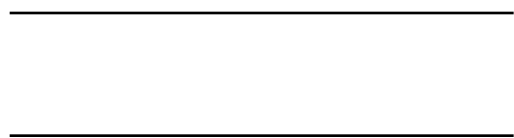




**NORTHERN NEW ENGLAND
PASSENGER RAIL AUTHORITY**

**Full Service Marketing/ Advertising Agency
Request for Proposals #23-Advertising Firm-002
Due April 21, 2023, 12:00 PM EST.**



Northern New England Passenger Rail Authority
75 West Commercial Street Suite 104
Portland, ME 04101
Phone: 207-780-1000
Fax: 207-780-1001
Email: www.nnepra.com

REQUEST FOR PROPOSALS (RFP)

The Northern New England Passenger Rail Authority, (NNEPRA), a public transportation authority that provides oversight of the Amtrak Downeaster passenger rail service between Brunswick, ME and Boston, MA is seeking proposals for a cost-effective, full service marketing/advertising agency to assist with ridership and revenue growth.

NNEPRA manages the budget, contracts, promotion, and customer services associated with the Amtrak Downeaster and participates in research and activities to support the growth and development of passenger rail and public transportation throughout Northern New England.

The purpose of this RFP is to seek and retain a qualified full service creative and media buying agency to work with NNEPRA staff and its contractors to plan, develop, and execute marketing programs for the Amtrak Downeaster that integrate paid, earned and owned channels and target multiple audiences to achieve performance goals. The selected agency will assist in the development and execution of initiatives that support NNEPRA's objectives including:

- A. Increase ridership and revenue on the Amtrak Downeaster
- B. Identify areas of untapped ridership potential and develop marketing strategies to address those areas
- C. Maximize visibility with a comprehensive annual advertising strategy utilizing a maximum paid media budget (approximately \$225,000 annually)
- D. Build brand awareness and loyalty

It is the intent of NNEPRA to contract with one (1) full-service marketing / advertising agency to provide the desired services for a period of one (1) year with an option to extend services on a year-to-year basis. NNEPRA is funded in part with federal funds and, therefore, any agency which contracts with NNERPA must comply with the provisions (see Attachment A: FTA Grant Compliance Requirements) provided by the Federal Transit Administration (FTA) for federally assisted contracts.

NNEPRA requires a written proposal, that addresses the points detailed in this RFP, from any agency wishing to be considered. Electronic proposals will not be accepted.

Proposals must be submitted to the Northern New England Passenger Rail Authority, 75 West Commercial Street, Suite 104, Portland, ME 04101, no later than 12:00 PM EST Friday, April 21, 2023. Proposals received later than the deadline will be rejected.

For more information about NNEPRA, please visit our website at www.nnepra.com.

Selection Timeline and Contract Terms:

Please note that dates below may be adjusted in order to comply with all procedural requirements associated with the contracting process. The actual contract start date will be established by a completed and approved contract.

Date	Phase
March 27, 2023	Advertisement of RFP
April 3, 2023 5:00PM EST	Deadline for agencies to submit written questions to NNEPRA
April 7, 2023	NNEPRA issues written responses to questions on www.nnepra.com
April 21, 2023, 12:00PM EST	Responses to RFP due to NNEPRA. Late submission will not be accepted and will be returned unopened.
April 26, 2023	Invitations to interview issued (if necessary)
May 3-5, 2023	Interviews (if necessary)
May 9, 2023	Recommendations made for award
May 15, 2023	NNEPRA awards contract

Following the initial term of the contract, NNEPRA may opt to renew the contract subject to the availability of funding and satisfactory performance (not to exceed 5 renewal periods). The term of the anticipated contract, resulting from the RFP is:

Period	Start Date	End Date
Initial Contract Period	May 15, 2023	June 30, 2024
Renewal Period 1	July 1, 2024	June 30, 2025
Renewal Period 2	July 1, 2025	June 30, 2026
Renewal Period 3	July 1, 2026	June 30, 2027
Renewal Period 4	July 1, 2027	June 30, 2028

NNEPRA has a total budget of \$350,000 for the Initial Contract Period of which approximately \$225,000 is targeted to paid media. Please note this is a ceiling and not a target.

Scope

The Scope of Services may include, but is not limited to the following during the Initial Contract Period:

- A. Collaborate with NNEPRA staff on strategic direction to achieve established objectives.
- B. Develop a creative strategy that builds upon the established Downeaster brand.

- C. Provide account support including regular/concise communication, budget management, timely billing, and campaign results/reporting. Attend on-site meetings as needed at the agency's expense.
- D. Produce creative materials for all paid, earned, and owned channels including digital (display, pre-roll, social media, and search), print and broadcast assets (TV/ CTV, radio, video) to include outdoor advertising, signage, sales materials, schedules, etc.
- E. Submit monthly reports that utilize agency expertise, tools, data, partnerships, and other resources to track effectiveness of advertising campaigns and measure return on investment.
- F. Produce and provide timely digital reporting documents that clearly identify digital media tactics, associated spend, with applicable metrics that outline campaign success. Reports should identify top performing placements, demographics, creative executions, and recommendations on further optimizations to best utilize campaign budget and to meet brand goals.
- G. Provide all support services for the AmtrakDowneaster.com website including hosting, security, website maintenance, website programming, software updates, and backup server data.
- H. Review and analyze the existing marketing strategies and develop and prepare strategic/cost effective annual media plans and recommendations to improve performance.
- I. Negotiate favorable media rates and execute media plans with cost effective planning, buying, audits and optimizations.
- J. Supply tradeshow and event support as needed.

Submittal Information

An original copy of agency proposals, along with three (3) complete copies must be submitted in a sealed envelope to:

*William R. Gayle
 NNEPRA Director of Policy and Administration
 75 West Commercial Street, Suite #104
 Portland, ME 04101*

In order to establish a uniform review process, all proposals shall include the following:

- I. Title Page: Include the Request for Proposal title and number, the name, address and telephone number of the proposing agency, name/title of primary agency contact person, and submission date.
- II. Table of Contents: Clearly identify the material by section and by page number.
- III. Letter of Transmittal: (limited to one page)
 - i. Briefly state the agency's understanding of the work to be performed, a positive commitment to perform the work and ability to meet defined

objectives. This should not include any speculative creative development.

- ii. Provide the names of the persons who will be authorized to make representations for the proposal, their titles, addresses, and telephone numbers.

IV. Agency Profile:

- i. Provide the address of the primary office from which the work is to be performed, disclose if your agency conducts any hybrid or remote work, as well as the number of partners, managers, supervisors, seniors, and other professional staff employed by that office.
- ii. Include a copy of the agency's most recent annual financial report.

V. Summary of Proposer's Qualifications

- I. Provide an overview of the agency and list all in house capabilities.
- II. Identify agency leadership and day-to-day staff who will work on the NNEPRA account and their relevant experience.
- III. Describe how you would onboard the Amtrak Downeaster as a client.
- IV. Describe one prior or present project that is most relevant to our brand that demonstrates your agency's qualifications to perform this work.
- V. Provide one example of client work that best represents your agency's ability to creatively and strategically execute a mass media campaign across multiple channels.
- VI. Provide one example that best represents your agency's ability to report on digital marketing campaigns and ROI for your client.
- VII. List any accounts lost during the past three (3) years and reasons.
- VIII. Disclose any potential conflicts of interest.

VI. Cost Proposal

- I. Provide a cost estimate for the initial contract period and renewal period(s). List rates for all available services (in-house and subcontracted), plus hourly fee schedule for all staff that might be assigned to the account.

VII. Signed Certifications:

- I. The Certification form included in this package as Attachment A must be signed by an authorized official and submitted with bidder's proposal.

Other Proposal Requirements

- VIII. All proposals are limited to a total of 20 pages including all signed certifications.
 - a. Signed acknowledgement of all, addendums such as Question and Answer Summary, must be included in proposal.
 - b. Elaborate proposals in the form of brochures or other presentations beyond that necessary to present a complete and effective proposal are not desired.
- IX. Proposals shall be valid for 90 days from the date of submission and are not subject to withdrawal.

Interviews

One or more proposers may be selected for an in-depth interview before the contract is awarded.

Evaluation of Proposals

Proposals received will be reviewed to assure they are responsive to the RFP requirements. Proposals deemed responsive will then be reviewed and scored by an evaluation committee in accordance with the criteria below.

I. Completeness of Proposal (10 points)

- Quality of proposal.
- Comprehensive, organized proposal that addresses all areas of the RFP.
- Includes required signatures / signed certifications.

II. Qualifications, Experience, and Availability of the personnel to be assigned (55 points)

- Ability to provide the full range of agency services required.
- Understanding of NNEPRA's needs/objectives as outlined.
- Relevant qualifications, technical skills and availability of key personnel assigned to account.
- Demonstrated understanding of New England marketplace and effective geotargeting and segmentation strategies.

III. Cost of proposal (35 points)

- Both the lowest overall cost and the hourly cost per person may be considered in this category.

The committee may perform preliminary scoring of proposals and choose to interview the top scoring agency(ies), after which scoring will be finalized.

Questions regarding this proposal for services must be made in writing and submitted to the address below by 5:00 PM EST April 7, 2022:

William R. Gayle
NNEPRA Director of Policy and Administration
75 West Commercial Street, Suite #104
Portland, ME 04101
Or via e-mail: william@nnepra.com

Please include "RFP#23-Advertising Firm-002" in the subject line of all e-mail questions. Responses to all questions will be compiled in writing and posted on the NNEPRA

website (<http://www.nnepra.com>) no later than seven (7) calendar days prior to the proposal due date. **It is the responsibility of all interested parties to visit this website to obtain a copy of the Question & Answer Summary and provide signed acknowledgement as a part of their proposal package.**

No telephone inquiries will be accepted.

NNEPRA reserves the right to waive formalities, to accept any proposal, or to reject any and all proposals for any reason.

Any costs incurred by proposers in preparing or submitting offers are the proposer's sole responsibility; NNEPRA will not reimburse any proposer for any costs incurred prior to award.

Attachment A: FTA Grant Compliance Requirements

Federal Grant Compliance Requirements

Contractor/Vendor (Contractor) 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 Contractor. The parties agree that this document is not intended to enlarge or increase the applicability of any federal requirements to Contractor/Vendor 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/2022-11/FTA-Master-Agreement-v30-2022-11-02_0.pdf

(the "Master Agreement") by virtue of Contractor/Vendor's participation in the Project.

No Government Obligation to Third Parties.

Contractor acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Recipient, 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 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.

Contractor 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, Contractor certifies and 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, Contractor 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 Contractor to the extent the Federal Government deems appropriate.

Contractor recognizes that if Contractor makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal

Government of 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 Contractor 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 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.

Access to Records and Reports.

Record Retention. The Contractor 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 Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor 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 Contractor agrees to provide sufficient access to FTA and its contractors 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 Contractor agrees to permit FTA and its contractors' access to the sites of performance under this contract as reasonably may be required.

Federal Changes.

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

Civil Rights and Equal Opportunity.

The Contractor agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal

laws or regulations, the Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. 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 Contractor agrees to take 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 Contractor 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 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.

Equal Employment Opportunity Requirements for Construction Activities. Contractor agrees to comply, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), with: (a) U.S. DOL regulations, "Office of Federal

Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. chapter 60, and (b) 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.

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 Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor 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 Contractor 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 Contractor hereunder, Contractor 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 Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. 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 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 contractor from future bidding as non-responsible. 49 C.F.R. §26.13(b)

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

ADA Access.

To the extent applicable to the services to be performed by Contractor hereunder, Contractor agrees to comply with all applicable employment and accessibility requirements of the American with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101 *et seq.*, Section 504 Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; 49 U.S.C. § 5301(d), 42 U.S.C. §§ 4151 *et seq.*, and the following applicable regulations:

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

Safe Operation of Motor Vehicles.

Seat Belt Use. The Contractor 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 Contractor.

Distracted Driving. The Contractor 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 Contractor 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 Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor 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 Contractor setting forth the manner in which the Contractor is in default. The Contractor 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 Contractor 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 Contractor, the Authority, after setting up a new delivery of performance schedule, may allow the Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor. Any such termination for default shall not in any way operate to preclude the Authority from also pursuing all available remedies against Contractor 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 Contractor 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.

Contractor 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 Contractor 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 Contractor 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 bidder 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 bidder 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 bidder 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 bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

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. Contractor 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 Contractor. Contractor 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 Contractor seeks to name the Federal Government or the Authority as a party to litigation for any reason, in any forum, Contractor 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, Contractor 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 Contractor 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.

Contractor 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 Contractor has provided, and hereafter upon notice from the Authority’s Contractor will provide, to the Authority (i) a certification that Contractor has not used Federal assistance funds for Lobbying and (ii)

if applicable, Contractor's statement disclosing any Lobbying that it has undertaken with funds other than Federal appropriated funds. Contractor shall include the requirements of this paragraph in any third-party agreement with a Contractor or any subrecipient and require such Contractors or subrecipients to extend applicable requirements to all Subcontractors at any tier in connection with the Project. Contractor agrees to maintain a file with all such certifications as part of the records required to be maintained.

Clean Air and Clean Water.

The Contractor 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

Patent Rights.

If any invention, improvement or discovery is conceived or if it is actually reduced to practice in the course of or under Contractor's performance under the Agreement, 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 the Authority immediately and provide a detailed report. Unless the Federal Government later makes a contrary determination in writing, the rights and responsibilities of the Authority, Contractor, any Subcontractor and the Federal Government pertaining to that invention, improvement or discovery will be determined in accordance with applicable Federal laws and regulations and including any waiver thereof. Unless the Federal Government later makes a contrary determination in writing, Contractor agrees that, irrespective of its status or the status of any Subcontractor/Vendor (at any tier), Contractor will transmit to FTA those rights due the Federal Government in any invention resulting from the Agreement as described in U.S. Department of Commerce Regulations, "Rights Inventions Made by Nonprofit Organizations and Small Business Agencies Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

Rights in Data and Copyrights.

Contractor agrees that all ownership, property and copyrights throughout the world in any photographs, artwork, logos, trade names, trademarks, service marks, copy, text or information assembled or created pursuant to the Agreement ("Material") shall belong to and hereby are assigned to the Authority. In accordance with 49 C.F.R. §§ 18.34 and 19.36, the Federal Government has reserved 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 Material developed under the contract or

any subcontract, whether or not a trade name, trademark or service mark has been developed, or a copyright has been obtained or any other property right registered; and (ii) any such rights that the Authority or Contractor may purchase or otherwise acquire ownership.

Contractor may not publish or reproduce any recorded information, whether or not copyrighted, that is delivered or specified to be delivered to the Federal Government under a grant agreement between the Authority and any agency of the Federal Government ("Subject Data"), in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without in each instance, the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public. All copyrights in any information created pursuant to this Agreement shall belong to and hereby are assigned to the Authority. In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government 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 Subject Data developed under this Agreement or any subcontract under this Agreement, whether or not copyright has been obtained; and (ii) any rights of copyright to which the Authority or Contractor purchases ownership with Federal Assistance. Without limiting the generality of the foregoing, under certain circumstances, the Federal Government may make available Subject Data derived under this Agreement or a copy of Subject Data first produced under this Agreement to other grant recipients or Municipalities. Contractor agrees to indemnify, save and hold harmless the Authority and FTA against any liability including costs and expenses resulting from any willful or intended violation by Contractor or its Contractors and Subcontractor/Vendors at any tier, of property rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Project.

Fly America.

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

NORTHERN NEW ENGLAND PASSENGER RAIL AUTHORITY

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

The Potential 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
AFAGENCY'S THE TRUTHFULLNESS AND ACCURACY OF THE CONTENTS OF THE
STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT
THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

(Company Name)

DATE:

By: _____

Its _____

**NORTHERN NEW ENGLAND PASSENGER RAIL AUTHORITY
CERTIFICATION OF RESTRICTIONS ON LOBBYING**

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 any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for 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 the its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is 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 31, 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.

Date: _____

Name of Organization: _____

Address: _____

City: _____

State: _____ Zip Code: _____

Signature of Authorized Official

Title of Authorized Official