



Audit Services

Request for Proposal #23-Audit Services-003

Proposals Due: May 16, 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), is a public transportation authority that provides oversight of the Amtrak Downeaster passenger rail service between Brunswick, ME and Boston, MA.

The purpose of this RFP is to acquire the services of an independent accounting firm to fulfill the requirements of the Single Audit Act of 1984, PL 98-502 as amended in 1996, State of Maine and National Transit Database reporting requirements. The selected accounting firm will perform annual financial and compliance audits of NNEPRA's financial operations. In addition, the audit must comply with the requirements of the Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP).

NNEPRA, a component unit of the State of Maine, was formed June 29, 1995 to initiate, establish and maintain regularly scheduled passenger rail service between points within and outside Maine. NNEPRA has from time-to-time various construction contracts to rehabilitate the railroad lines over which it provides service. Downeaster service is provided under an operating agreement with the National Railroad Passenger Corporation (AMTRAK).

Financial activity of NNEPRA is accounted in a proprietary fund on a full accrual basis and uses SAGE accounting system. The total operating budget for State Fiscal Year 2023 is \$27,942,041. NNEPRA is not required to adopt a legal budget. Therefore, a comparison of budget to actual is not presented in the financial statements. A single audit has been obtained for all financial activity since its inception and NNEPRA has received unqualified opinions and has had no findings.

NNEPRA has no taxing power and is a recipient of State of Maine capital and operating funds, U.S. Department of Transportation Federal Transit Administration (FTA) capital and operating program funds and Federal Railroad Administration (FRA) capital grant funds. The Office of Management and Budget has designated the U.S. Department of Transportation as the cognizant federal audit agency.

NNEPRA requires a written proposal, that addresses the points detailed in this RFP to be considered. **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 May 16, 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:

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
April 25, 2023	Advertisement of RFP
April 28, 2023 5:00PM EST	Deadline for proposers to submit written questions to NNEPRA
May 2, 2023	NNEPRA issues written responses to questions on www.nnepra.com
May 16, 2023, 12:00PM EST	Responses to RFP due. Late submission will not be accepted and will be returned unopened
May 19, 2023	Invitations to interview issued (if necessary)
May 22-24, 2023	Interviews (if necessary)
May 26, 2023	NNEPRA awards Contract

Scope of Services

- a) General
Audits shall be conducted in accordance with generally accepted government auditing standards (GAGAS) for financial and compliance audits.

- b) Financial Statements
The auditor shall determine whether the Basic Financial Statements and related schedules are presented fairly in conformity with accounting principles generally accepted in the United States (GAAP). The auditor shall also determine whether the schedule of expenditures of federal awards is presented fairly in all material respects in relation to NNEPRA's financial statements as a whole.

- c) Internal Control
GAGAS requires that an auditor determine and report whether there are any material weakness in internal control as they relate to the financial statements. In addition, as a condition for receiving financial awards, the Uniform Guidance requires that NNEPRA establish and maintain sufficient internal control to provide reasonable assurance that it complies with all other federal requirements and to support a low assessed level of control risk. The auditor shall determine and report whether NNEPRA's internal controls provide reasonable assurance that it is managing federal awards in compliance with applicable federal laws and regulations.

- d) Compliance
GAGAS requires that an auditor determine and report whether there are any

material weakness in compliance as they relate to the financial statements. Also, according to the Uniform Guidance, the auditor shall determine whether NNEPRA has complied with laws, regulations, and the provisions of contracts or grant agreements that may have a direct and material effect on each of its major programs. The Compliance Supplement (Supplement) identifies existing compliance requirements, which the Federal government expects to be considered as part of a single audit. The Supplement also provides guidance to assist auditors in determining compliance requirements relevant to the audit, audit objectives, and suggested procedures for programs not specifically included. According to OMB, auditors shall use the Compliance Supplement in determining compliance requirements. NNEPRA's major programs are under Catalog of Federal Domestic Assistance Numbers 20.500 and 20.507, which are included in the Supplement under the Federal Transit Program Cluster.

e) Audit Follow-up

It is NNEPRA's responsibility to follow up on prior audit findings. The auditor shall perform procedures to assess the accuracy of the summary schedule of prior audit findings. The auditor shall perform audit follow-up procedures whether or not a prior audit finding relates to a major program in the current year.

f) Audit Reporting Requirements

There are various reporting requirements imposed by the Government Accountability Office (GAO), the Single Audit, the State of Maine, Office of the State Controller and the Federal Transit Administration. The auditor will be responsible for providing an opinion on the financial statements, issuing any additional reports and schedules required by the GAO, the Uniform Guidance and completing and signing specified sections of the Data Collection Form.

Two separate reporting packages will be required for the financial reports and single audit. The auditor shall provide 15 copies of the audited Basic Financial Statements. In addition, sufficient copies will be provided to comply with single audit reporting requirements. The single audit package shall contain the single audit reports and schedules as well as the Basic Financial Statements. The auditor will also provide NNEPRA with an electronic version of all reports in PDF format.

The auditor will be responsible for completing any GASB 34 reports or schedules required by the State of Maine, Office of the State Controller as required by their annual Closing Package.

Finally, a separate management letter shall be issued to include observations and recommendations affecting future financial reporting, internal control, and other operational issues.

g) Deadlines for Reporting

The audit must be completed and the required financial information submitted to the Office of the State Controller by the deadline established by that office. The reporting packages for the Basic Financial Statements and single audit with the electronic versions must be provided by October 15th. The Data Collection Form must be available for submission to the Single Audit Clearinghouse by the deadlines prescribed by the Federal government.

h) Audit Work Papers

Work papers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit working papers shall be made available upon request to the cognizant agency or its designee, the General Accountability Office or other granting agencies at the completion of the audit at no additional cost.

Minimum Qualifications

The following are the minimum required qualifications for the auditors:

- a) The auditor shall be a certified public accounting firm;
- b) The auditor meets the independence standards of the U.S. General Accountability Office's Government Auditing Standards, (GAGAS) as revised;
- c) Supervisory personnel (partners, managers) of the firm shall have at least five years of experience in the audit of government organizations. These governmental audits shall be comparable in complexity and size to NNEPRA and have included audits of federal awards in accordance with the Uniform Guidance;
- d) The auditors have had experience in State of Maine Office of the Controller filing requirements for GASB 34;
- e) The firm shall be members of, or plan to apply to be members of, before final contracting, the American Institute of Certified Public Accountants Governmental Audit Quality Center;
- f) Supervisory personnel on the contract shall be licensed members of the American Institute of Certified Public Accountants and;
- g) The firm shall have prior experience with the transit industry.

Proposal Submittal Information

An original copy of proposals, must be emailed or submitted in a sealed envelope to by the deadline to:

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

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 company, name/title of primary contact person, and submission date.
- II. Table of Contents: Clearly identify the material by section and by page number.
- III. Letter of Transmittal: (limit to one or two pages)
 - i. Briefly state your understanding of the work to be performed, a positive commitment to perform the work and ability to meet defined objectives.
 - ii. Provide the names of the persons who will be authorized to make representations for the proposal, their titles, addresses, and telephone numbers.
- IV. Company Profile:
 - i. State whether the firm is local, national or international.
 - ii. State whether the firm is certified in Maine.
 - iii. Give the location of the office from which the work is to be done and the number of partners, managers, supervisors, seniors and other professional staff employed at that office.
 - iv. Describe the range of activities performed by the local office such as audit, accounting, tax service or management services.
- V. Summary of Company's Qualifications
 - i. Identify the partners, managers and supervisors who will work on the audit, including staff from other than the local office. Resumes from each supervisory person to be assigned to the audit shall be included as an appendix. Indicate whether staff for this engagement complies with Government Auditing Standards concerning requirements for continuing professional education.
 - ii. State whether the firm has undergone peer review or participated in practice monitoring by the American Institute of CPA's or complies with stipulations of the Maine Society of CPA's. If yes, the firm shall include its most recent peer review letter with any letter of comments or matter for further consideration.
 - iii. Describe recent local and regional offices auditing experience similar to the type of audit requested and give the names and telephone numbers

- of client officials responsible for three of the audits.
- iv. The firm shall disclose whether it has had any single audit reports or working papers reviewed by a federal or state agency. If so, please indicate the agency, circumstances and results of the review and any corrective action taken.
- VI. Cost Proposal
- i. Estimate the total hours and the resulting all-inclusive maximum fee for each year's audit work, years 1 through 5.
 - ii. An appendix stating the hourly rates to be charged for each staff classification is required.
 - iii. The auditor shall not be reimbursed for any travel, per diem, photocopying, telephone bills or other related expenses of the audit unless incurred at the specific request of NNEPRA.
- VII. Signed Certifications:
- I. The Certification forms included in this package as Attachment A must be signed by an authorized official and submitted with the proposal.
- VIII. Other Proposal Requirements:
- i. Proposals shall be valid for 30 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 (40 points)*
 - Relevant and proven experience in government auditing
 - Relevant and proven experience with the transit industry
 - Ability to provide full range of required services
 - Understanding of NNEPRA's needs/objectives as outlined
- III. Cost of proposal (50 points)*
 - Both lowest annual fee and overall lowest price may be considered in this category.

The committee may perform preliminary scoring of proposals and choose to interview the top scoring company(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 28, 2023:

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

Or via e-mail: william@nnepra.com

Please include “RFP#23-Audit Services-003” 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 May 2, 2023. It is the responsibility of all interested parties to visit this website to obtain a copy of the Question & Answer Summary.

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/2022-02/FTA-Master-Agreement-v29-2022-02-07.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 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 affirmative action to ensure that applicants are employed, and that employees are treated fairly 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, the Contractor 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 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 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