspension and Debarment	8
FC 8. Disadvantaged Business Enterprise (DBE)	8
FC 9. Clean Water Requirements	9
FC 9.1 Environmental Protection.....	9
FC 10. Clean Air Requirements	10
FC 11. Compliance with Federal Lobbying Policy	10
FC 12. Buy America	10
FC 13. Pre-Award and Post-Delivery Audits	10
FC 14. Cargo Preference	11
FC 14.1 Cargo Preference.....	11
FC 15. Fly America	12
FC 16. Contract Work Hours and Safety Standards Act	12
FC 16.1 Davis-Bacon Act Provisions.....	12
FC 16.2 Safety Oversight.....	12
FC 17. ADA Access	13
FC 18. Other Federal Requirements	13
FC 18.1 Patent Rights.....	13
FC 18.2 Rights in Data and Copyrights.....	14
FC 18.3 Acknowledgment of Support and Disclaimer.....	15
FC 18.4 Right of FRA to Terminate.....	15
FC 18.5 Whistleblower Protections.....	15

FC 18.6 False Claims Act..... 16
FC 18.7 Prohibited Activities 16
FC 18.8 Recovery Act Funding Announcement..... 16
FC 18.9 Reporting Requirements 16
FC 18.10 Reprints of Publications..... 17
FC 18.11 Site Visits..... 17
FC 18.12 FRA Flow Down Provisions..... 17
FC 18.13 Buy America Language for Bi-Level Car Procurement RFI..... 26
 FC 18.13.1 Buy America Requirements..... 26
 FC 18.13.2 Table of Rail Equipment Components 26

SECTION 5: FEDERAL CLAUSES

NOTE Regarding Contents of the Federal Clauses Sections:

The contents of the Federal Clauses Sections below come from the following sources:

- APTA Light Rail Vehicle (LRV) RFP Template – Unless otherwise noted, the text at the beginning of each section below is the content from the APTA LRV RFP Template, which has served as the basis for much of the Terms and Conditions contained in this Request for Information. Please note that it references and makes use of codes and regulations from the FTA, which may not be appropriate in these Federal Clauses.
- FRA Grant Agreements with the State of California – Text from the FRA’s Grant Agreements with the State of California appears in these Federal Clauses following “***Note: the following text was adopted from the FRA Grant Agreement with Caltrans.***” These reflect an attempt to relate relevant information and requirements from the Grant Agreements to existing sections of the LRV RFP template. In addition, elements of the FRA Grant Agreement are also included in Federal Clauses Sections 18.1 to 18.11. Where appropriate, the term “Grantee” has been replaced with “Contractor” in the FRA Grant Agreement text.
- FRA Flow Down Provisions (Federal Clauses Section 18.12) – This is a document produced by the FRA that lists potential Federal Clauses for Contractors working on FRA funded contracts. Much of this document is duplicative of or similar to the FRA Grant Agreement text included in these Federal Clauses and referenced in the item above. To help expedite review, text in the “FRA Flow Down Provisions” is shown in gray *italics* where the “FRA Flow Down Provisions” completely or largely duplicate text included elsewhere in these Federal Clauses.
- FRA Buy America Language for Bi-Level Car Procurement RFI (Federal Clauses Section 18.13) – This is a document produced by the FRA to assist in explaining Buy America provisions and to help gather information needed for the implementation of the Buy America provisions for the procurement of Bi-Level Railcars. This section is in addition to the other Buy America information included in other parts of these Federal Clauses.

The most appropriate language for these Federal Clauses will be determined based on the feedback provided to the RFI and the comments of other parties reviewing this document.

FC 1. Access to Records

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 Caltrans, 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).

The following access to records requirements also apply to this Contract as appropriate to the funding of the contract:

FC 1.1 Local Governments

Not Applicable.

FC 1.2 State Governments

In accordance with 49 CFR 633.17, the Contractor agrees to provide Caltrans, the FTA Administrator or his or her authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 USC 5302(a)1, which is receiving Federal financial assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

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.

FC 2. Federal Funding, Incorporation of FRA Terms and Federal Changes

FC 2.1 Application of Federal, State, and Local Laws and Regulations

Note: the following text was adopted from the FRA Grant Agreement with Caltrans.

- 1) Federal Laws and Regulations. The Contractor understands that Federal laws, regulations, policies, and related administrative practices to this Agreement on the date the Agreement was executed may be modified from time to time. The Contractor agrees that the most recent of such Federal requirements will govern the administration of this Agreement at any particular time, except if there is sufficient evidence in this Agreement of a contrary intent. Likewise, new Federal laws, regulations, policies and administrative practices may be established after the date the Agreement has been executed and may apply to this Agreement. To achieve compliance with changing Federal requirements, the Contractor agrees to include in all sub-assistance agreements and third party contracts financed with FRA assistance, specific notice that Federal requirements may change and the changed requirements will apply to the Project as required. All limits or standards set forth in this Agreement to be observed in the performance of the Project are minimum requirements.
- 2) State or Territorial Law and Local Law. Except to the extent that a Federal statute or regulation preempts State or territorial law, nothing in this Agreement shall require the Contractor to observe or enforce compliance with any provision thereof, perform any other act, or do any other thing in contravention of any applicable State or territorial law; however, if any of the provisions of this Agreement violate any applicable State or territorial law, or if compliance with the provisions of this Agreement would require the Contractor to violate any applicable State or territorial law, the Contractor agrees to notify the FRA immediately in writing in order that FRA and the Contractor may make appropriate arrangements to proceed with the Project as soon as possible.

FC 2.2 Inspection by Federal Officials

Note: the following text was adopted from the FRA Grant Agreement with Caltrans.

The Contractor agrees to permit the Secretary and the Comptroller General of the United States, or their authorized representatives, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Contractor and its Contractors pertaining to the Project. The Contractor agrees to require each third party Contractor whose contract award is not based on competitive bidding procedures as defined by the Secretary to permit the Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that contract, and to audit the books, records, and accounts involving that contract as it affects the Project.

FC 3. Federal Energy Conservation Requirements

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

FC 4. Civil Rights Requirements

The following requirements apply to the underlying Contract:

1. **Nondiscrimination:** In accordance with Title VI of the Civil Rights Act, as amended, 42 USC § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 USC § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 USC § 12132, and Federal transit law at 49 USC § 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 USC § 2000e, and Federal transit laws at 49 USC § 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 CFR Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, 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 USC §§ 623 and Federal transit law at 49 USC § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- c. **Disabilities:** In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 USC § 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 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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.

FC 4.1 Civil Rights

Note: the following text was adopted from the FRA Grant Agreement with Caltrans.

The Contractor agrees to comply with all civil rights laws and regulations, in accordance with applicable Federal directives, except to the extent that the FRA determines otherwise in writing. These include, but are not limited to, the following: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) (as implemented by 49 C.F.R. Part 21), which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681- 1683, and 1685-1686), which prohibits discrimination on the basis of sex, (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 1601-1607), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing, (i) 49 U.S.C. § 306, which prohibits discrimination on the basis of race, color, national origin, or sex in railroad financial assistance programs; (j) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance was made; and (k) the requirements of any other nondiscrimination statute(s) which may apply to the Contractor.

FC 5. No Government Obligation to Third Parties

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

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.

Note: the following text was adopted from the FRA Grant Agreement with Caltrans.

Absent FRA's express written consent, and notwithstanding any concurrence by FRA in or approval of the award of any contract of the Contractor (third party contract) or subcontract of the Contractor (third party subcontract) or the solicitation thereof, FRA shall not be subject to any obligations or liabilities to third party Contractors or third party Subcontractors or any other person not a party to this Agreement in connection with the performance of the Project.

FC 6. Program Fraud and False or Fraudulent Statements or Related Acts

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC §§ 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the 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.

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 USC § 5307, the Government reserves the right to impose the penalties of 18 USC § 1001 and 49 USC § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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.

FC 7. Suspension and Debarment

This Contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 49 CFR 29, Subpart C, and must include the requirement to comply with 49 CFR 29, Subpart C, 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 Caltrans. If it is later determined that the Bidder or Proposer knowingly rendered an erroneous certification, in addition to remedies available to Caltrans, 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 49 CFR 29, Subpart C, while this Proposal is valid and throughout the period of any Contract that may arise from this Proposal. The Bidder or Proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Note: the following text was adopted from the FRA Grant Agreement with Caltrans.

The Contractor agrees to obtain certifications on debarment and suspension from its Subcontractors and otherwise comply with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200, and "Government wide Requirements for Drug-Free Workplace (Grants)," 49 C.F.R. Part 32.

FC 8. Disadvantaged Business Enterprise (DBE)

This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.

The Contractor shall maintain compliance with CER 4.7, DBE Approval Certification, throughout the period of Contract performance.

The Contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and

administration of this DOT-assisted Contract. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as Caltrans deems appropriate. Each subcontract the Contractor signs with a Subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

FC 9. Clean Water Requirements

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

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.

FC 9.1 Environmental Protection

Note: the following text was adopted from the FRA Grant Agreement with Caltrans.

- a. All facilities that will be used to perform work under this Agreement shall not be so used unless the facilities are designed and equipped to limit water and air pollution in accordance with all applicable local, state and Federal standards.
- b. The Contractor will conduct work under this Agreement, and will require that work that is conducted as a result of this Agreement be in compliance with the following provisions, as modified from time to time, all of which are incorporated herein by reference: section 114 of the Clean Air Act, 42 U.S.C. 7414, and section 308 of the Federal Water Pollution Control Act, 33 U.S.C. 1318, and all regulations issued there under. The Contractor certifies that no facilities that will be used to perform work under this Agreement are listed on the List of Violating Facilities maintained by the Environmental Protection Agency ("EPA"). The Contractor will notify the Administrator as soon as it or any Contractor or Subcontractor receives any communication from the EPA indicating that any facility which will be used to perform work pursuant to this Agreement is under consideration to be listed on the EPA's List of Violating Facilities; provided, however, that the Contractor's duty of notification hereunder shall extend only to those communications of which it is aware, or should reasonably have been aware. The Contractor will include or cause to be included in each contract or subcontract entered into, which contract or subcontract exceeds Fifty Thousand Dollars (\$50,000.00) in connection with work performed pursuant to this Agreement, the criteria and requirements of this section and a formative covenant requiring such Contractor or Subcontractor to immediately inform the Contractor upon the receipt of a communication from the EPA concerning the matters set forth herein.
- c. The Contractor may not expend any of the funds provided in this agreement on construction or other activities that represent an irretrievable commitment of resources to a particular course of action affecting the environment until after all environmental and historic preservation analyses required by the National Environmental Policy Act (42 U.S.C. 4332)(NEPA), the National Historic Preservation Act (16 U.S.C. 470(f))(NHPA), and related laws and regulations have been completed and the FRA has provided the Contractor with a written notice authorizing the Contractor to proceed.
- d. The Contractor shall assist the FRA in its compliance with the provisions of NEPA, the Council on Environmental Quality's regulations implementing NEPA (40 C.F.R. Part 1500 *et seq.*), FRA's "Procedures for Considering Environmental Impacts" (45 Fed. Reg. 40854, June 16, 1980), as revised May 26, 1999, 64 Fed. Reg. 28545), Section 106 of the NHPA, and related environmental and historic preservation statutes and regulations. As a condition of receiving financial assistance under this agreement, the Contractor may be required to conduct certain environmental analyses and to prepare and submit to the FRA draft docu-

ments required under NEPA, NHPA, and related statutes and regulations (including draft environmental assessments and proposed draft and final environmental impact statements).

- e. No publicly-owned land from a park, recreational area, or wildlife or waterfowl refuge of national, state, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, state or local significance as so determined by such officials shall be used by the Contractor without the prior written concurrence of FRA. The Contractor shall assist the FRA in complying with the requirements of 49 U.S.C. §303(c).
- f. The Contractor agrees to facilitate compliance with the policies of Executive Order No. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. '4321 note, except to the extent that the FRA determines otherwise in writing.

FC 10. Clean Air Requirements

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

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.

FC 11. Compliance with Federal Lobbying Policy

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 Caltrans, a member of Congress, an 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 USC 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 USC 1352. Such disclosures are forwarded from tier to tier up to the recipient.

FC 12. Buy America

Note: the following text was adopted from the FRA Grant Agreement with Caltrans.

The Contractor shall comply with the Buy America provisions set forth in 49 U.S.C. 24405(a) for the Project with respect to the use of steel, iron, and manufactured goods produced in the United States, subject to the conditions therein set forth.

(Please also see Section FC 18.13 below "Buy America Language for Bi-Level Car Procurement" for more information regarding Buy America requirements.)

FC 13. Pre-Award and Post-Delivery Audits

The Contractor agrees to comply with 49 USC § 5323(1) and FTA's implementing regulation at 49 CFR Part 663 and to submit the following certifications:

1. **Buy America Requirements:** The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the recommended Bidder/Proposer certifies compliance with Buy America, it shall submit documentation that lists (1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their

country of origin and costs; and (2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

2. **Solicitation specification requirements:** The Contractor shall submit evidence that it will be capable of meeting the bid specifications.
3. **Post-delivery audit requirement:** A post-delivery review of the first serial production vehicle will be completed before title is transferred to the agency or before it is placed into revenue service. The Contractor agrees to provide the information requested by Caltrans to allow Caltrans to complete the post-delivery audit. Caltrans may not accept vehicles if the post-delivery audit cannot be completed to verify the Contractor's compliance with the Buy America requirements regarding 60 percent United States content and final assembly in the United States.

FC 14. Cargo Preference

The Contractor agrees to the following:

1. To use privately owned U.S.-flag commercial vessels to ship at least fifty (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 U.S.-flag commercial vessels.
2. To furnish within twenty (20) working days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill of lading in English for each shipment of cargo described in the preceding 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.)
3. 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.

FC 14.1 Cargo Preference

Note: the following text was adopted from the FRA Grant Agreement with the Caltrans.

Use of United States-Flag Vessels. Pursuant to U.S. DOT, Maritime Administration regulations, "Cargo Preference -- U.S.-Flag Vessels," 46 C.F.R. Part 381, the Grantee shall insert the following clauses in contracts let by the Grantee in which equipment, materials or commodities may be transported by ocean vessel in carrying out the Project:

As required by 46 C.F.R. Part 381, The Contractor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this contract to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
2. To furnish within twenty (20) days following the date of loading for shipments originating within the United States, or within thirty (30) business days following the date of loading for shipment originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in

English for each shipment of cargo described in paragraph (1) above to the recipient (through the prime Contractor in the case of Subcontractor bills-of lading) and to the Division of Cargo Preference and Domestic Trade, Maritime Administration, 1200 New Jersey Avenue, SE, Washington, D.C. 20590, marked with appropriate identification of the Project.

3. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

FC 15. Fly America

The Contractor agrees to comply with 49 USC 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 sub recipients 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.

FC 16. Contract Work Hours and Safety Standards Act

FC 16.1 Davis-Bacon Act Provisions

Note: the following text was adopted from the FRA Grant Agreement with the Caltrans.

Payment of prevailing wages on the Project is required by 49 U.S.C. 24405(c)(2) and section 1606 of the American Recovery and Reinvestment Act of 2009. For Project components that use or would use rights-of-way owned by a railroad, the Contractor shall comply with the provisions of 49 U.S.C. 24405(c) (2), with respect to the payment of prevailing wages consistent with the provisions of 49 U.S.C. 24312. For these purposes, wages in collective bargaining agreements negotiated under the Railway Labor Act are deemed to comply with Davis-Bacon Act requirements. For Project components that do not use or would not use rights-of-way owned by a railroad, the Contractor will comply with the provisions of 40 U.S.C. 3141 et seq.

As required by section 1606 of the Recovery Act, all laborers and mechanics employed by Contractors and Subcontractors on the Project funded directly by or assisted in whole or part by and through this California Department of Transportation FR-HSR-0045-11-01-00 Agreement shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

FC 16.2 Safety Oversight

Note: the following text was adopted from the FRA Grant Agreement with the Caltrans.

To the extent applicable, the Contractor agrees to comply with any Federal regulations, laws, or policy and other guidance that FRA or U.S. DOT may issue pertaining to safety oversight in general, and in the performance of this Agreement, in particular.

FC 17. ADA Access

The Contractor and any of its Subsuppliers under this Contract agree to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC §§ 12101 *et seq.*; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; 49 USC § 5301(d); and the following regulations and any amendments thereto:

1. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37;
4. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27;
5. Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "American With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38;
6. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR Part 35;
7. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;
8. General Services Administration regulations, "Accommodations for the Physically Handicapped," 41 CFR Subpart 101-19;
9. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630;
10. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 CFR Part 64, Subpart F;
11. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609;
12. U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 CFR Part 1194; and
13. Any implementing requirements FTA may issue.

Note: the following text was adopted from the FRA Grant Agreement with the Caltrans.

Americans With Disabilities Act: The Contractor agrees to utilize funds provided under this Agreement in a manner consistent with the requirements of the Americans With Disabilities Act of 1990, as amended (42 U.S.C. § 12101 *et seq.*).

FC 18. Other Federal Requirements

Note: the following sections were adopted from the FRA Grant Agreement with the Caltrans.

FC 18.1 Patent Rights

- a. If any invention, improvement, or discovery of the Contractor or any of its third party Contractors is conceived or first actually reduced to practice in the course of or under this Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Contractor agrees to notify FRA immediately and provide a detailed report. The rights and responsibilities of the Contractor, third party Contractors and FRA with respect to such invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, policies, and any waiver thereof.
- b. If the Contractor secures a patent with respect to any invention, improvement, or discovery of the Contractor or any of its third party Contractors conceived or first actually reduced to practice in the course of or under this Project, the Contractor agrees to grant to FRA a royalty-free, non-exclusive, and irrevocable license to use and to authorize others to use the patented device or process for Federal Government purposes.

FC 18.2 Rights in Data and Copyrights

- a. The term "subject data" used in this section means recorded information, whether or not copyrighted, that is developed, delivered, or specified to be delivered under this Agreement. The term includes graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term does not include financial reports, cost analyses, and similar information incidental to Project administration.
- b. The following restrictions apply to all subject data first produced in the performance of this Agreement:
 - i. Except for its own internal use, the Contractor may not publish or reproduce such data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FRA, until such time as FRA may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to grant agreements with academic institutions.
 - ii. As authorized by 49 C.F.R. § 18.34, or 49 C.F.R. § 19.36, as applicable, FRA reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:
 - Any work developed under a grant, cooperative agreement, sub-grant, sub-agreement, or third party contract, irrespective of whether or not a copyright has been obtained; and
 - Any rights of copyright to which a Contractor, Subcontractor, or a third party Contractor purchases ownership with Federal assistance.
- c. When FRA provides assistance to a Contractor for a Project involving planning, research, or development, it is generally FRA's intent to increase the body of knowledge, rather than to limit the benefits of the Project to those parties that have participated therein. Therefore, unless FRA determines otherwise, the Contractor understands and agrees that, in addition to the rights set forth in preceding portions of this section of this Agreement, FRA may make available to any FRA Contractor, Subcontractor, third party Contractor, or third party Subcontractor, either FRA's license in the copyright to the "subject data" derived under this Agreement or a copy of the "subject data" first produced under this Agreement. In the event that such a Project which is the subject of this Agreement is not completed, for any reason whatsoever, all data developed under that Project shall become subject data as defined herein and shall be delivered as FRA may direct.
- d. To the extent permitted by State law, the Contractor agrees to indemnify, save and hold harmless FRA, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Agreement. The Contractor shall not be required to indemnify FRA for any such liability arising out of the wrongful acts of employees or agents of FRA.
- e. Nothing contained in this section on rights in data, shall imply a license to FRA under any patent or be construed as affecting the scope of any license or other right otherwise granted to FRA under any patent.
- f. The requirements of this section of this Agreement do not apply to material furnished to the Contractor by FRA and incorporated in the work carried out under this Agreement, provided that such incorporated material is identified by the Contractor at the time of delivery of such work.

- g. Unless FRA determines otherwise, the Contractor agrees to include the requirements of this section of this Agreement in its third party contracts for planning, research, development, or demonstration under the Project.

FC 18.3 Acknowledgment of Support and Disclaimer

- a. An acknowledgment of FRA support and a disclaimer must appear in any Contractor publication, whether copyrighted or not, based on or developed under the Agreement, in the following terms: "This material is based upon work supported by the Federal Railroad Administration under a grant/cooperative agreement, dated." (Fill-in appropriate identification of grant/cooperative agreement)
- b. All Contractor publications must also contain the following: "Any opinions, findings, and conclusions or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the view of Caltrans, the Federal Railroad Administration, and/or U.S. DOT."
- c. The Contractor agrees to cause to be erected at the site of any construction, and maintain during construction, signs satisfactory to FRA identifying the Project and indicating that FRA is participating in the development of the Project.

FC 18.4 Right of FRA to Terminate

- a. Upon written notice, the Contractor agrees that FRA may suspend or terminate all or part of the financial assistance provided herein if the Contractor has violated the terms of this Agreement, or if FRA determines that the purposes of the statute under which the Project is authorized would not be adequately served by continuation of Federal financial assistance for the Project. Any failure to make reasonable progress on the Project or other violation of this Agreement that significantly endangers substantial performance of the Project shall provide sufficient grounds for FRA to terminate this Agreement.
- b. In general, termination of any financial assistance under this Agreement will not invalidate obligations properly incurred by the Contractor and concurred in by FRA before the termination date, to the extent those obligations cannot be canceled. However, if FRA determines that the Contractor has willfully misused Federal assistance funds by failing to make adequate progress, failing to make reasonable use of the Project property, facilities, or equipment, or failing to adhere to the terms of this Agreement, FRA reserves the right to require the Contractor to refund the entire amount of FRA funds provided under this Agreement or any lesser amount as may be determined by FRA.
- c. Expiration of any Project time period established for this Project does not, by itself, constitute an expiration or termination of this Agreement.

FC 18.5 Whistleblower Protections

An employee of the Contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Recovery Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of – (1) gross mismanagement of an agency contract or grant relating to Recovery Act funds; (2) a gross waste of Recovery Act funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of Recovery Act funds; (4) an abuse of authority related to the implementation or use of Recovery Act funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to Recovery Act funds.

FC 18.6 False Claims Act

The Contractor and any sub-Contractor awarded funds made available under the Recovery Act and through this Agreement shall promptly refer to the Department of Transportation Inspector General any credible evidence that a principal, employee, agency, Contractor, Subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving Recovery Act funds.

FC 18.7 Prohibited Activities

None of the funds provided through this Agreement may be used for any casino or other gaming establishment, aquarium, zoo, golf course or swimming pool.

FC 18.8 Recovery Act Funding Announcement

The Contractor is strongly encouraged to post a sign at all fixed project locations at the most publicly accessible location and a plaque in all purchased rail cars announcing that the project or equipment was funded by the U.S. Department of Transportation, Federal Railroad Administration, with funds provided through the American Recovery and Reinvestment Act. The configuration of the signs or plaques will be consistent with guidance issued by the Office of Management and Budget and/or the Department of Transportation and approved by the FRA.

FC 18.9 Reporting Requirements

- a. **Periodic Reports.** The Grantee shall submit periodic reports to the FRA Administrator, as required by section 1201(c) of the Recovery Act, and as described in this section, not later than February 17, 2011, and February 17, 2012. The periodic reports shall include information describing: (1) the amount of Federal funds appropriated, allocated, obligated, and outlayed under this Agreement; (2) the number of projects that have been put out to bid under this Agreement and the amount of Federal funds associated with such projects; (3) the number of projects for which contracts have been awarded under this Agreement and the amount of Federal funds associated with such contracts; (4) the number of projects for which work has begun under such contracts and the amount California Department of Transportation FR-HSR-0045-11-01-00 of Federal funds associated with such contracts; (5) the number of projects for which work has been completed under such contracts and the amount of Federal funds associated with such contracts; (6) the number of direct, on-project jobs created or sustained by the Federal funds provided for projects under this Agreement and, to the extent possible, the estimated indirect jobs created or sustained in the associated supplying industries, including the number of jobs created and the total increase in employment since February 17, 2009; and (7) information tracking the actual aggregate expenditures by the Grantee from Grantee sources (both internal and external) for projects eligible for funding under this Agreement during the period beginning on February 17, 2009 through September 30, 2010, as compared to the level of such expenditures that were planned to occur during such period as of February 17, 2009. The Department of Transportation or the FRA may issue additional guidance on the preparation and submission of periodic reports.
- b. **Jobs Accountability Reports.** As required by Section 1512(c) of the Recovery Act, and consistent with Office of Management and Budget (OMB) Guidance, dated June 22, 2009 and found at (http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-21.pdf), the Grantee shall submit a jobs accountability report to <http://www.FederalReporting.gov> not later than ten days after the end of each quarter. The report shall contain: (1) the total amount of Recovery Act funds received pursuant to this Agreement; (2) the amount of Recovery Act funds received that were expended or obligated to projects or activities; and (3) a detailed list of all projects or activities for which Recovery Act funds were expended or obligated, including—(A) the name of the project or activity; (B) a description of the project or activity; (C) an evaluation of the completion status of the project or activity; (D) an estimate of the number of jobs created and the number of jobs retained by the project or activity; and (E) detailed information on

any subcontracts or subgrants awarded by the Grantee to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget. Information from these reports will be made available to the public. The reporting responsibility should be passed down from the Grantee to the sub-grantee/sub-recipient or vendor, in order to ensure that the necessary information is provided to the Grantee, which is ultimately responsible for reporting the required elements. The Office of Management and Budget may issue additional guidance on the preparation and submission of jobs accountability reports. The Grantee must also register with the Central Contractor Registration database (<http://www.ccr.gov>) or complete other registration requirements as determined by the Director of the Office of Management and Budget. A DUNS Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration.

FC 18.10 Reprints of Publications

At such time as any article resulting from work under this Agreement is published in a scientific, technical, or professional journal or publication, two reprints of the publication should be sent to FRA's Grant Manager, clearly referenced with the appropriate identifying information.

FC 18.11 Site Visits

FRA, through its authorized representatives, has the right, at all reasonable times, to make site visits to review Project accomplishments and management control systems and to provide such technical assistance as may be required. If any site visit is made by FRA on the premises of the Grantee, subgrantee, Contractor, or Subcontractor under this Agreement, the Grantee shall provide and shall require its Contractor and Subcontractors to provide, all reasonable facilities and assistance for the safety and convenience of FRA representatives in the performance of their duties. All site visits and evaluations shall be performed in such a manner as will not unduly delay work being conducted by the Contractor or Subcontractors.

FC 18.12 FRA Flow Down Provisions

NOTE: The following is from a document produced by the FRA that lists potential Federal Clauses for Contractors working on FRA funded contracts. Much of this document is duplicative of or similar to the FRA Grant Agreement text included in these Federal Clauses listed above. Text in the "FRA Flow Down Provisions" is shown in gray italics where the "FRA Flow Down Provisions" completely or largely duplicates text from the FRA Grant Agreement included elsewhere in these Federal Clauses.

I. PASSENGER RAIL INVESTMENT AND IMPROVEMENT ACT OF 2008.

Section 1. Buy America. CONTRACTOR agrees to comply with the Buy America provisions set forth in 49 U.S.C. §24405(a), with respect to the use of steel, iron, and manufactured goods produced in the United States, subject to the conditions set forth therein.

Section 2. Labor Provisions. CONTRACTOR recognizes that 49 U.S.C. 24405(b) provides that persons conducting rail operations over rail infrastructure constructed or improved in whole or in part with funds provided through this agreement shall be considered a "rail carrier," as defined by 49 U.S.C. 10102(5), for the purposes of Title 49, United States Code, and any other statute that adopts that definition or in which that definition applies, including the Railroad Retirement Act of 1974 (45 U.S.C., See. 231 et seq.), the Railway Labor Act 43 (43 U.S.C. 151 et seq.), and the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.).

Section 3. Labor Protective Arrangements. CONTRACTOR shall comply with the protective arrangements established under section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act), 45 U.S.C. 836, with respect to employees affected by actions taken in connection with the project financed in whole or in part under this arrangement (See 49 U.S.C. 24405(c).) CONTRACTOR

agrees to comply with the protective arrangements established by the Department of Labor under 45 U.S.C. 836, and to insure that the CONTRACTOR agrees to those terms.

Section 4. Davis-Bacon Act Provisions. *CONTRACTOR shall comply with the provisions of 49 U.S.C. 24405(c)(2)), with respect to the payment of prevailing wages consistent with the provisions of 49 U.S.C. 24312. For these purposes, wages in collective bargaining agreements negotiated under the Railway Labor Act are deemed to comply with Davis-Bacon Act requirements.*

II. AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009.

Section 1. Whistleblower Protection. *An employee of CONTRACTOR may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of employee's duties, to the Recovery Accountability and Transparency Board, an Inspector General, the Comptroller General of the United States, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct), a court or grand jury, the head of a federal agency, or their representatives, information that the employee reasonably believes is evidence of:*

- 1) *Gross mismanagement of an agency contract or grant relating to ARRA funds;*
- 2) *A gross waste of ARRA funds;*
- 3) *A substantial and specific danger to public health or safety related to the implementation or use of ARRA funds;*
- 4) *An abuse of authority related to the implementation or use of ARRA funds; or*
- 5) *A violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant awarded or issued relating to ARRA funds.*

III. GENERAL PROVISIONS.

Section 1. General Requirements. CONTRACTOR agrees to carry out the Project in a sound, economical, and efficient manner, and in accordance with the provisions of the FRA cooperative grant agreement, the application, approved project budget, project schedules, and all applicable laws, regulations, and public policies of FRA.

Section 2. Federal Laws and Regulations. *CONTRACTOR understands that Federal laws and regulations related to this Agreement on the date the Agreement was executed may be modified from time to time. CONTRACTOR agrees that the most recent of such Federal requirements will govern the administration of this Agreement at any particular time, so long as consistent with the terms of this Agreement. Likewise, new Federal laws and regulations may be established after the date the Agreement has been executed and may apply, to the extent they are consistent with the terms of this Agreement. To achieve compliance with changing Federal requirements, CONTRACTOR agrees to include in all sub-assistance agreements and third party contracts financed with FRA assistance, specific notice that Federal requirements may change and the changed requirements will apply to the Project to the extent they are consistent with the terms of this Agreement. All limits or standards set forth in this Agreement to be observed in the performance of the Project are minimum requirements.*

Section 3. State Law. *Except to the extent that a Federal statute or regulation preempts State law, nothing in this Agreement shall require CONTRACTOR to observe or enforce compliance with any provision thereof, perform any other act, or do any other thing in contravention of any applicable State law; however, if any of the provisions of this Agreement violate any applicable State law, or if compliance with the provisions of this Agreement would require CONTRACTOR to violate any applicable State law, CONTRACTOR agrees to notify the State immediately in writing in order that the State, in consultation with FRA, and CONTRACTOR may make appropriate arrangements to proceed with the Project as soon as possible.*

Section 4. Ethics.

1. **General.** CONTRACTOR agrees to maintain a written code or standards of conduct that shall govern the performance of its officers, employees, board members, or agents. The code or standards shall provide that CONTRACTOR's officers, employees, board members, or agents may neither solicit nor accept gratuities, favors or anything of monetary value from present or potential Contractors or sub-Grantees. CONTRACTOR may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. As permitted by State or local law or regulations, such code or standards shall provide for penalties, sanctions, or other disciplinary actions for violations by CONTRACTOR's officers, employees, board members, or agents, or by Contractors or sub-Grantees or their agents.
2. **Personal Conflict of Interest.** CONTRACTOR's code or standards must provide that no employee, officer, board member, or agent of CONTRACTOR may participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the parties set forth below has a financial or other interest in the firm selected for award:
 - a. The employee, officer, board member, or agent;
 - b. Any member of his or her immediate family;
 - c. His or her partner; or
 - d. An organization that employs, or is about to employ, any of the above.
3. **Organizational Conflicts of Interest.** CONTRACTOR's code or standards of conduct must include procedures for identifying and preventing real and apparent organizational conflicts of interests. An organizational conflict of interest exists when the nature of the work to be performed under a proposed third party contract, may, without some restrictions on future activities, result in an unfair competitive advantage to the Contractor or impair the Contractor's objectivity in performing the contract work.

Section 5. Accounting Records.

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

Section 6. Record Retention, Audits and Inspection.

1. **Submission of Proceedings, Contracts and Other Documents.** During the course of the Project and for three years thereafter, CONTRACTOR agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials relating to the Project as FRA may require. Reporting and record-keeping requirements are set forth in 49 C.F.R. Part 18. Project closeout does not alter these requirements.
2. **Audit.** CONTRACTOR agrees to comply with the audit requirements of 49 C.F.R. § 18.26 and OMB Circular A-133, and any revision or supplement thereto. CONTRACTOR agrees to obtain any other audits required by FRA. Project closeout will not alter CONTRACTOR's audit responsibilities. Audit costs for Project administration and management are allowable under this Project to the extent authorized by OMB Circular A-87, Revised; OMB Circular A-2 1, Revised; or OMB Circular A-122, Revised.

3. **Inspection.** *CONTRACTOR agrees to permit the Secretary and the Comptroller General of the United States, or their authorized representatives, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of CONTRACTOR and its sub-Contractors pertaining to the Project. CONTRACTOR agrees to require each third party Contractor whose contract award is not based on competitive bidding procedures as defined by the Secretary to permit the Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that contract, and to audit the books, records, and accounts involving that contract as it affects the Project.*

Section 7. Payment by FRA. CONTRACTOR agrees to provide the State with information necessary for the State to complete and submit Standard Form 3881, "Payment Information Form - ACH Payment Vendor Payment System," to FRA and to complete and submit Standard Form 270, "Request for Advance or Reimbursement," to FRA.

Upon receipt of a payment request and adequate accompanying information (invoices in accordance with applicable cost principles) by the State, FRA will authorize payment provided CONTRACTOR:

- i. is complying with its obligations under this Agreement,
- ii. has satisfied FRA that it needs the requested Federal funds during the requisition period, and
- iii. is making adequate and timely progress toward Project completion.

If all these circumstances are present, FRA may reimburse allowable costs incurred by CONTRACTOR up to the maximum amount of FRA's share of the total Project funding.

Section 8. Allowable Costs. CONTRACTOR's expenditures will be reimbursed only if they meet all requirements set forth below:

- 1) Conform with the Project description, the Statement of Work, and the Approved Project Budget and all other terms of the Cooperative Agreement;
- 2) Be necessary in order to accomplish the Project;
- 3) Be reasonable for the goods or services purchased;
- 4) Be actual net costs to CONTRACTOR (i.e., the price paid minus any refunds, rebates, or other items of value received by CONTRACTOR that have the effect of reducing the cost actually incurred);
- 5) Be incurred (and be for work performed) after the effective date of this Agreement, unless specific authorization from FRA to the contrary is received in writing;
- 6) Unless permitted otherwise by Federal status or regulation, conform with Federal guidelines or regulations and Federal cost principles including, but not limited to the standards of OMB Circular A-87, Revised, "Cost Principles for State and Local Governments";
- 7) Be satisfactorily documented; and
- 8) Be treated uniformly and consistently under accounting principles and procedures approved and prescribed by FRA for the State, and those approved or prescribed by the State for its Grantees.

Section 9. Disallowed Costs. CONTRACTOR agrees that reimbursement of any cost under the "Payment by FRA," part of this Agreement does not constitute a final FRA decision about the allowability of that cost and does not constitute a waiver of any violation by CONTRACTOR of the terms of this Agreement. CONTRACTOR understands that FRA will not make a final determination about the allowability of any cost until an audit of the Project has been completed. If FRA determines that CONTRACTOR is not entitled to receive any part of the Federal funds requested, FRA will notify CONTRACTOR stating the reasons therefore. Project closeout will not alter CONTRACTOR's obligation to return any funds due to FRA as a result of later refunds, corrections, or other transactions. Nor will Project closeout alter FRA's right to disallow costs and recover funds on the basis of a later audit or other review. Unless prohibited by law, FRA may offset any Federal assistance funds to be made available under this Project as needed to satisfy any outstanding monetary claims that the Federal Government may have against CON-

TRACTOR. Exceptions pertaining to disallowed costs will be assessed based on their applicability, as set forth in the applicable Federal cost principals or other written Federal guidance.

Section 10. General Federal Requirements. CONTRACTOR agrees to comply with the property management standards of 49 C.F.R. §§ 18.31, 18.32, and 18.33, including any amendments thereto, and other applicable guidelines or regulations that are issued.

Section 11. Records. CONTRACTOR agrees to keep satisfactory records with regard to the use of the property, equipment, and supplies, and submit to the State, upon request, such information as may be required to assure compliance with this section of this Agreement.

Section 12. Flood Hazards. CONTRACTOR agrees to comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4012a(a), with respect to any construction or acquisition Project.

Section 13. Procurement.

1. **Federal Standards.** CONTRACTOR agrees to comply with the Procurement Standards requirements of the Grantee(s)/State(s) as set forth in 49 C.F.R. § 18.36 and with any applicable supplementary U.S. DOT or FRA directives or regulations. If determined necessary for proper Project administration, the State and FRA reserves the right to review CONTRACTOR's technical specifications and requirements.
2. **Reserved.**
3. **Cargo Preference. Use of United States - Flag Vessels.** Pursuant to U.S. DOT, Maritime Administration regulations, "Cargo Preference -- U.S.-Flag Vessels," 46 C.F.R. Part 381, CONTRACTOR shall insert the following clauses in contracts entered into by CONTRACTOR in which equipment, materials or commodities may be transported by ocean vessel in carrying out the Project:

As required by 46 C.F.R. Part 381, the Contractor agrees:

 - a. *To utilize privately owned United States-flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this contract to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.*
 - 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 shipment originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (1) above to the recipient (through the prime Contractor in the case of Subcontractor bills-of lading) and to the Division of Cargo Preference and Domestic Trade, Maritime Administration, 1200 New Jersey Avenue, SE, Washington, D.C. 20590, marked with appropriate identification of the Project.*
4. **Notification Requirement.** With respect to any procurement for goods and services (including construction services) having an aggregate value of \$500,000 or more, CONTRACTOR agrees to:
 - a. specify in any announcement of the awarding of the contract for such goods or services the amount of Federal funds that will be used to finance the acquisition; and
 - b. express the said amount as a percentage of the total costs of the planned acquisition.
5. **Debarment and Suspension; and Drug-Free Work Place.** CONTRACTOR agrees to comply with U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 C.F.R. Part 1200, and "Government wide Requirements for Drug-Free Workplace (Grants)," 49 C.F.R. Part 32.
6. **Participation by Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals.** CONTRACTOR agrees to use small businesses owned and controlled by socially and economically disadvantaged individuals (as that term is defined for other DOT agencies in 49 C.F.R. Part 26), including veteran-owned small businesses and service disabled veteran-owned small businesses, and to achieve any DBE goal for the Contract, in accordance with the respective plan developed by the Grantee(s)/State(s) for this Project.

Section 14. Metric System: CONTRACTOR agrees to use the metric system of measurement in its Project activities to the extent practicable, in conformance with applicable regulations, guidelines, and policies that U.S. DOT or FRA may issue. The Metric Conversion Act of 1975, as amended by the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 205), designates the metric system of measurement as the preferred system of weights and measures for United States trade and commerce, and it requires that each agency use the metric system of measurement in its procurements, grants, and other business-related activities, except to the extent that such use is impracticable or likely to cause significant inefficiencies or loss of markets to U.S. firms.

Section 15. Patent Rights.

1. *If any invention, improvement, or discovery of CONTRACTOR or any of its third party Contractors is conceived or first actually reduced to practice in the course of or under this Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, CONTRACTOR agrees to notify FRA immediately and provide a detailed report. The rights and responsibilities of CONTRACTOR, third party Contractors and FRA with respect to such invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, policies, and any waiver thereof.*
2. *If CONTRACTOR secures a patent with respect to any invention, improvement, or discovery of CONTRACTOR or any of its third party Contractors conceived or first actually reduced to practice in the course of or under this Project, CONTRACTOR agrees to grant to FRA a royalty-free, nonexclusive, and irrevocable license to use and to authorize others to use the patented device or process for Federal Government purposes.*

Section 16. Rights in Data and Copyrights.

1. *The term "subject data" used in this section means recorded information, whether or not copyrighted, that is developed, delivered, or specified to be delivered under this Agreement. The term includes graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term does not include financial reports, cost analyses, and similar information incidental to Project administration.*
2. *The following restrictions apply to all subject data first produced in the performance of this Agreement:*
 - a. *Except for its own internal use, CONTRACTOR may not publish or reproduce such data in whole or in part, or in any manner or form, nor may CONTRACTOR authorize others to do so, without the written consent of FRA, until such time as FRA may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to grant agreements with academic institutions.*
 - b. *As authorized by 49 C.F.R. § 18.34, FRA reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:*
 - i. *Any work developed under a grant, cooperative agreement, sub-grant, sub-agreement, or third party contract, irrespective of whether or not a copyright has been obtained; and*
 - ii. *Any rights of copyright to which CONTRACTOR, its sub-Grantee, or a third party Contractor purchases ownership with Federal assistance.*
 - c. *When FRA provides assistance to a Grantee for a Project involving planning, research, or development, it is generally FRA's intent to increase the body of knowledge, rather than to limit the benefits of the Project to those parties that have participated therein. Therefore, unless FRA determines otherwise, CONTRACTOR understands and agrees that, in addition to the rights set forth in preceding portions of this section of this Agreement, FRA may make available to any*

- FRA Grantee, sub-Grantee, third party Contractor, or third party Subcontractor, either FRA's license in the copyright to the "subject data" derived under this Agreement or a copy of the "subject data" first produced under this Agreement. In the event that such a Project which is the subject of this Agreement is not completed, for any reason whatsoever, all data developed under that Project shall become subject data as defined herein and shall be delivered as FRA may direct.*
- d. Unless prohibited by State law, CONTRACTOR agrees to indemnify, save and hold harmless FRA, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by CONTRACTOR of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Agreement. CONTRACTOR shall not be required to indemnify FRA for any such liability arising out of the wrongful acts of employees or agents of FRA.*
 - e. Nothing contained in this section on rights in data, shall imply a license to FRA under any patent or be construed as affecting the scope of any license or other right otherwise granted to FRA under any patent.*
 - f. The requirements of this section of this Agreement do not apply to material furnished to CONTRACTOR by FRA and incorporated in the work carried out under this Agreement, provided that such incorporated material is identified by CONTRACTOR at the time of delivery of such work.*
 - g. Unless FRA determines otherwise, CONTRACTOR agrees to include the requirements of this section of this Agreement in its third party contracts for planning, research, development, or demonstration under the Project.*

Section 17. Acknowledgment of Support.

- 1. An acknowledgment of FRA support and a disclaimer must appear in any CONTRACTOR publication, whether copyrighted or not, based on or developed under this Agreement, in the following terms:
 *"This material is based upon work supported by the Federal Railroad Administration under a grant/cooperative agreement, dated March 11, 2009."**
- 2. All CONTRACTOR publications must also contain the following:
 *"Any opinions, findings, and conclusions or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the view of the Federal Railroad Administration and or U.S.DOT."**
- 3. CONTRACTOR agrees to cause to be erected at the site of any construction, and maintain during construction, signs satisfactory to FRA identifying the Project and indicating that FRA is participating in the development of the Project.*

Section 18. Site Visits. *CONTRACTOR understand that FRA, through its authorized representatives, has the right, at all reasonable times, to make site visits to review Project accomplishments and management control systems and agrees to provide such technical assistance as may be required. CONTRACTOR shall provide and shall require its sub-grantees or Subcontractors to provide, all reasonable facilities and assistance for the safety and convenience of FRA representatives in the performance of their duties. All site visits and evaluations shall be performed in such a manner as will not unduly delay work being conducted by CONTRACTOR, sub-Grantee, Contractor, or Subcontractor.*

Section 19. Reprints of publications. *At such time as any article resulting from work under this agreement is published in a scientific, technical, or professional journal or publication, two reprints of the publication should be sent to at the State, clearly referenced with the appropriate identifying information.*

Section 20. Safety Oversight. *To the extent applicable, CONTRACTOR agrees to comply with any Federal regulations, laws, or policy and other guidance that FRA or U.S. DOT may issue pertaining to safety oversight in general, and in the performance of this Agreement, in particular.*

Section 21. Civil Rights. *CONTRACTOR agrees to comply with all civil rights laws and regulations, in accordance with applicable Federal directives, except to the extent that FRA determines otherwise in writing. These include, but are not limited to, the following:*

- a. *Title VI of the Civil Rights Act of 1964 (P.L.88-352) (as implemented by 49 C.F.R. Part 21), which prohibits discrimination on the basis of race, color or national origin;*
- b. *Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681 - 1683, and 1685 – 1686, which prohibits discrimination on the basis of sex;*
- c. *Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps;*
- d. *The Age Discrimination Act of 1975, as amended 42 U.S.C. §§ 1601–1607, which prohibits discrimination on the basis of age;*
- e. *The Drug Abuse Office and Treatment Act of 1972 (P.L., 92-255), as amended, relating to non-discrimination on the bases about called the use or alcoholism;*
- f. *The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;*
- g. *§§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;*
- h. *Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or finance housing;*
- i. *49 U.S.C. section 306, which prohibits discrimination on the basis of race, color, national origin, or sex in CONTRACTOR financial assistance programs;*
- j. *Any other nondiscrimination provisions in the specific statute under which application for Federal assistance was made; and*
- k. *The requirements of any other nondiscrimination statutes which may apply to CONTRACTOR.*

Section 22. Americans with Disabilities Act. *CONTRACTOR agrees to utilize funds provided under this Agreement in a manner consistent with the requirements of the Americans With Disabilities Act of 1990, as amended (42 U.S.C. § 12101 et seq.).*

Section 23. Environmental Protection.

1. *All facilities that will be used to perform work under this Agreement shall not be so used unless the facilities are designed and equipped to limit water and air pollution in accordance with all applicable local, state and Federal standards.*
2. *CONTRACTOR will conduct work under this Agreement, and will require that work that is conducted as a result of this Agreement be in compliance with the following provisions, as modified from time to time, all of which are incorporated herein by reference: section 114 of the Clean Air Act, 42 U.S.C. 7414, and section 308 of the Federal Water Pollution Control Act, 33 U.S.C. 1318, and all regulations issued there under. CONTRACTOR certifies that no facilities that will be used to perform work under this Agreement are listed on the List of Violating Facilities maintained by the Environmental Protection Agency ("EPA"). CONTRACTOR will notify the Administrator as soon as it or any Contractor or Subcontractor receives any communication from the EPA indicating that any facility which will be used to perform work pursuant to this Agreement is under consideration to be listed on the EPA's List of Violating Facilities; provided, however, that CONTRACTOR's duty of notification hereunder shall extend only to those communications of which it is aware, or should reasonably have been aware. CONTRACTOR will include or cause to be included in each contract or subcontract entered into, which contract or subcontract exceeds Fifty Thousand Dollars (\$50,000.00) in connection with work performed pursuant to this Agreement, the criteria and requirements of this section and an affirmative covenant requiring such Contractor or Subcontractor to immediately inform CONTRACTOR upon the receipt of a communication from the EPA concerning the matters set forth herein.*
3. *CONTRACTOR may not expend any of the funds provided in this agreement on construction or other activities that represent an irretrievable commitment of resources to a particular course of action affecting the environment until after all environmental and historic preservation analyses required by*

the National Environmental Policy Act (42 U.S.C. 4332)(NEPA), the National Historic Preservation Act (16 U.S.C. 470(f))(NHPA), and related laws and regulations have been completed and the FRA has provided CONTRACTOR with a written notice authorizing CONTRACTOR to proceed.

4. *CONTRACTOR shall assist the FRA in its compliance with the provisions of NEPA, the Council on Environmental Quality's regulations implementing NEPA (40 C.F.R. Part 1500 et seq.), FRA's "Procedures for Considering Environmental Impacts" (45 Fed. Reg. 40854, June 16, 1980), as revised May 26, 1999, 64 Fed. Reg. 28545), Section 106 of the NHPA, and related environmental and historic preservation statutes and regulations. As a condition of receiving financial assistance under this agreement, CONTRACTOR may be required to conduct certain environmental analyses and to prepare and submit to the FRA draft documents required under NEPA, NHPA, and related statutes and regulations (including draft environmental assessments and proposed draft and final environmental impact statements).*
5. *No publicly-owned land from a park, recreational area, or wildlife or waterfowl refuge of national, state, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, state or local significance as so determined by such officials shall be used by CONTRACTOR without the prior written concurrence of FRA. CONTRACTOR shall assist the FRA in complying with the requirements of 49 U.S.C. §303(c).*

Section 24. Project Completion, Audit, Settlement and Closeout.

1. **Project Completion.** Within 90 days of the project completion date, or termination by FRA, CONTRACTOR agrees to submit a final financial status report (Standard Form 269), a certification or summary of project expenses, and third-party Potter reports, as applicable
2. **Audits.** CONTRACTOR agrees to provide information necessary for the State to undertake the audits required by 49 C.F.R. § 18.26 and OMB Circular A-128 or any revision or supplement thereto. Each non-governmental Grantee agrees to undertake the audits required by 49 C.F.R. § 19.26 and OMB Circular A-133 or any revision or supplement there to.
3. **Remittance of Excess Payments.** If the State has made payments to CONTRACTOR in excess of the total amount of FRA funding due, CONTRACTOR agrees to promptly remit that excess and interest as may be required by the "Payment by FRA" section of this Attachment.
4. **Project Closeout.** Project closeout occurs when all required Project work and all administrative procedures described in 49 C.F.R. Part 18, or 49 C.F.R. Part 19, as applicable, have been completed, and when FRA notifies CONTRACTOR and forwards the final Federal assistance payment, or when FRA acknowledges CONTRACTOR's remittance of the proper refund. Project closeout shall not invalidate any continuing obligations imposed on CONTRACTOR by this Agreement or by the FRA's final notification or acknowledgment.

Section 25. Right of FRA to Terminate.

1. *Upon written notice, CONTRACTOR agrees that FRA may suspend or terminate all or part of the financial assistance provided herein if CONTRACTOR has violated the terms of this Agreement, or if FRA determines that the purposes of the statute under which the Project is authorized would not be adequately served by continuation of Federal financial assistance for the Project. Any failure to make reasonable progress on the Project or other violation of this Agreement that significantly endangers substantial performance of the Project shall provide sufficient grounds for FRA to terminate this Agreement.*
2. *In general, termination of any financial assistance under this Agreement will not invalidate obligations properly incurred by CONTRACTOR and concurred in by FRA before the termination date; to the extent those obligations cannot be canceled. However, if FRA determines that CONTRACTOR has willfully misused Federal assistance funds by failing to make adequate progress, failing to make reasonable use of the Project property, facilities, or equipment, or failing to adhere to the terms of this Agreement, FRA and the State reserve the right to require CONTRACTOR to refund the entire amount of FRA funds provided under this Agreement or any lesser amount as may be determined by FRA.*

3. *Expiration of any Project time period established for this Project does not, by itself, constitute an expiration or termination of this Agreement.*

FC 18.13 Buy America Language for Bi-Level Car Procurement RFI

In this RFI Caltrans asks potential bidders to provide feedback on the intended application of Buy America 100% content required by PRIIA / NGEIC to the subject bi-level car procurement. Your comments and suggestions may be incorporated in the RFP.

FC 18.13.1 Buy America Requirements

Caltrans supports Buy America for its bi-level passenger rail car procurement. The domestic content determined at the component level will be part of the proposal evaluation criteria.

Successful bidders should follow FRA’s guidance on Buy America and strive for the highest domestic content possible at the equipment component level.

(1) For manufactured products, including rolling stock, to be considered produced in the United States:

- a) All of the manufacturing processes for the end product (final assembly) must take place in the United States; and
- b) All of the components of the end product must be of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its sub-components. (See FRA Answers to Frequently Asked Questions (FAQ) no. 6, available at <http://www.fra.dot.gov/Pages/11.shtml>)

(2) In order to provide evidence for both Buy America criteria mentioned above, the Contractor must provide documentation certifying its compliance with FRA’s Buy America requirements (final assembly and 100% domestic component content). This certification requirement is described in FRA FAQ no. 11.

FC 18.13.2 Table of Rail Equipment Components

The following table which lists rail equipment components is adapted from three sources:

- a) The list of vehicle components the Federal Transit Administration (FTA) uses (at Appendix C to 49 CFR § 661.11);
- b) Items specific to high speed/intercity passenger rail cars (e.g., bathroom equipment, dining car equipment, bike and luggage racks); and
- c) Items not on FTA’s list but that fit the FTA/FRA definition of “component.” The FTA/FRA definition of “component,” is “any article, material, or supply, whether manufactured or unmanufactured, that is directly incorporated into the end product at the final assembly location.” FRA FAQ no. 6 (citing 49 CFR § 661.3).

The table needs to be filled out separately for each type of car: coach, café lounge, and cab baggage. The feedback you provide in the attached table will help determine the feasibility of manufacturing 100% of the content for the rolling stock in the U.S.

Please complete one table for each car type: coach, café lounge, and cab baggage. If the component does not apply to this procurement, please insert an “N/A.”

No.	Component	% of Total Car Components Value	Manufactured in USA? Yes/No
1	Car shells-assembled carbody structures (including under frame structure, side frame structure, end structure, Floor structure, roof structure, integrated cab structure), and including carbody steel (both side frame and carbody skin), stainless 301L and 304L, and Low Alloy High Tensile used for structural underfloor, and carbon steel for anti-climbers and collision posts		
2	Main transformers (including invertors, contactors, rectifiers, brake choppers, filter inductors)		
3	Pantographs		
4	Traction motors		
5	Propulsion gear boxes		
6	Interior linings (including panels, moldings, window masks)		
7	Acceleration and braking resistors		
8	Propulsion controls		
9	Low voltage auxiliary power supplies (including all batteries, battery charger, battery boxes, auxiliary AC motors)		
10	HVAC System (including compressors, coils, controls, electric baseboard heaters and covers)		
11	Air brake system(s) both pneumatic and mechanical (including brake discs, disc brake actuators, piping and fittings, houses and couplers, control manifold and valves, tread brake units, wheel slide control system and control unit)		
12	Brake controls (air, electrical, and mechanical)		
13	Articulation assemblies		
14	Train control systems (including PTC)		
15	Windows and window assemblies (including panes, frames, diaphragms, molding, gaskets)		
16	Communication equipment (including radios, Public Address system, speakers, information and emergency signs, emergency announcement equipment)		
17	Lighting (all lighting systems, including fixtures of each type and exterior lighting)		
18	Seating and tables (including seat assemblies, frames, tracks, cushions for each seat type, passengers and engineer)		
19	Doors side entry doors, end doors, cab doors		
20	Door actuators and controls		
21	Couplers and draft gear (including yoke, drawbar and coupler CEM structure)		
22	Trucks (including truck frames-either fabricated or cast, truck weldments, and truck suspension systems, elastomers, and truck mounts for propulsion systems, truck bolster-connections to carbody, wheels, axles, and axle drivers)		

No.	Component	% of Total Car Components Value	Manufactured in USA? Yes/No
23	Journal bearings		
24	Diagnostic equipment (including that used for equipment maintenance)		
25	Third rail pick-up equipment (including paddles and shoes)		
26	Bicycle racks, and storage units for cab/baggage compartment		
27	Floors (including phenolic composite floor panels, plymetal, plywood, honeycomb panels, rubber floor coverings, carpet, linoleum)		
28	Event recorder		
29	Wiring harnesses (wire and cable, wire harnesses, including terminations, receptacles, and conduit)		
30	Wheelchair lifts, bridge plates, and ramps		
31	Sanding system		
32	Metal fabrication (including HVAC duct system, battery boxes, and other underfloor equipment lockers, internal equipment lockers)		
33	Lavatory equipment and facilities (or toilet modules, often procured as end product systems, the components of which should also be domestic)		
34	Food service equipment (including carts, refrigeration equipment, ovens)		
35	Cab equipment (including engineer console, cabinets, overhead indicator panel, all instrument panels)		
36	Engines' Prime Mover and Head End Power		
37	Project management and test equipment delivered with rolling stock (including test equipment, hardware/computers and software for running tests, e.g., carbody CEM and structural tests, Finite Element Analysis tests, truck performance tests, HVAC performance tests, Communication System Performance tests, and all required documented proof of design and system functionality tests)		
38	Manuals delivered with equipment (including Operator, Maintenance, Heavy Overhaul, Parts, Training, Car History Books, As-built drawings)		
39	Miscellaneous electrical items (including 27 Pin Trainline System, Communication Trainline, MU Trainline, Trainline junction boxes, 480 VAC HEP Trainline System including receptacles and jumpers, power junction boxes, main circuit breaker, 120 VAC power distribution system, DC power distribution system, and all electrical panels or lockers, terminal boards, contactors and relays, bus bars, and switches)		

No.	Component	% of Total Car Components Value	Manufactured in USA? Yes/No
40	Miscellaneous materials (including all fasteners, threaded and structural, washers, rivets, bolts, elastomers, paints and coatings, insulation both acoustical and thermal, piping and fixtures, filters, and conduit)		
41	Other components not named above (please specify):		
	Total	100%	

Further explanations and definitions:

For a manufactured product to be considered produced in the United States:

- 1) All of the **manufacturing processes** (which for rolling stock FRA has determined to mean final assembly) for the product must take place in the United States; and
- 2) All of the **components** of the product must be of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents.

(49 C.F.R. § 661.5)

Component means any article, material, or supply, whether manufactured or unmanufactured, that is directly incorporated into the **end product** at the final assembly location. (49 C.F.R. § 661.3)

A component is considered to be manufactured if there are sufficient activities taking place to advance the value or improve the condition of the subcomponents of that component; that is, if the subcomponents have been substantially transformed or merged into a new and functionally different article. (49 C.F.R. §661.11(e))

Final assembly Is the creation of the end product from individual elements brought together for that purpose through application of manufacturing processes. If a system is being procured as the end product by the grantee, the installation of the system qualifies as final assembly. (49 C.F.R. 661.11(r))

Manufacturing process means the application of processes to alter the form or function of materials or of elements of the product in a manner adding value and transforming those materials or elements so that they represent a new **end product** functionally different from that which would result from mere assembly of the elements or materials. (49 C.F.R. § 661.3)

End product means any vehicle, structure, product, article, material, supply, or system, which directly incorporates constituent components at the final assembly location, that is acquired for public use under a federally-funded third-party contract, and which is ready to provide its intended end function or use without any further manufacturing or assembly change(s). (49 C.F.R. § 661.3)

For the Purchase of Bi-Level Passenger Railcars

Section 7: Warranty (DRAFT)

October 18, 2011

DRAFT

Table of Contents

WR 1. Basic Warranty Provisions	3
WR 1.1 Warranty Requirements	3
WR 1.1.1 Contractor Warranty	3
WR 1.1.2 General Warranty	3
WR 1.1.3 Contractor Obligations/Contractual Requirements	3
WR 1.1.4 Field Service	4
WR 1.1.5 Field Service Office, Related Facilities and Inventory	4
WR 1.1.6 Field Service Personnel.....	5
WR 1.1.7 Detection of defects	5
WR 1.1.8 Department Rights and Obligations.....	5
WR 1.1.9 Minimum Warranty Parts Inventory	5
WR 1.1.10 Carbody Structure	5
WR 1.1.11 Major Subsystems	6
WR 1.1.12 Extension of Warranty	6
WR 1.2 Voiding of Warranty.....	6
WR 1.3 Exceptions and Additions to Warranty.....	6
WR 1.3.1 Pass-Through Warranty	6
WR 1.3.2 Superior Warranty.....	7
WR 1.3.3 Extended Warranty	7
WR 1.4 Fleet Defects.....	7
WR 1.4.1 Occurrence and Remedy	7
WR 1.4.2 Recurring Defect.....	8
WR 2. Repair Procedures	8
WR 2.1 Repair Performance	8
WR 2.1.1 Urgent Repairs by Contractor; Safety Issue.....	8
WR 2.2 Repairs by the Contractor	9
WR 2.3 Repairs by Caltrans/Designee.....	9
WR 2.3.1 Parts Used	9
WR 2.3.2 Contractor-Supplied Parts	9
WR 2.3.3 Defective Component Return.....	9
WR 2.3.4 Failure Analysis	9
WR 2.3.5 Reimbursement for Labor and Other Related Costs	9
WR 2.3.6 Reimbursement for Parts.....	9
WR 2.3.7 Reimbursement Requirements	10
WR 2.4 Warranty After Replacement/Repairs	10
WR 2.4.1 Warranty Processing Procedures.....	10
WR 2.5 Forms.....	10
WR 2.6 Return of Parts.....	11
WR 2.7 Timeframe for Warranty Reimbursement Requests.....	11
WR 2.8 Warranty Reimbursement.....	11

SECTION 7: WARRANTY

For definitions and acronyms please see Section 3: General Conditions.

WR 1. Basic Warranty Provisions

WR 1.1 Warranty Requirements

WR 1.1.1 Contractor Warranty

Warranties in this document are in addition to any statutory remedies or warranties imposed on the Contractor. Consistent with this requirement, the Contractor warrants and guarantees to Caltrans or designee each complete vehicle, subsystems, and components.

WR 1.1.2 General Warranty

The complete vehicle shall be warranted to be free from defects and related defects for two (2) years unless specified below. The warranty period shall begin at Conditional Acceptance except for parts and systems on the vehicle which require corrective action on the open items list (see Appendix, Form 4: Vehicle Conditional Acceptance and Certificate of Title). Any parts and systems requiring corrective action, the warranty period shall begin once corrections have been made. Conditional Acceptance of each vehicle for revenue service does not relieve the Contractor of the responsibility to correct defects as required by the Contract. The warranty is based on regular operation of the vehicle under normal operating conditions (see Amtrak Environmental Conditions defined in the Technical Specification).

WR 1.1.3 Contractor Obligations/Contractual Requirements

The Contractor must provide equipment that meets the reliability and performance requirements of the Contract, all applicable technical specifications and referenced documents, and the maintenance and operational requirements as specified by the Subsupplier. The Contractor shall bear all costs of corrective Work which shall include, but not be limited to, necessary disassembly, transportation, reassembly, repair or replacement and testing of the defective goods, supplies, subsystems, parts and equipment.

The Contractor shall submit to Caltrans for approval a Warranty Service Plan that is compliant with all contractual and technical specifications. **CDRL**

Included in the Warranty Service Plan the Contractor shall:

1. Establish a warranty response team with a Warranty Manager.
2. Establish warranty field offices for warranty support at locations where repairs are to be conducted and parts can be stored, as specified by Caltrans or designee.
3. Establish warranty and Fleet Defect repair response process and timelines, in accordance with the Caltrans Warranty Administration Process.
4. Setup a dedicated warranty email address, telephone number, voicemail system and address for U.S Postal Service and courier mail.
5. Establish a disposition procedure to track failed parts to ensure that they are not reused without proper authorization from Caltrans or designee.
6. Prepare for and participate in bi-weekly warranty status/resolution meetings.

During the warranty period, the Contractor shall maintain qualified warranty repair representatives at each designated warranty field-site to be available to perform corrective work under the warranty. The Contractor's Representative shall be qualified and knowledgeable in the repair and maintenance of the cars. The warranty repair staff shall be available to perform repairs at any time, including but not limited to nights and weekends.

The Contractor is to provide Caltrans with a complete description of the repair work that was conducted, written on the Amtrak Warranty Claim Request (AWCR) and entered into Warranty Database and Performance System (WDPS), in order for Caltrans to close an AWCR. This description is to include name and title of the employee who completed the Work, date of repair, method of repair, and the old and new serial numbers of any major components that have been replaced, and disposition of replaced materials.

If any warranty or engineering items are unresolved and open at the conclusion of the basic warranty period, Caltrans, designees, and the Contractor (in mutual agreement) have the option to negotiate an extended warranty on those items, and to delay the release of applicable retention payments.

Caltrans or designee reserves the right at the end of any warranty period to take corrective action to resolve open warranty and engineering issues at the Contractor's expense.

WR 1.1.4 Field Service

The Contractor shall provide for field support facilities and personnel during the periods of acceptance and performance testing, training, warranty, and retrofit programs (if any). Where manufacturers' systems require specialist support, the Contractor shall arrange with the manufacturer for qualified personnel.

An approved Warranty Service Plan shall be part of the product support program and approval required prior to the release for shipment of the first vehicle.

WR 1.1.5 Field Service Office, Related Facilities and Inventory

Requirements for payment are identified as Items 1-8 below:

1. The warranty field offices must be established prior to the release for shipment of the first vehicle.
2. The field offices shall be established at locations as approved by Caltrans or designee.
3. The field offices shall be staffed with the Contractor's designated warranty representatives and any additional staff, as required.
4. The warranty staff shall be sufficiently trained and qualified to perform all required duties to administer the warranty on all cars delivered under the contract, and in accordance with the Contractor's Warranty Service Plan.
5. The field offices shall be sufficiently equipped with all necessary tools, documents, manuals, drawings, spare parts and communication systems to effectively administer the warranty and meet the requirements of the Contractor's Warranty Service Plan, Caltrans' Warranty Administration Process, and all contract provisions.
6. An email address, voicemail system and U.S Postal Service and courier mail delivery facilities shall be established at the field offices.
7. The Contractor shall provide Caltrans the contact names, phone numbers, email addresses, and street address for the Warranty Administrator, including the means for contacting the Administrator during evenings, weekends and holidays to respond to urgent warranty claims.
8. The Contractor shall certify in writing that the warranty field offices shall remain staffed for the duration of the two (2) year warranty period (unless otherwise extended), including all warranty extensions if applicable.

CDRL

The Contractor shall make provisions for onsite storage of material routinely needed to support its warranty and shall obtain storage nearby for large warranty spare parts. Material storage shall include secure facilities for storing nonconforming, rejected, or condemned materials.

The Contractor shall provide for all necessary tools, cranes, pits, jacks, gauges, rerailling equipment, motor vehicles, office equipment and furnishings, and supplies. Caltrans or designee shall cooperate in making

available yard space to carry out the Contractor's acceptance work, and shall provide (through its Contractor) switching within yard limits as motive power and crews are otherwise available.

WR 1.1.6 Field Service Personnel

The Contractor shall provide adequate Field Service Personnel until the last vehicle's warranty expires. The Contractor shall arrange for its subcontractor's Field Service Personnel to be available as needed. All of these shall be employees experienced in field service and thoroughly familiar with the product supplied. The field service effort shall be supervised and managed by only one Warranty Manager, who shall have full and immediate authority to act for the Contractor in field service and acceptance matters.

The Contractor, its subcontractors, commercial representative, agents, consultants, and guests shall at all times wear proper clothing and identification, including safety apparel, while on railroad property and operating territory. Personnel working on or about cars shall wear a distinctive, safe, clean work uniform, and identification clearly identifying their employer.

The Contractor, its subcontractors, commercial representatives, agents, consultants, and guests shall promptly remove from the field any person whose conduct or personal protective equipment is not appropriate for railroad field service work.

WR 1.1.7 Detection of defects

Field inspectors, Amtrak employees, Caltrans and designee, and other staff may note defects during routine inspections, in normal operation, or maintenance of the equipment. Defects will be reported on the Caltrans AWCR form and submitted to the Contractor. All AWCRs will be submitted to the Caltrans WDPS database and will be available for review by Caltrans, designees, or the Contractor. For Contractors or designees that do not currently utilize the AWCR and WDPS processes, a process will be developed during project management meetings. All warranty claims shall be identified and resolved.

WR 1.1.8 Department Rights and Obligations

During the warranty period, Caltrans or designee will make every reasonable effort to make facilities and vehicles available to the Contractor for warranty and related work as permitted by operational requirements.

Caltrans will provide the Contractor access to the WDPS Database for the purpose of reviewing defect claims and entering Contractor's resolution of open AWCRs.

WR 1.1.9 Minimum Warranty Parts Inventory

The Contractor shall establish minimum warranty parts inventory to be approved by Caltrans and in place before Conditional Acceptance of the first pilot vehicle. The minimum warranty parts inventory will include three types of inventory:

- Strategic parts that are safety critical for train operation;
- Strategic parts that have high failure rates or that are known to be replaced frequently; and
- Strategic parts that are long-lead-time items.

The minimum warranty parts inventory list will include a complete listing of each part, the number to be stocked, and a parts replacement schedule to ensure that adequate quantities of warranty parts are stocked while cars are in service and under warranty.

WR 1.1.10 Carbody Structure

The vehicle body structure as defined in Chapter 4 of the Technical Specifications is warranted to be free from defects and related defects for ten (10) years.

WR 1.1.11 Major Subsystems

The following major subsystems shall be warranted to be free from defects and related defects for more than two (2) years:

- Truck structural parts (frame and bolster) and suspension: five (5) years
- Carshell including Crash Energy Management (CEM) and flooring systems (excluding carpet): 10 (ten) years

All other subsystems are covered by the General Warranty provision.

WR 1.1.12 Extension of Warranty

If, during the warranty period, repairs or modifications on any vehicle are necessary due to defective design, materials or workmanship, written notice must be given to the Contractor. If repairs are not completed within 10 (ten) days of the notice or an agreed upon timeline, the warranty period will be suspended until such time that the repairs are fully completed and the warranty will be extended for that component on a day-for-day basis. Once repairs are completed, the warranty timeline recommences and the remaining warranty will continue to be in effect. If the repairs are not completed within the agreed upon timeline, resulting in the vehicle being unavailable for revenue service, liquidated damages will commence in accordance with SP 3.3.2 "Liquidated Damages: Warranty" and will accrue on a day-for-day basis starting at the end of the agreed upon timeline.

WR 1.2 Voiding of Warranty

The warranty shall not apply to the failure of any part or component of the vehicle that demonstrably and directly results from misuse, negligence, an accident, or repairs not conducted in accordance with the Contractor-provided maintenance manuals and with workmanship performed by adequately trained personnel in accordance with the highest recognized standards of the industry for which such misuse, negligence, accident, or repairs was not caused by the Contractor or subcontractors. The warranty also shall be void if Caltrans or designee fails to conduct normal inspections and scheduled preventive maintenance procedures as recommended in the Contractor's maintenance manuals and if that omission caused the part or component failure. Caltrans or designee shall maintain documentation, auditable by the Contractor, verifying service activities in conformance with the Contractor's maintenance manuals.

WR 1.3 Exceptions and Additions to Warranty

The warranty shall not apply to the following items:

- Scheduled maintenance items
- Consumable items
- Items furnished by Caltrans
- Modifications made without Contractor approval, except as provided herein

WR 1.3.1 Pass-Through Warranty

Should the Contractor elect to not administer warranty claims on certain components and wish to transfer this responsibility to the Sub-Suppliers or others, the Contractor shall request this waiver. The Contractor shall state in writing that Caltrans' warranty reimbursements will not be impacted in accordance with WR 2.3.5 "Reimbursement for Labor and Other Related Costs," WR 2.3.6 "Reimbursement for Parts" and WR 2.3.7 "Reimbursement Requirements". Otherwise, the Contractor shall be solely responsible for the administration of the warranty as specified.

If the Contractor requests such a waiver in writing, then the Contractor also shall state in writing any exceptions as it relates to the costs incurred in the transport of vehicles and/or components associated with such a Pass-Through Warranty. Approval of the waiver request shall be at the sole discretion of Caltrans.

WR 1.3.2 Superior Warranty

The Contractor shall pass onto Caltrans any warranty offered by a Supplier that is superior to that required herein. The Contractor shall provide a list to Caltrans noting the conditions and limitations of the Superior Warranty no later than the start of production. The Contractor shall not be required to administer the Superior Warranty except through a mutual agreement between the parties.

The Superior Warranty shall be administered by the Supplier after the completion of the base warranty period.

The Contractor shall convey the Superior Warranty to Caltrans through a three-party agreement, signed by the Contractor, the Supplier and Caltrans, specifying the terms and procedures for the administration of the Superior Warranty.

Superior warranty terms and conditions may not conflict with any provisions of this agreement or in any way increase the liability of Caltrans.

WR 1.3.3 Extended Warranty

Not applicable.

WR 1.4 Fleet Defects

WR 1.4.1 Occurrence and Remedy

A Fleet Defect is defined as cumulative failures of ten percent (10%) of any part, system, or component in the same or similar applications with a minimum of three (3) failures of the same component where such items are covered by warranty. Similar components are defined as components that perform the same function or purpose regardless of specific orientation (e.g. left-hand vs. right-hand). A Fleet Defect shall apply only to the warranty period.

In the event that failures reach the threshold as defined for a Fleet Defect, Caltrans shall provide the Contractor written notification of the assessment of the Fleet Defect or Recurring Defect. This notification shall include the description of the failure and the dates, vehicle numbers, and warranty claim numbers for the failures. Within five (5) business days of this notification, the Contractor shall present to Caltrans its corrective action plan for an engineering analysis of the Fleet Defect or Recurring Defect. The plan shall include an estimated timeline for a failure analysis to determine the cause, and extent of the failure, and the corrective actions needed to resolve the failure on all affected cars. The results of the failure analysis and corrective actions shall be presented to Caltrans for review and approval within thirty (30) days after notification of the Fleet or Recurring Defect. Caltrans shall have the authority to assess the effectiveness and appropriateness of the proposed solution and require that the Contractor propose alternate solutions, if necessary.

Once the corrective action plan has been approved by Caltrans, the Contractor shall provide a Field Modification Instruction (FMI) within thirty (30) days that will resolve the failure on all affected cars that have been delivered. This FMI shall include all components requiring repair or replacement, all diagnostic, removal, and installation instructions, and the applicability to the vehicles in the fleet to which the FMI applies. An FMI shall apply to all vehicles in the fleet that meet the criteria for corrective action to resolve the Fleet or Recurring Defect, regardless of whether the vehicle is within the warranty period or not. The Contractor shall also implement engineering changes, as necessary, to modify the design, material, or installation procedures for all cars in production or not yet delivered. All drawings, manuals, parts lists, test procedures, vehicle history books, and other documentation shall be revised and updated, as necessary, to reflect any changes to design, parts, installation, procedures, or maintenance requirements, as a result of the FMI or engineering change.

No payment, for any vehicle, its associated components, parts, work, or for any other purpose, shall relieve the Contractor of any obligation to correct Fleet or Recurring Defects as provided herein.

If the Contractor fails to resolve Fleet or Recurring Defects or complete FMIs as set forth herein, Caltrans or designee reserves the right to resolve open FMIs at the Contractor's expense, utilizing funds in any or all of the following: deduction from amounts due or remaining milestones, the performance bond, other Contractor funds, or legal action.

WR 1.4.2 Recurring Defect

A Recurring Defect is when the same component or system on the same rail vehicle fails in a similar manner three (3) or more times. Once the component or system fails for the third (3rd) time, the Contractor shall perform an engineering investigation as to the cause and nature of the failure, and shall provide to the Caltrans a report of the investigation and a recommendation as to how the Recurring Defect will be properly and permanently corrected. If the component or system fails again after the corrective action is completed, the Contractor shall perform another analysis as to why the corrective action did not solve the problem, and make another recommendation as to the method by which the failure will be corrected. Once the Recurring Defect is corrected, the item(s) shall have the longer of one (1) year additional warranty from the correction of the Recurring Defect or the remainder of the unexpired warranty period.

WR 2. Repair Procedures

WR 2.1 Repair Performance

The Contractor is responsible for all warranty-covered repair-work. Under normal circumstances, Caltrans will allow the Contractor's Representative to perform such Work. At its discretion, Caltrans or designee may perform such Work if it determines it needs to do so. Such Work shall be reimbursed by the Contractor.

WR 2.1.1 Urgent Repairs by Contractor; Safety Issue

If Caltrans or designee identifies a defect that is a safety issue within the warranty period, they shall, within twenty-four (24) hours, notify the Contractor's Representative per the urgent AWCRC and warranty process (defined during design review). Components, systems, and subsystems that are covered and critical for urgent repair include:

- Side doors
- Wheelchair lifts
- HVAC
- Brakes systems
- Trucks and suspension
- Safety appliances
- Vehicle shell structure
- Train control

Within forty-eight (48) hours of receiving an urgent notification of a defect from Caltrans or the designee, the Contractor's Representative shall begin work on warranty-covered repairs. If the Contractor does not begin work on the warranty-covered repair within forty-eight (48) hours after receiving an urgent notification, Caltrans may hire another Contractor to perform the Work, including all needed parts and labor, which shall be reimbursed in full by the Contractor to Caltrans.

Caltrans or designee shall make the vehicle available to the Contractor, within restrictions imposed by Amtrak's operational requirements, to allow for completion of repairs in a timely manner.

The Contractor shall provide at its own expense all spare parts, tools, and space required to complete repairs. At Caltrans' or designee's option, the Contractor may be required to remove the vehicle from Caltrans' or designee's property while repairs are being performed. If the vehicle is removed from Caltrans' or designee's property, repair procedures must be diligently pursued by the Contractor's Representative and the Contractor shall be liable for the vehicle while off Caltrans' or the designee's premises.

WR 2.2 Repairs by the Contractor

If Caltrans or designee detects a defect within the warranty periods, it shall, within five (5) days, notify the Contractor's Representative. The Contractor's Representative shall begin Work on warranty-covered repairs within five (5) days after receiving notification of a defect from Caltrans or designee. Caltrans or designee shall make the vehicle available to the Contractor to complete repairs.

The Contractor shall provide, at its own expense, all spare parts and tools required to complete repairs.

WR 2.3 Repairs by Caltrans/Designee

WR 2.3.1 Parts Used

If Caltrans or its representatives perform the warranty-covered repairs, it shall correct or repair the defect and any related defects utilizing parts supplied by the Contractor specifically for the repair. At its discretion, Caltrans or designee may use Contractor-specified parts available from its own stock if deemed in its best interests.

WR 2.3.2 Contractor-Supplied Parts

Caltrans or designee may require that the Contractor supply parts for warranty-covered repairs being performed by Caltrans or its representatives. The parts shall be shipped prepaid to Caltrans or designee within ten (10) days of receipt of the request for said parts and shall not be subject to Caltrans or designee handling charge.

WR 2.3.3 Defective Component Return

The Contractor may request that defective parts discovered during warranty repairs be returned to the parts manufacturer. The freight costs for this action shall be paid by the Contractor. Materials should be returned in accordance with the procedures outlined in WR 2.6 "Return of Parts."

All serialized components that fail and are exchanged will be tracked by the AWCR form. Serialized components that have failed will not be used as spare parts and the Contractor will provide new serial numbers for exchanged components.

Caltrans or designee may request that any failed part be made available for inspection, analysis, or documentation.

WR 2.3.4 Failure Analysis

The Contractor shall provide a failure analysis of Fleet Defects, safety-related parts, or major components removed from vehicles under the terms of the warranty that could affect fleet operation. Such reports shall be delivered within thirty (30) days, or an agreed upon timeline, after notification of the Fleet Defect or Recurring Defect.

WR 2.3.5 Reimbursement for Labor and Other Related Costs

Caltrans and/or its representatives shall be reimbursed by the Contractor for labor and other related costs. The amount shall be determined by Caltrans for a qualified mechanic at the hourly and/or overtime wage rates, including fringe benefits and overhead adjusted for Caltrans' or designee's most recently published rate in effect at the time the Work is performed, plus the cost of retrieving the vehicle if such action was necessary. These wage and fringe benefit rates shall not exceed the rates in effect at the time the defect correction is made.

WR 2.3.6 Reimbursement for Parts

Caltrans or designee shall be reimbursed by the Contractor for defective parts replaced with Caltrans' or designee's parts to correct the defect. The reimbursement shall be at the current price at the time of repair and shall include taxes where applicable.

WR 2.3.7 Reimbursement Requirements

The Contractor shall respond to Caltrans' or designee's request for warranty parts, labor, and other related costs reimbursement with an accept/reject decision, including necessary failure analysis, no later than thirty (30) days after Caltrans or designee submits the request and defective part(s), when requested.

Reimbursement for all accepted requests shall occur no later than sixty (60) days from the date of the acceptance of a valid request. Caltrans may dispute rejected requests or requests for which the Contractor did not reimburse the full amount. The parties agree to review disputed warranty requests during the following ninety (90) day period to reach an equitable decision to permit the disputed request to be resolved and closed. The parties also agree to review all requests at least once every ninety (90) days throughout the entire warranty period to ensure that open requests are being tracked and properly dispositioned.

WR 2.4 Warranty After Replacement/Repairs

During the warranty period, if any component, unit, or subsystem is repaired, rebuilt, or replaced by the Contractor, Caltrans, or designee with the concurrence of the Contractor, then the component, unit, or subsystem shall have the longer of a one (1) year additional warranty from the replacement or repair of the component, unit, or subsystem, or the remainder of the unexpired warranty period of the original item.

If an item is declared to be a Fleet Defect, the warranty is suspended with the declaration of the Fleet Defect. Once the Fleet Defect is corrected, the item(s) shall have the longer of one (1) year additional warranty from the correction of the Fleet Defect or the remainder of the unexpired warranty period.

WR 2.4.1 Warranty Processing Procedures

The following list represents information required by the Contractor from Caltrans or designee for processing requests for warranty reimbursements. One failure per vehicle per AWCR request is allowed. Specific details regarding the warranty processing procedures will be resolved during project management meetings with the Contractor.

- Vehicle number
- Location of defect on vehicle
- Date of failure/repair
- Acceptance/in-service date
- Repair order number
- Contractor part number and description
- Description of failure
- All costs associated with each failure/repair (invoices may be required for third-party costs):
 - Vehicle retrieval
 - Road calls
 - Labor
 - Materials
 - Rented equipment
 - Parts
 - Handling
 - Troubleshooting time

WR 2.5 Forms

AWCR will be accepted by the Contractor if all of the above information is included. Electronic submittals may be used, if available, between the Contractor and Caltrans.

WR 2.6 Return of Parts

Defective and tagged parts removed for warranty purposes by Caltrans or designee will be returned prepaid by the Contractor, as appropriate. Defective parts should be segregated by the Contractor or designee, and each defective part shall be tagged with the following:

- Name of Contractor (company name)
- Vehicle number
- AWCR number
- Part number
- Contractor Part number
- Manufacturer's name and Part number
- Part Name or Description
- Serial number (if so equipped)
- Name and phone number of the person removing the part
- Current date
- Location of facility where part was removed

WR 2.7 Timeframe for Warranty Reimbursement Requests

Each warranty reimbursement request must be submitted no more than ninety (90) days from the date of failure and/or repair, whichever is later. All defective parts must be returned to the Contractor, when requested, no more than forty-five (45) days from the date of repair.

WR 2.8 Warranty Reimbursement

How Warranty Reimbursements will be credited to the Contract shall be determined by Caltrans. Specific details for the reimbursement process will be resolved during project management meetings with the Contractor.

For the Purchase of Bi-Level Passenger Railcars

Section 8: Quality Assurance (DRAFT)

October 18, 2011

DRAFT

SECTION 8: QUALITY ASSURANCE

The Contractor shall establish and maintain a Quality Assurance Program as specified in Chapter 3 of the Technical Specifications. The Contractor's Quality Assurance Program shall ensure compliance with the requirements of the Contract, and should any portion of the Work be subcontracted, shall include provisions ensuring compliance by Subcontractors and Sub-suppliers.

The Contractor, the Contractor's manufacturing plant and its organization shall be certified to the appropriate QS 9000/ISO 9000 series of standards. Contractor shall ensure that all Subcontractors and Sub-suppliers maintain a formal, documented Quality Assurance Program. Caltrans reserves the right to verify the Quality Assurance Program of either the Contractor or any Subcontractor or Sub-supplier.

DRAFT

For the Purchase of Bi-Level Passenger Railcars

Appendix: Sample Vehicle Forms (DRAFT)

October 18, 2011

Appendix F: Sample Vehicle Forms

Form 1. Certificate of Release for Shipment

From: [Contactor name and address]

To: [Caltrans or designee name and address]

I, duly appointed Inspector and authorized representative of the Caltrans or designee, do hereby certify that I have inspected on behalf of Caltrans or designee the following car, constructed by you under [Caltrans Contract Number], and so far as I can ascertain, except as noted on the attached Exception Report, such equipment is in conformity with PRIIA Technical Requirements for Bi-Level Passenger Railcar, approved drawings, and subsequent agreements arrived at in correspondence, documented meetings, and change orders, except for completion of such performance tests as required under said Contract and scheduled to be conducted. It is further understood that you will correct any defects revealed as a result of such tests.

This is to verify that the car has been weighed and scale weight and adjusted weight are as indicated below in pounds.

Car No.	Scale Weight	Missing Component Weight	Loose Equipment Weight	Adjusted Weight
[###]	0	0	0	[#]

NOTES:

- This Certificate of Release is signed subject to correction or completion of the items on the attached list of exceptions which were deemed unacceptable or incomplete conditions existing at the time the car was shipped.
- Serialized equipment lists and car test records are included in the Car History Book.
- Loose equipment: Please refer to the attached list of equipment or materials that will ship separately inside the car. This equipment or materials will be applied by [Contractor] upon arrival or after the completion of the Performance testing as required.
- Exceptions: This certificate is signed subject to correction or completion of the open items identified on the attached List of Exceptions which were unacceptable or incomplete at the time the car was shipped.

For [Caltrans or designee]

Date

For [Contractor]

Date

Form 2. Vehicle Delivery Notice

Caltrans
[Contract Number]

Vehicle #: _____

Pursuant to Special Provision 6, notice is hereby given that the above-referenced vehicle arrived at Caltrans or designee location on the following date: _____.

For [Caltrans or designee] Date

Comments regarding the condition of the vehicle upon arrival are set out in attached Exhibit [#], which is incorporated herein by this reference.

Exhibit [#]:

Caltrans
[Contract Number]

Vehicle #: _____

The following observations were made concerning the condition of the above-referenced vehicle upon its arrival at Caltrans or designee location.

Item #	Description of Item

For [Caltrans or designee] Date

For [Contractor] Date

Form 3. Receiving Inspection
Caltrans
Vehicle Inspection

Car No: _____ Inspected By: _____
Truck No: _____ Inspection Date: _____
Procedure: _____ Inspection Location: _____

LOC A,B	Item No.	Disp Code	Description	Action Taken Comments	Corrected		QA Accepted	
					By	Date	By	Date

Key
Loc = Location
Disp = Disposition ("R" - rejected, "U" - use as is, "A" - accepted)

Form 4. Vehicle Conditional Acceptance and Certificate of Title

Caltrans
[Contract Number]

Vehicle #: _____

Contractor hereby makes the following representations and warranties regarding the above-referenced vehicle: (i) that all phases of production, testing and inspection have been completed for such vehicle in accordance with the requirements of the Contract between Caltrans and Contractor for the manufacture of said vehicle, (ii) that such vehicle substantially conforms to all requirements set out in said Contract and (iii) that such vehicle meets or exceeds all of the technical requirements of the Contract except with respect to those items set out in attached Exhibit [#], which is incorporated herein by this reference. Caltrans or designee reserves its right to reject this vehicle as non-conforming if the items listed in Exhibit [#] are not completed or resolved within a reasonable period of time or if the vehicle fails burn-in testing. The persons signing below on behalf of Contractor represent, respectively, that s/he is authorized to make the foregoing representations and warranties on behalf of Contractor.

Contractor warrants and represents that the above-referenced vehicle is free and clear of any and all liens, mortgages, encumbrances, financing statements, security agreements claims and demand of any character and that title to said vehicle is vested in Caltrans or designee. Caltrans or designee hereby accepts title to the above-referenced vehicle.

For [Contractor]

Date

For [Contractor]

Date

Caltrans or designee has inspected the above-referenced vehicle and finds that it is in condition for acceptance under a reservation of rights as to burn-in testing and the incomplete or unresolved items listed in attached Exhibit [#] (See next page).

For [Caltrans or designee]

Date

For [Caltrans or designee]

Date

EXHIBIT [#]
Vehicle Conditional Acceptance and Inspection
Caltrans
[Contract Number]

Vehicle #: _____

Date: _____

The following are incomplete or unresolved items at the time of vehicle inspection. Resolution of these items is the Contractor's responsibility.

Item #	Resolved Mfg.	Approved [Caltrans or designee Representative]	Description of Exception

Sample Form

Form 5. Vehicle Final Acceptance

Caltrans
[Contract Number]

Vehicle #: _____

Contractor hereby makes the following representations and warranties regarding the above-referenced vehicle: (i) that all phases of design, manufacture, static testing, dynamic testing, calibration, acceptance testing and burn-in testing have been properly completed for such vehicle pursuant to the terms of the Contract between Caltrans and Contractor for the manufacture of said vehicle, (ii) that satisfactory documentation of the foregoing is set out in the completed Car History Book for said vehicle, and (iii) that all of the items listed in the Vehicle Conditional Acceptance and Inspection Form for said vehicle have been satisfactorily completed or resolved.

The persons signing below on behalf of Contractor represent, respectively, that s/he is authorized to make the foregoing representations and warranties on behalf of Contractor.

For [Contractor]

Date

For [Contractor]

Date

Caltrans or designee has inspected the vehicle during manufacture and testing and Conditional Acceptance, and has reviewed the Car History Book for completeness and finds that the above-referenced vehicle is acceptable and that all exceptions noted on the Vehicle Conditional Acceptance and Inspection Form have been completed or resolved in accordance with the Contract requirements.

For [Caltrans or designee]

Date

For [Caltrans or designee]

Date