



Invitation to Bid 20-ATJ-Cross Ties-003
Hardwood Cross Ties
April 17, 2020

SUPPLIER NAME: _____

DESCRIPTION OF MATERIAL REQUESTED:

- **Minimum of 15,000 new, Domestically Produced Hardwood Cross Ties** conforming to the attached Pan Am Railways specification.
- NNEPRA intends to issue a purchase order for 15,000 cross ties shortly after this procurement. NNEPRA may have need for additional cross ties through the end of 2020 and will issue additional purchase orders, as needed, if the supplier is willing to hold their bid unit price through December 31, 2020. The additional quantity of cross ties is anticipated to be less than 10,000.

DELIVERY REQUIREMENTS:

- All delivery costs shall be included in the bid price.
- All cross ties shall be delivered as soon as possible. Please provide a proposed delivery date on the bid form. Due to the ongoing COVID-19 pandemic and associated reduction in rail traffic, NNEPRA would like to begin receiving cross ties for installation as soon as possible. Bids with earlier delivery dates may be given preference.
- If materials are not available soon enough to reasonably take advantage of the currently reduced rail traffic, NNEPRA and Pan Am Railways would consider receiving the cross ties in late summer of 2020 if the supplier is willing to hold their bid unit price.
- All cross ties shall be delivered by flatbed truck, as specified in the Pan Am Railways Specification. Deliveries shall be made to multiple Pan Am Railways Freight Main Line grade crossings between MP 274 (Plaistow, NH) and MP 247 (Madbury, NH). Each truck will be completely unloaded at a single grade crossing and multiple trucks may be shipped to a single grade crossing. The final delivery locations will be determined in coordination with NNEPRA and Pan Am Railways. Pan Am Railways will unload the cross ties at the grade crossings at no cost to the suppliers.

BID OPENING TIME AND LOCATION:

- Sealed bids for the above product must be received at the following location by **3:00 p.m. local time, April 27, 2020:**
William Gayle, Grant and Policy Administrator
Northern New England Passenger Rail Authority
75 West Commercial Street, Suite #104,
Portland, Maine 04101
- Bids received after this time will not be accepted.
- Sealed bids will be publicly opened and read aloud at 3:30pm on April 23, 2020. *Please note that suppliers will not be permitted to attend the bid opening in person due to COVID-19*

NORTHERN NEW ENGLAND PASSENGER RAIL AUTHORITY INVITATION TO BID
ITB #20-ATJ-Cross Ties-003

restrictions. NNEPRA will make reasonable efforts to provide a live stream or virtual meeting invitation for the bid opening. This information will be provided to suppliers as soon as possible.

- Each bid shall contain all pages of the **Bid Form** and **signed Federal Clauses (3 total)** in a single sealed envelope. The envelope shall be clearly marked “**Bid for Hardwood Cross Ties, Bid # 20-ATJ-Cross Ties-003**”.
- Bids for this procurement may submitted via email to william@nnepra.com, rather than in a sealed envelope, at the supplier’s option.

ADDITIONAL INFORMATION:

- Portions of this project are being funded by the Federal Funding Sources and the State of Maine.
- Compliance with attached Federal Clauses is required.
- NNEPRA encourages their contractors to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community and to make reasonable efforts to use these institutions. Contact NNEPRA for further information or assistance.
- All bids shall be valid for 60 days after the bid opening.
- NNEPRA intends to provide notice of award within five business days of the bid opening to the lowest bidder that is responsive to the requirements and is a responsible supplier.
- NNEPRA has a dispute and protest policy. Contact the NNEPRA for more information.
- NNEPRA reserves the right to reject any or all Bids, to waive any technical or legal deficiencies, and to accept any Bid that it may deem to be in the best interest of the Authority.

POST BID REQUIREMENTS:

The successful Bidder must begin execution of this contract within ten (10) calendar days following the Notice of Award.

PAYMENT PROVISIONS:

Payment will be made within 30 days after approval of invoices.

BID QUESTIONS:

- All questions must be received no later than Tuesday April 21, 2020 at 5:00 p.m. local time to be considered.
- NNEPRA will issue an addendum, if needed, by April 22, 2020 answering questions received prior to the deadline.
- All questions regarding this bid must be made in writing by **email only** and directed to:
William Gayle, Grant and Policy Administrator
Northern New England Passenger Rail Authority
75 West Commercial Street, Suite #104
Portland, Maine 04101
william@nnepra.com
Phone calls will not be accepted.

BID FORM

SUPPLIER NAME: _____

PRODUCT IDENTIFICATION:

New, Domestically Produced Hardwood Cross Ties conforming to the attached Pan Am Railways specification.

THIS BID IS SUBMITTED TO:

Mr. William Gayle
Grant and Policy Administrator
Northern New England Passenger Rail Authority
75 W Commercial Street, Suite #104
Portland, Maine 04101

By submitting this Bid the undersigned Bidder:

1. Proposes and agrees, if the Bid is accepted, to enter into an Agreement with Northern New England Passenger Rail Authority to supply the Materials in accordance with the specifications and other Bid Documents, for the prices and in accordance with the delivery schedule as detailed in the Bid Form.
2. Accepts all of the terms and conditions included in the Invitation to Bid and agrees that this Bid will remain open for sixty days after the day of Bid opening.
3. Agrees that:
 - a. Bidder has examined copies of all the Bid Documents and any addenda, receipt of all of which is hereby acknowledged.
 - b. This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation, and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any person, firm or corporation to refrain from bidding; and Bidder has not sought by collusion to obtain for himself any advantage over any other Bidder or over Northern New England Passenger Rail Authority.
4. Acknowledges that this Invitation to Bid does not constitute an order or contract.
5. Acknowledges that Northern New England Passenger Rail Authority is exempt from all taxes. The undersigned hereby certifies that no taxes are included in the prices bid.

Bidders shall state if exemption certificate is required: Yes _____ No _____.

NORTHERN NEW ENGLAND PASSENGER RAIL AUTHORITY INVITATION TO BID
ITB #20-ATJ-Cross Ties-003

BID FORM

This Bid is submitted for the following product:

New, Domestically Produced Hardwood Cross Ties conforming to the attached Pan Am Railways specification. All cross ties shall be delivered as soon as possible. Please provide a proposed delivery date below. Bids with earlier delivery dates may be given preference

<u>Bid Item 1</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Total Price</u>
Hardwood Cross Ties	15,000 EA (Min.)	_____/EA	_____
		Total Price	_____
	Proposed Start of Delivery Date		_____
	Proposed Completion of Delivery Date		_____

All suppliers shall respond to the two items below.

Due to the ongoing COVID-19 pandemic and associated reduction in rail traffic, NNEPRA would like to begin receiving cross ties for installation as soon as possible. However, if materials are not available soon enough to reasonably take advantage of the currently reduced rail traffic, NNEPRA and Pan Am Railways would consider receiving the cross ties in late summer of 2020. Please indicate below if you are willing to deliver the initial 15,000 cross ties in late summer 2020 at the bid unit price:

_____ **Yes** _____ **No**

NNEPRA intends to issue a purchase order for 15,000 cross ties shortly after this procurement. NNEPRA may have need for additional cross ties through the end of 2020 and will issue additional purchase orders, as needed, if the supplier is willing to hold their bid unit price through December 31, 2020. The additional quantity of cross ties is anticipated to be less than 10,000. Delivery timeframes for the additional cross ties shall be mutually agreed upon by NNEPRA and the Supplier. Please indicate below if you are willing to supply additional cross ties through December 31, 2020 at the bid unit price:

_____ **Yes** _____ **No**

NORTHERN NEW ENGLAND PASSENGER RAIL AUTHORITY INVITATION TO BID
ITB #20-ATJ-Cross Ties-003

Communications concerning this Bid shall be addressed to:

Bidder Company Name: _____

Bidder's Representative: _____

Bidder's Address: _____

Bidder's Telephone No: _____

Bidder's E-mail Address: _____

Bidder's Fax Number: _____

(Please note that the information below is used for internal purposes only and will not be disclosed.)

Age of your company: _____ Gross Annual Receipts: _____

Employees: _____ DUNS #: _____

In submitting this bid, it is understood and agreed by vendor that THE AUTHORITY reserves the right to reject any and all Bids, or part of any Bid, and it is agreed that the Bid may not be withdrawn for a period of [60] days subsequent to the receipt of bids, without the written consent of the Authority.

BIDDER AUTHORIZED SIGNATURE: _____

Printed Name & Title: _____

SUBMITTED ON: _____, 2020



PAN AM RAILWAYS

1700 IRON HORSE PARK
NO. BILLERICA, MA 01862

Specifications for: Hardwood Cross Ties

1. SPECIES ACCEPTABLE:

Group A - Red or white oak, locust, walnut

Group B - Beech, birch, cherry, hickory, hard maple, soft maple

2. DESIGN:

All cross ties shall conform to this specification and the specifications for hardwood cross ties in the current edition of the American Railway Engineering and Maintenance-of-Way Association (AREMA) Manual for Railway Engineering.

<u>Grade</u>	<u>Size</u>	<u>Designation</u>
#5	7" x 9" x 8'-6" (minimum 9" top in rail bearing area)	"A" Ties
#4	7" x 8" x 8'-6" (minimum 8" top in rail bearing area)	"B" Ties

A 60/40 mix of oak and mixed hardwoods is acceptable.

An 80/20 mix of Grade #5 (80%) and Grade #4 (20%) is acceptable.

Definition of Tie Structure

Rail Bearing Area (RBA) - that section of the tie between 20" and 40" from the middle. With respect to defects and measurements it includes top, bottom and sides of the tie.

Top Face - the 9" cross section for Grade 5 ("A" ties) and the 8" cross section for Grade 3 ("B" ties).

Width - the measure of the top face within the rail bearing area.

Measurement Items

Straightness - acceptable when a straight line along the top from the middle of one end to the middle of the other end is everywhere more than 2" from the nearest edge of tie.

When a straight line along a side from the middle of one end to the middle of the other end is everywhere more than 2" from the top and the bottom of the ties.

Length - acceptable from 1" under to 2" over.



PAN AM RAILWAYS

1700 IRON HORSE PARK
NO. BILLERICA, MA 01862

Thickness and width - apply to sections of the tie at the RBA. Determination of width will be made at the top face of the tie. Excess of more than 1" in thickness or width may result in rejection.

Wane- a maximum wane of 1" in the RBA of Grade 5"A" Ties is acceptable. No wane in the RBA of Grade 4"B" Ties is permitted.

3. MANUFACTURE:

All ties shall be well manufactured, cut square at the end, be sawn four sides, have top and bottom parallel and have inner and outer bark completely removed.

Ties shall be branded with the permanent identification for ownership and year graded, and treating plant. Branding is only required on ties that are end-plated.

Anti-Splitting Devices - Nail plates may be used as an anti-splitting device, provided they are not used on any defects other than splits or season checks. Nail plates should be flush with the end after application.

4. INSPECTION:

Defect Restrictions

Decay and rot – criteria for “holes” apply. Blue stain is not a defect.

Holes - are permissible - within the RBA if not more than 1/2" in diameter and 3" deep - outside the RBA if not more than 1/4" of the surface on which it appears and 3" deep. Numerous holes that taken together equal more than above may be cause for rejection.

Knots - when flush-cut to eliminate bark inclusions, are permissible - within the RBA if less than 1/4 the surface width, outside of the RBA larger knots are acceptable. Numerous knots on any number equaling a larger knot in damaging effect.

Shake - one which is no more than 1/4 the width of the tie will be allowed, provided it does not extend nearer than 1" to any surface.

Split - no more than 1/4" wide and/or longer than the face across which it occurs is acceptable, to a seasoned crosstie.

Overgrowth seams and general bark inclusions - are permissible if not more than 13.5" long and 1" deep.



PAN AM RAILWAYS

1700 IRON HORSE PARK
NO. BILLERICA, MA 01862

Manner of Inspection

Boulton dried ties will be inspected at the time of delivery. Air dry ties will be subject to inspection after seasoning and before treatment.

Inspectors will make a close examination of the top, bottom, sides and ends of each tie. Each tie will be graded independently, without regard for the grading of the others in the same lot. Ties covered with ice or too muddied for ready inspection will be rejected.

Ties must be turned over for the inspector when inspected.

Risk, rejection

All ties are at owner's risk until accepted. All rejected ties must be removed within 30 days of notice of rejection.

5. CONDITIONING BEFORE TREATMENT:

American Wood Preservative Association standards and specifications listed below shall govern all tie conditioning.

Air Drying – stacking for seasoning shall be performed in accordance with recommended practice and in a suitable yard, and will be subject to approval by the Vice President, Purchases and Stores and/or the Vice President-Engineering. These ties will be seasoned for treatment so that they may be satisfactorily penetrated with preservatives. Sufficient number of borings shall be taken to determine condition prior to treatment. No tie shall be considered for treatment unless the seasoning period is more than 12 months and less than 18 months or the average moisture content for Group A ties is below 50%, Group B ties below 40%.

Boulton, Kiln, and Vapor Drying - all ties processed by these methods shall be conditioned within 45 days from time tree is felled.

- A. Boulton Drying - temperature shall not exceed 2000 with moisture content to conform to current AWP standards.
- B. Kiln and Vapor Drying - average moisture content shall be 50% - 40% for Group A ties and 40% - 30% for Group B ties, after conditioning.

Inspection and Records - inspections shall be made and records retained by the contractor of the conditioning process in accordance with the latest AWP standards for review. Copies of reports shall be furnished upon request.



PAN AM RAILWAYS

1700 IRON HORSE PARK
NO. BILLERICA, MA 01862

6. TREATMENT:

Preservative - preservative treatment shall be a creosote-coal tar solution conforming to AWWA Standard P2. Preservative treatment shall be to a retention of seven pounds per cubic foot of wood or to refusal.

Inspection and Records – a sufficient number of borings shall be taken after treatment to determine proper retention and penetration according to latest standards of the AWWA and reports shall promptly be submitted covering each charge.

7. DELIVERY

Shipment – shipment shall be made by flatbed truck to the location(s) noted in the Invitation to Bid. Ties shall be bundled and care shall be taken during loading operations to avoid damaging the ties. Tally sheets which contain information identifying truck information, date shipped, number and grade of ties on truck and purchase order number shall be furnished to Pan Am Railways upon release of shipment.

Pan Am Railways will unload the cross ties at no cost to the supplier.

Federal Grant Compliance Requirements

Supplier further agrees with the Northern New England Passenger Rail Authority (referred to in this Addendum A as the "Authority") to comply with the following, to the extent applicable to Supplier. The parties agree that this document is not intended to enlarge or increase the applicability of any federal requirements to Supplier beyond those requirements that arise under federal law, regulation or the United States of America Department of Transportation Federal Transit Administration Master Agreement for Federal Transit Administration Agreements, as the same is amended from time to time by FTA, presently published at:

<https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/funding/grantee-resources/sample-fta-agreements/114766/fta-master-agreement-fy2018.pdf>

(the "Master Agreement") by virtue of Supplier's participation in the Project.

No Government Obligation to Third Parties. Supplier acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Recipient, Supplier or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Supplier agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud. Supplier recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.*, and U.S. DOT Regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions hereunder. Accordingly, by signing the Agreement, Supplier certifies and affirms the truthfulness and accuracy of any statement it has made, it makes, or may make pertaining to the activities covered hereunder. In addition to other penalties that may be applicable, Supplier also acknowledges that if it makes false, fictitious or fraudulent claims, statements, submissions, assurances, or certifications, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on Supplier to the extent the Federal Government deems appropriate.

Supplier recognizes that if Supplier makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal Government in connection with a project authorized under 49 U.S.C. chapter 53 or any other federal law, the Federal Government reserves the right to impose on Supplier the penalties of 49 U.S.C. § 5323(1), 18 U.S.C. § 1001 or other applicable federal law to the extent the Federal Government deems appropriate.

The Supplier 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.

Access to Records and Reports.

Record Retention. The Supplier will retain and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.

Retention Period. The Supplier agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Supplier shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) 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 records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

Access to Records. The Supplier agrees to provide sufficient access to FTA and its Suppliers to inspect and audit records and information related to performance of this contract as reasonably may be required.

Access to the Sites of Performance. The Supplier agrees to permit FTA and its Suppliers access to the sites of performance under this contract as reasonably may be required.

Federal Changes. Supplier shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Supplier's failure to so comply shall constitute a material breach of this contract.

Civil Rights and Equal Opportunity. - The Supplier agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Supplier agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Supplier shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

Nondiscrimination. In accordance with Federal transit law at 49 U.S.C. § 5332, the Supplier agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Supplier agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq.*, and Federal transit laws at 49 U.S.C. § 5332, the Supplier agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment

Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Supplier agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, 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 Supplier agrees to comply with any implementing requirements FTA may issue.

Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Supplier agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Supplier agrees to comply with any implementing requirements FTA may issue.

Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Supplier agrees that it will not discriminate against individuals on the basis of disability. In addition, the Supplier agrees to comply with any implementing requirements FTA may issue.

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

Energy Conservation. To the extent applicable to the services to be performed by Supplier hereunder, Supplier shall comply with the mandatory energy efficiency standards and policies within the applicable state energy conservation plans issued in compliance with the Energy Policy and Conservation Act.

Disadvantaged Business Enterprise. The Authority has adopted a Disadvantaged Business Enterprise and Women's Business Enterprise Policy in accordance with Federal Regulations issued by U.S. DOT (49 C.F.R. Part 26). This Policy provides that Disadvantaged Business Enterprises ("DBEs") and Women's Business Enterprises ("WBEs") will be afforded every practicable opportunity to participate in the

performance of contracts related to the Authority's construction, procurement and professional service activities. The Supplier shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Supplier shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the Supplier 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 the recipient deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying the Supplier from future bidding as non-responsible. 49 C.F.R. §26.13(b)

Prompt Payment. The Supplier is required to pay its Subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the Supplier's receipt of payment for that work from the Authority. In addition, is required to return any retainage payments to those Subcontractors within 30 days after the Subcontractor work related to this contract is satisfactorily completed.

Safe Operation of Motor Vehicles.

Seat Belt Use. The Supplier is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Supplier.

Distracted Driving. The Supplier agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contactor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

Termination Provisions.

Termination for Convenience.

The Authority shall have the right to terminate the Agreement for convenience, in accordance with 2 C.F.R. §200.339. Any termination for convenience by the Authority shall not excuse the Authority's obligations under the Agreement arising prior to the effective date of such termination.

Termination for Default (Breach or Cause).

If the Supplier does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Supplier fails to perform in the manner called for in the contract, or if the Supplier fails to comply with any other provisions of the contract, the Authority may terminate this contract for default. Termination shall be affected by serving a Notice of Termination on the Supplier

setting forth the manner in which the Supplier is in default. The Supplier will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the Authority that the Supplier had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Supplier, the Authority, after setting up a new delivery of performance schedule, may allow the Supplier to continue work, or treat the termination as a Termination for Convenience.

Opportunity to Cure.

The Authority, in its sole discretion may, in the case of a termination for breach or default, allow the Supplier an appropriately short period of time in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions.

If Supplier fails to remedy to NNEPRA's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within 10 days after receipt by Supplier of written notice from the Authority setting forth the nature of said breach or default, the Authority shall have the right to terminate the contract without any further obligation to Supplier. Any such termination for default shall not in any way operate to preclude the Authority from also pursuing all available remedies against Supplier and its sureties for said breach or default.

Waiver of Remedies for any Breach.

In the event that the Authority elects to waive its remedies for any breach by Supplier of any covenant, term or condition of this contract, such waiver by the Authority shall not limit the Authority's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

Supplier recognizes and agrees that the FTA may suspend or terminate the Project for various reasons set forth in the Master Agreement at Section 11, that such termination may act to cancel or invalidate certain obligations incurred by FTA prior to the termination date, and that such Termination may act to relieve the Authority of such obligations as well.

Suspension and Debarment. The Supplier shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Supplier shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;

- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the Supplier or proposer certifies as follows:

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

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

The Supplier must submit to The Authority the appropriate Buy America certification with its bid or offer. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

Resolution of Dispute, Breach or Other Litigation. FTA and the Authority have a vested interest in the settlement of any dispute, default, breach, or litigation involving any federally-assisted third-party contract. Supplier agrees to pursue all legal rights available under any third-party subcontract. FTA and the Authority reserve the right to concur in any compromise or settlement of any third-party subcontract claim involving Supplier. Supplier agrees to notify FTA and the Authority of any current or prospective major dispute, breach, default, or litigation pertaining to any third-party subcontract. If Supplier seeks to name the Federal Government or the Authority as a party to litigation for any reason, in any forum, Supplier agrees to inform the FTA and/or the Authority, as applicable, before doing so. The Federal Government retains the right to a proportionate share, based on the percentage of the Federal share committed to the Project, of any proceeds derived from any third-party recovery. If the third-party subcontract at issue contains a liquidated damages provision, Supplier agrees to credit any liquidated damages recovery to the Project unless the Federal Government permits otherwise.

In the event of any failure on the part of Supplier or the Authority to comply with any of its obligations contained in the Agreement and the continuation of such failure for a period of thirty (30) days after receipt of notice thereof from the other party, the other party shall have the right, at its option, to declare a default. Upon giving the party in default an additional notice of thirty (30) days and an opportunity to cure the default, the party not in default may terminate the Agreement. The rights to terminate shall be in addition to the other rights and remedies provided hereunder as well as those

available, at law or in equity, including claims for money damages and specific performance, which remedies will be cumulative.

Lobbying. Supplier agrees that it will not use Federal assistance funds received from the Authority to support lobbying or to pay any person or organization to influence or attempt to influence an officer or employee of any federal department or agency, a member of Congress, a member of a State legislature, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal grant, cooperative agreement, or any other Federal award used for the Project (“Lobbying”), and it will comply with applicable requirements of U.S. DOT regulations “New Restrictions on Lobbying,” 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352. Prior to execution of this Agreement Supplier has provided, and hereafter upon notice from the Authority’s Supplier will provide, to the Authority (i) a certification that Supplier has not used Federal assistance funds for Lobbying and (ii) if applicable, Supplier’s statement disclosing any Lobbying that it has undertaken with funds other than Federal appropriated funds. Supplier shall include the requirements of this paragraph in any third-party agreement with a Supplier or any subrecipient and require such Suppliers or subrecipients to extend applicable requirements to all SubContractors at any tier in connection with the Project. Supplier agrees to maintain a file with all such certifications as part of the records required to be maintained.

Clean Air and Clean Water. The Supplier agrees:

- 1) It will not use any violating facilities;
- 2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;”
- 3) It will report violations of use of prohibited facilities to FTA; and
- 4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

NORTHERN NEW ENGLAND PASSENGER RAIL AUTHORITY

CERTIFICATION OF A POTENTIAL PRIME CONTRACTOR (DIRECT THIRD-PARTY CONTRACTOR) REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

The Contractor _____, certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this proposal or bid had one or more public transactions (Federal, State or local) terminated for cause or default.
5. The potential Contractor agrees to provide the Authority with immediate written notice if, at any time, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Each Subcontractor or Vendor for the potential Contractor shall provide the same updated notice to the potential Contractor and the potential Contractor shall be solely responsible for collecting, updating and submitting updated information to the Authority.

NOTE: If for any reason the potential Contractor is unable to certify to any of the statements in this certification, the potential Contractor shall attach an explanation to this certification.

THE POTENTIAL CONTRACTOR, _____, CERTIFIES OR AFFIRMS THE TRUTHFULLNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION.

(Company Name)

DATE: _____

By: _____

Its _____

CERTIFICATION REGARDING LOBBYING
FOR
CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities" in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 21, U.S. Code. Any Person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Name of Organization: _____

Address: _____

City: _____

State: _____ Zip Code: _____

(Signature of Authorized Official)

(Title of Authorized Official)

(Date) _____



Northern New England Passenger Rail Authority
FTA America Certification

**BUY AMERICA CERTIFICATE
FOR COMPLIANCE WITH TITLE 49 USC § 5323(J)(1) (For
Procurement of Steel, Iron, or Manufactured Products)**

The Bidder/Proposer hereby certifies that it will comply with the requirements of Title 49 USC § 5323(j)(1) and the applicable regulations in 49 CFR Part 661.

Executed on: _____, 20 ____, at _____, _____
(Date) (City) (State)

Printed Name Signature of Authorized Official Title

BUY AMERICA CERTIFICATE FOR NON-COMPLIANCE WITH TITLE 49 USC §. 5323(J)(1)

The Bidder/Proposer hereby certifies that it cannot comply with the requirements of Title 49 USC § 5323(j)(1), but it may qualify for an exception pursuant to Title 49 USC § 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Executed on: _____, 20 ____, at _____, _____
(Date) (City) (State)

Printed Name Signature of Authorized Official Title