



Commercial Products & Services Agreement
Pursuant to Bid Solicitation / Request for Proposal
Solicitation /Project number 11314.6 - 1

Date: 09/2/2025 – Addendum -01

NOTICE TO ASPA BIDDERS / OFFERORS

From: Alabama State Port Authority
Attn: NiChelle Flynn / Brian Doyle
P.O. Box 1588
Mobile, AL 36633

In Support of: – Montgomery Intermodal Container Transfer Facility Project, (ICTF)
Montgomery, Al 36108

Subject: SPECIFICATIONS AND CONTRACT DOCUMENTS FOR:

Project Name: **PROJECT No. 11314.6 – 1**
(ICTF Material Handling Equipment)
Container Reach Stacker; 6000 Lb. Forklift; Terminal Tractor

Douglas C. Otto, Jr., P.E., Interim Director

Kay Ivey, Governor of Alabama

ISSUED BY

Procurement Department



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This is a combined synopsis/solicitation for commercial items/ equipment prepared in accordance with the format in FAR Part 12 and FAR Part 15, as supplemented with additional information included in this notice. This combined synopsis announcement constitutes the only solicitation; proposals are being requested and a written solicitation will not be issued. Solicitation / Project number 11314.6 - 01 is issued as a Request for Proposal (RFP). This solicitation document and incorporated provisions and clauses are those in effect through Federal Acquisition Circular 2025-02, effective 03 January 2025.

The applicable North American Industry Classification Standard Code is 333924. The small business size standard is 900 employees. The contract type will be a Firm Fixed Price contract award. All responsible sources may submit a proposal which shall be considered by the Alabama State Port Authority.

The list of items and quantities can be found on “Attachment 1 – Schedule of Supplies – Bidding Schedule (BS): BS-1; BS-2; BS-3”.

Only the items requested in this solicitation will be considered for award.

NOTE: NO DRAWINGS, SPECIFICATIONS OR SCHEMATICS ARE AVAILABLE FROM THIS AGENCY.

SEE EXHIBIT A - [SCHEDULE OF SUPPLIES & SPECIFICATIONS, BID SCHEDULES, AND OTHER IMPORTANT ITEMS]

SEE EXHIBIT B – FEDERAL RAILROAD ADMINISTRATION (FRA) CONTRACT PROVISIONS

“TERMS AND CONDITIONS” FOR APPLICABLE CLAUSES, INSTRUCTIONS AND EVALUATION CRITERIA.

Closing date and time for receipt of offers is 09/18/2025 at 2:00 PM Central Time. Anticipated award date is on or about 09/29/2025. E-mail your proposal to: procurementandcontracting@alports.com
Please indicate Solicitation / Project number 11314.6 - 01 in the subject line.



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This Commercial Products & Services Agreement between ("You"), as an independent contractor, and the Alabama State Port Authority provides for your performance of specified services in accordance with the terms outlined below, with the Standard General Terms and Conditions on page 2 hereof, and with the Alabama State Port Authority's Commercial Products and Services Master Agreement included herewith (together with exhibits, schedules and specifications attached thereto, the "Agreement").

Description of Services: Furnish/ Deliver Equipment per Exhibit A, to ICTF Montgomery Al.

Service Performance Dates: Through completion

Fee: Reference Exhibit "A"

Check One: ☒ You are solely responsible for any costs and expenses that you incur in performing the services.
☐ You will be reimbursed for reasonable transportation and subsistence expenses.
☐ You will be reimbursed_% of fee for expenses.

Payment Terms: ☐ Due Upon Receipt ☐ Net 7 days ☐ Net 10 days ☒ Net 30 days
☐ Net 45 days

Payment Milestones: Reference "INVOICING SCHEDULE / PAYMENT TERMS/ MILESTONES"

Please signify your acceptance of the terms and conditions of this Agreement by signing below as indicated.

Alabama State Port Authority

Accepted by:

Douglas C. Otto, Jr., P.E., Interim Director Date

Person name Date

As: _____
Corporation Representative



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Standard General Terms and Conditions

These Standard General Terms and Conditions are incorporated into and are a material part of the Commercial Products & Services Agreement (the “Agreement”) between You and the Alabama State Port Authority (“ASPA”).

1. The ASPA’s sole obligation to You is the fee listed on this Agreement, and unless otherwise provided for in the Agreement, that fee is in full payment for your services, all necessary licenses and other governmental approvals, all equipment all expenses and costs, including transportation and subsistence expenses, needed for the performance of your services. You must obtain the ASPA’s prior written consent before performing or incurring any additional services or expenses, or the ASPA shall have no obligation to pay You for unapproved additional services or expenses.
Moreover, if at any time prior to the ASPA’s release of funds in payment of this fee, the ASPA discovers that You are indebted to any department of the ASPA, then You authorize the ASPA to offset the amount of funds owed to You for services performed under this agreement by the total amount You owe the ASPA.
2. RESERVED.
3. You are solely responsible for the timely payment of all federal, state, and local taxes or contributions with respect to your performance of this Agreement. However, The Alabama State Port Authority will utilize its sales tax exemption status on this project. Accordingly, all pertinent information, documents, and forms necessary to process the exemption will be forwarded to the service provider during the contract award process.
4. RESERVED.
5. You are an independent contractor and nothing in this Agreement shall be deemed to create any partnership, joint venture, association, or syndicate between us; or to confer upon You any express or implied right or authority to enter into any agreement, express or implied, or to incur any



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obligation on behalf of the ASPA. You are solely responsible for your acts and for the acts of your agents, employees, and subcontractors, if any, during the performance of this Agreement.

6. RESERVED.
7. By accepting payments agreed to in this Agreement, You certify that to your actual knowledge no ASPA employee or official, and no family members of an ASPA employee or official, will receive a benefit from these payments, except as been previously disclosed, in writing, to the ASPA.
8. The laws of the State of Alabama shall govern the construction of this Agreement, without regard to conflicts of laws principles. Any claim against ASPA arising from this Agreement shall be filed with the Alabama State Board of Adjustment.
9. This Agreement constitutes the entire agreement of the parties with respect to its subject matter and all prior understandings and agreements between the parties are merged into this Agreement. This Agreement may not be amended or modified except by a writing signed by all of the parties.
10. You agree to perform your services consistent with applicable industry standards and in accordance with the terms and conditions set forth in this Agreement.
11. RESERVED
12. NOTE: If there are any consistencies between the Standard General Terms and Conditions and the Commercial Products & Services Terms stated within this Request for Proposal, then the Commercial Products & Services Terms shall control.



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Commercial Products & Services Agreement

This Commercial Products & Services Agreement (this "**Agreement**"), dated as of [DATE] (the "**Effective Date**"), is entered into by and between _____ ("**Service Provider**") and the Alabama State Port Authority, an agency of the State of Alabama, with offices located at 250 N. Water Street, Mobile, Alabama 36602 ("**Customer**") and together with the Service Provider, the "**Parties**", and each a "**Party**").

Service Provider has the capability and capacity to provide new equipment; as described in Exhibit A, (the "**Product**"); and Customer desires to retain Service Provider to provide the Product(s) under the terms and conditions hereinafter set forth, and Service Provider is willing to provide the Product under such terms and conditions.

In consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Service Provider and Customer agree as follows:

1. Services.

1.1 Service Provider shall provide to Customer the Product and (if applicable) the Services as set out in one or more statements of work to be issued by Customer and accepted by Service Provider (each, a "**Statement of Work**"). The initial accepted Statement of Work is attached hereto as **Exhibit A**. Additional Statements of Work substantially in the same form as the Statement of Work attached hereto shall be deemed accepted and incorporated into this Agreement. only if signed by the Service Provider Contract Manager (as defined in Section 2.1(a) below) and the Customer Contract Manager (as defined in Section 3.1 below), appointed pursuant to Section 2.1(a) and Section 3.1, respectively. The Service Provider shall provide the Services (a) in accordance with the terms and subject to the conditions set forth in the applicable Statement(s) of Work and this Agreement; (b) using personnel of required skill, experience, and qualifications; (c) in a timely, workmanlike, and professional manner; (d) in accordance with the generally recognized industry standards in Service Provider's field.

1.2 For the sake of clarity, nothing in this Agreement shall be construed to prevent the Customer from performing for itself or from acquiring from other providers services that are similar to or identical to the Services.



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2. Service Provider Obligations. Service Provider shall:

2.1 Appoint representatives to the following positions after obtaining Customer's consent, which consent shall not be unreasonably withheld or delayed:

- (a) A primary contact to act as its authorized representative with respect to all matters pertaining to this Agreement (the "**Service Provider Contract Manager**").

2.2 Make no changes in the Service Provider Contract Manager except:

- (a) With the prior consent of Customer, which consent shall not be unreasonably withheld or delayed.
- (b) At the request of Customer, in which case the Service Provider shall use commercially reasonable efforts to promptly appoint a replacement.
- (c) Upon the resignation, termination, death, or disability of the existing Service Provider Contract Manager.

2.3 Assign only qualified, legally authorized employees of Service Provider or legally authorized designees of the Service Provider, to provide the Services and fabricate the Product.

2.4 Comply with all applicable laws and regulations in providing the Services and the Product.

2.5 Comply with all Customer rules, regulations, and policies of which it has been made aware, in its provision of the Services and the Product.

2.6 Maintain complete and accurate records relating to the fabrication and delivery of the Product and the provision of the Services under this Agreement.

3. Customer Obligations. Customer shall:

3.1 Designate one of its employees to serve as its primary contact with respect to this Agreement and to act as its authorized representative with respect to matters pertaining to this Agreement (the "**Customer Contract Manager**"), with such designation to remain in force unless and until a successor Customer Contract Manager is appointed, in Customer's reasonable discretion.



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3.2 Require that the Customer Contract Manager respond promptly to any reasonable requests from the Service Provider for instructions, information, or approvals required by the Service Provider to provide the Product and the Services.

4. Fees and Expenses.

4.1 In consideration of the Product to be furnished and the Services to be performed under this Agreement, the Customer shall pay to Service Provider a fee determined in accordance with the fee schedule set out in each Statement of Work. Unless otherwise provided in the Statement of Work, said fee will be payable within {30} days of receipt by the Customer of an undisputed invoice from the Service Provider accompanied by documentation reasonably requested by the Customer evidencing all charges.

4.2 Customer shall reimburse Service Provider for all reasonable expenses incurred in accordance with the Statement of Work, if such expenses are not included in the price quoted for the Product and/or the Services, have been pre-approved, in writing by the Customer Contract Manager, within 30 days of receipt by the Customer of an invoice from Service Provider accompanied by receipts and supporting documentation acceptable to the Customer and conforming to the requirements of Customer's standard expense reimbursement policy, a copy of which is attached as **Exhibit B, (incorporated by reference, provided separately)**. All permitted Service Provider expenses not pre-approved by the Customer Contract Manager or not otherwise meeting the requirements of this Agreement or the Statement of Work to which it applies shall be the sole responsibility of the Service Provider.

4.3 The fees set forth in this Agreement shall cover and include all sales and use taxes, duties, and charges of any kind imposed by any federal, state, or local governmental authority on amounts payable by Customer under this Agreement, and in no event shall Customer be required to pay any additional amount to Service Provider in connection with such taxes, duties, and charges, or any taxes imposed on, or regarding, Service Provider's income, revenues, gross receipts, personnel, or real or personal property or other assets. The Alabama State Port Authority will utilize its sales tax exemption status on this project.

5. Intellectual Property.

5.1 The Service Provider assigns Customer rights only to custom deliverables specifically created for the customer under this agreement and listed on Exhibit A. Service Provider retains all rights to pre-existing intellectual property, including methodologies, software, tools, techniques, designs, processes, and know-how used in performing the Services. Any improvements or enhancements to Service Provider's pre-existing intellectual property remain the exclusive property of Service Provider, even if developed during the performance of this agreement.



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5.2 Service Provider retains ownership of all pre-existing intellectual property, including but not limited to the items listed in Exhibit A, as well as all methodologies, software, tools, techniques, designs, processes, and know-how developed by Service Provider prior to or independent of this Agreement, even if not specifically listed in Exhibit A. Customer acknowledges that Service Provider may use such pre-existing intellectual property in the performance of the Services, and nothing in this Agreement shall transfer ownership of such pre-existing intellectual property to Customer.

6. Confidentiality. All non-public, confidential, or proprietary information of a Party ("Confidential Information"), including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates[,/[OTHER ITEMS RELEVANT TO THE TRANSACTION,] disclosed by one Party to the other Party, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential," in connection with this Agreement is confidential, solely for such disclosing Party's use in performing this Agreement, and may not be disclosed or copied unless authorized by the disclosing Party in writing. Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of the receiving Party's breach of this Agreement; (b) is obtained by the receiving Party on a non-confidential basis from a third-party that was not legally or contractually restricted from disclosing such information; (c) the Receiving Party establishes by documentary evidence, was in the Receiving Party's possession prior to the disclosing Party's disclosure hereunder; or (d) was or is independently developed by the receiving Party without using any Confidential Information]. Upon the disclosing Party's request, the receiving Party shall promptly return all documents and other materials received from the disclosing Party. The disclosing Party shall be entitled to injunctive relief for any violation of this Section.

7. Term, Termination, and Survival.

7.1 This Agreement shall commence as of the Effective Date and shall continue thereafter until the delivery and installation of the Product and the completion of the Services under all Statements of Work/for a period of [TERM]] (the "**Term**") unless sooner terminated pursuant to Sections 7.2 and 7.3

7.2 Customer may terminate this Agreement or any Statement of Work, in whole or in part, upon thirty (30) days' written notice. In the event of termination by Customer for convenience, Customer shall pay Service Provider for: (1) all Services performed through the termination date; (2) all materials ordered that cannot be canceled; (3) all non-cancelable commitments made by Service Provider; and (4) a termination fee equal to 15% of the remaining contract value to compensate for mobilization costs and lost opportunity.

7.3 Either Party may terminate this Agreement, effective upon written notice to the other Party (the "**Defaulting Party**"), if the Defaulting Party:



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- (a) Materially breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within thirty (30) days after receipt of written notice of such breach.
- (b) Becomes insolvent or admits its inability to pay its debts generally as they become due.
- (c) Becomes subject, voluntarily, or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within ten (10) business days or is not dismissed or vacated within forty-five (45) days after filing.
- (d) Is dissolved or liquidated or takes any corporate action for such purpose.
- (e) Makes a general assignment for the benefit of creditors.
- (f) Has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

7.4 Upon expiration or termination of this Agreement for any reason, Service Providers shall promptly:

- (a) Deliver to Customer all documents, work product, and other materials, whether or not complete, prepared specifically for Service Provider in the course of performing the Services as stipulated in Section 5.1 of this Agreement and for which Customer has paid.
- (b) Return to the Customer all Customer-owned property, equipment, or materials in its possession or control.
- (c) Remove any Service Provider-owned property, equipment, or materials located at Customer's locations.
- (d) Deliver to the Customer, all documents, and tangible materials (and any copies) containing, reflecting, incorporating, or based on Customer's Confidential Information.
- (e) Provide reasonable cooperation and assistance to Customer in transitioning the Services to an alternate service provider.



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- (f) On a pro rata basis, repay all fees and expenses paid in advance for any Services which have not been provided.
- (g) Permanently delete all of Customer's Confidential Information from its computer systems.
- (h) Certify in writing to Customer that it has complied with the requirements of this Section 7.4.

7.5 The rights and obligations of the Parties set forth in this Section 5 and Section 6, Section 7, Section 8, Section 9, Section 10, Section 12, Section 14, Section 21, Section 22 and Section 23, and any right or obligation of the Parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement, and with respect to Confidential Information that constitutes a trade secret under applicable law, the rights and obligations set forth in Section 6 hereof will survive such termination or expiration of this Agreement until, if ever, such Confidential Information loses its trade secret protection other than due to an act or omission of Service Provider or its affiliates and its or their employees, officers, directors, shareholders, partners, members, managers, agents, independent contractors, service providers, sublicensees, subcontractors, attorneys, accountants, and financial advisors.

8. Independent Contractor.

8.1 It is understood and acknowledged that the Product and Services which Service Provider will provide to Customer hereunder shall be in the capacity of an independent contractor and not as an employee or agent of the Customer. The Service Provider shall control the conditions, time, details, and means by which Service Provider furnishes the Product and performs the Services. The Customer shall have the right to inspect the work of Service Provider as it progresses solely for the purpose of determining whether the work is completed according to the applicable Statement of Work.

8.2 Service Provider has no authority to commit, act for or on behalf of the Customer, or to bind the Customer to any obligation or liability.

8.3 Service Provider shall not be eligible for and shall not receive any employee benefits from Customer and shall be solely responsible for the payment of all taxes, FICA, federal and state unemployment insurance contributions, state disability premiums, and all similar taxes and fees relating to the fees earned by Service Provider hereunder.



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9. Indemnification. To the extent permitted under applicable law, Service Provider shall indemnify, defend, and hold harmless Customer and its officers, directors, employees, agents, affiliates, successors, and permitted assigns (collectively, "**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, fees and the costs of enforcing any right to indemnification under this Agreement, and the cost of pursuing any insurance providers, incurred by Indemnified Party or awarded against Indemnified Party in a final non-appealable judgment (collectively, "**Losses**"), relating to/arising out of or resulting from any claim of a third party or Customer arising out of or occurring in connection with Service Provider's negligence, willful misconduct, or breach of this Agreement.

(b) To the extent permitted under applicable law, Customer shall indemnify, defend, and hold harmless Service Provider and its officers, directors, employees, agents, affiliates, successors, and permitted assigns (collectively, "Service Provider Indemnified Party") against any and all Losses, incurred by a service provider indemnified party or awarded against a service provider indemnified party in a final non-appealable judgement, relating to/arising out of or resulting from any claim of a third party or Customer arising out of or occurring in connection with Customer's negligence, willful misconduct, or breach of this Agreement.

10. Remedies.

10.1 If the Service Provider violates any provision of this Agreement, the Customer shall, in addition to any damages to which it is entitled, be entitled to seek immediate injunctive relief against the Service Provider prohibiting further actions inconsistent with the Service Provider's obligations under this Agreement.

10.2 In the event Service Provider breaches this Agreement and failed to cure such breach within any applicable cure period, the Customer shall have the right, without prejudice to any other rights or remedies it may have under this Agreement or any applicable Statement of Work, to take one or more of the following steps:

- (a) Suspend Service Provider's right and obligation to complete its performance of the Services and its other obligations hereunder until such time as the Service Provider is able to demonstrate to the Customer's reasonable satisfaction that the Service Provider can satisfactorily meet its obligations under this Agreement.
- (b) Itself provides and engages a replacement service provider to provide the Product and/or any or all the delayed or unsatisfactory Services.
- (c) Assign one or more of its representatives to supervise and work with the Service Provider to correct and mitigate the effects of the Service Provider's breach.



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- (d) Withhold payment of any amounts otherwise due to the Service Provider in a sufficient amount to set off against any damage caused to the Customer as a consequence of the Service Provider's breach.

10.3 Reserved.

10.4 To the extent a Party is required to seek enforcement of this Agreement or otherwise defend against an unsuccessful claim of breach, the unsuccessful Party shall be liable for reasonable attorney's fees and costs incurred by the successful party to enforce the provisions of this Agreement.

10.5 Except for a breach of Section 6, all rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties, or otherwise.

11. Compliance with Law. Service Provider is in compliance with and shall comply with all applicable laws, regulations, and ordinances. Service Provider has and shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement.

12. Insurance. For a period of 365 days after the Effective Date, the Service Provider shall, at its own expense, maintain and carry insurance in full force and effect with financially sound and reputable insurers, that includes, but is not limited to, commercial general liability with limits no less than [\$3,000,000] per occurrence and [\$5,000,000] in the aggregate, including bodily injury and property damage and completed operations and advertising liability, which policy will include contractual liability coverage insuring the activities of Service Provider under this Agreement. Upon Customer's request, Service Provider shall provide Customer with a certificate of insurance from Service Provider's insurer evidencing the insurance coverage specified in this Agreement. The certificate of insurance shall name Customer as an additional insured. Service Provider shall provide Customer with [30] days' advance written notice in the event of a cancellation or material change in Service Provider's insurance policy. Except where prohibited by law, Service Provider shall require its insurer to waive all rights of subrogation against Customer's insurers and Customer or the Indemnified Parties.

If it shall have any employees providing services for Customer, Service Provider shall also provide workers' compensation insurance covering those employees in an amount required by applicable law and shall provide a certificate of insurance to Customer evidencing such coverage within thirty (30) days of the effective date of this Agreement.



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13. Entire Agreement. This Agreement, including and together with any related Statements of Work, exhibits, schedules, attachments, and appendices, constitutes the sole and entire agreement between the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter.

14. Notices. All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement (each, a "**Notice**") must be in writing and addressed to the other Party at its address set forth below (or to such other address that the receiving Party may designate from time to time in accordance with this Section). Unless otherwise agreed herein, all Notices must be delivered by personal delivery, nationally recognized overnight courier, or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) on receipt by the receiving Party; and (b) if the Party giving the Notice has complied with the requirements of this Section 14.

Notice to Customer:

P.O. Box 1588

Mobile, AL 36633

Attention: Brian Doyle

Notice to Service Provider:

Attention: [TITLE OF OFFICER TO RECEIVE
NOTICES] TO BE NAMED

15. Severability. If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

16. Amendments. No amendment to, or modification of, or rescission, termination, or discharge of, this Agreement is effective unless it is in writing, identified as an amendment to or rescission, termination, or discharge of this Agreement and signed by an authorized representative of each Party.



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17. Waiver. No waiver by any Party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

18. Assignment. Neither party shall assign, transfer, delegate, or subcontract any of its rights or obligations under this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld, conditioned, or delayed; provided, however, that either party may assign this Agreement to a successor entity in connection with a merger, acquisition, or sale of all or substantially all of its assets upon written notice to the other party.

19. Successors and Assigns. This Agreement is binding on and inures to the benefit of the Parties and their respective successors and permitted assigns.

20. No Third-Party Beneficiaries. This Agreement benefits solely the Parties and their respective successors and permitted assigns, and nothing in this Agreement, express or implied, confers on any third party any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

21. Choice of Law. This Agreement and all related documents, including all exhibits attached hereto, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the State of Alabama, United States of America (including its statutes of limitations, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Alabama.

22. Choice of Forum. Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement, including all exhibits, schedules, attachments, and appendices attached to this Agreement, and all contemplated transactions, including contract, equity, tort, fraud, and statutory claims, in any forum other than the federal or state courts in Mobile County, Alabama, and any appellate court from any thereof. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation, or proceeding only in the federal or state courts sitting in Mobile, Alabama, subject, however, to provisions of Alabama law requiring claims against state agencies to be brought exclusively in the Alabama Court of Claims. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.



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23. Waiver of Jury Trial. EACH PARTY ACKNOWLEDGES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT, INCLUDING EXHIBITS, SCHEDULES, ATTACHMENTS, AND APPENDICES ATTACHED TO THIS AGREEMENT, IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS, SCHEDULES, ATTACHMENTS, OR APPENDICES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.

24. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. Notwithstanding anything to the contrary in Section 14, a signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

25. Force Majeure. No Party shall be liable or responsible to the other Party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such Party's (the "**Impacted Party**") failure or delay is caused by or results from the following force majeure events ("**Force Majeure Event(s)**"): (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or action; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns or other industrial disturbances; (h) industry-wide shortages of materials or components, (i) significant and unexpected increases in material costs, (j) transportation delays; and (k) other similar events beyond the reasonable control of the Impacted Party.

Notwithstanding the foregoing, Service Provider's financial inability to perform, nor supplier actions or contract disputes external to the performance of this contract, will not excuse performance by Service Provider under this Section 25, however the obligation of a Party to pay money for products or materials delivered or for services performed shall not in any way be excused.

The Impacted Party shall give notice within ten (10) days of the Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of thirty (30) consecutive] days following written notice given by it under this Section 25, the other Party may thereafter terminate this Agreement upon ten (10) days' written notice, subject to the provisions of Section 7.4 and Section 7.5.



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1. Inspection of Commercial Products / Supplies / Services:

(a) *Definition.* "Supplies," as used in this section, includes but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.

(b) The Service Provider shall provide and maintain an inspection system acceptable to the Customer covering supplies under this contract and shall tender to the Customer for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the Service Provider to be in conformity with contract requirements. As part of the system, the Service Provider shall prepare records, evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the Customer during contract performance and for as long afterwards as the contract requires. The Customer may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the contract work. The right of review, whether exercised or not, does not relieve the Service Provider of the obligations under the contract.

(c) The Customer shall have the right to inspect the Product and perform reasonable tests to confirm conformance with the mutually approved design and specifications. All such inspections and tests shall be performed at the Customer's expense and in a manner that does not unreasonably interfere with the Service Provider's operations. The Customer shall notify the Service Provider in writing of any nonconformities promptly upon discovery. The Service Provider shall correct or replace ****any nonconforming components at its own expense if such nonconformities are attributable to a failure to meet the agreed specifications. Unless otherwise agreed in writing, the Service Provider shall not be responsible for modifications, integration, or testing services beyond the defined scope of supply.

(d) If the Customer performs inspection or test on the premises of the Service Provider or a subcontractor, the Service Provider shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the contract, the Customer shall bear the expense of Customer inspections or tests made at other than the Service Provider's or subcontractor's premises; provided, that in case of rejection, the Customer shall not be liable for any reduction in the value of inspection or test samples.

(e)

(1) When supplies are not ready at the time specified by the Service Provider for inspection or test, the Customer may charge to the Service Provider the additional cost of inspection or test.

(2) The Customer may also charge the Service Provider for any additional cost of inspection or



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test when prior rejection makes reinspection or retest necessary.

(f) The Customer has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements. The Customer may reject nonconforming supplies with or without disposition instructions.

(g) The Service Provider shall remove supplies rejected or required to be corrected. However, the Customer may require or permit correction in place, promptly after notice, by and at the expense of the Service Provider. The Service Provider shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.

(h) If the Service Provider fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, the Customer may either (1) by contract or otherwise, remove, replace, or correct the supplies and charge the cost to the Service Provider or (2) terminate the contract for default. Unless the Service Provider corrects or replaces the supplies within the delivery schedule, the Customer may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.



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(i)

(1) If this contract provides for the performance of Customer quality assurance at source, and if requested by the Customer, the Service Provider shall furnish advance notification of the time-

(i) When the Service Provider inspection or tests will be performed in accordance with the terms and conditions of the contract; and

(ii) When the supplies will be ready for Customer inspection.

(2) The Customer's request shall specify the period and method of the advance notification and the Customer representative to whom it shall be furnished. Requests shall not require more than 2 workdays of advance notification if the Customer representative is in residence in the Service Provider's plant, nor more than 7 workdays in other instances.

(j) The Customer shall accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the contract. Customer's failure to inspect and accept or reject the supplies shall not relieve the Service Provider from responsibility, nor impose liability on the Customer, for nonconforming supplies.

(k) Inspections and tests by the Customer do not relieve the Service Provider of responsibility for defects or other failures to meet contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.

(l) If acceptance is not conclusive for any of the reasons in paragraph (k) hereof, the Customer, in addition to any other rights and remedies provided by law, or under other provisions of this contract, shall have the right to require the Service Provider (1) at no increase in contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Service Provider's plant at the Customer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Service Provider and the Customer; provided, that the Customer may require a reduction in contract price if the Service Provider fails to meet such delivery schedule, or (2) within a reasonable time after receipt by the Service Provider of notice of defects or nonconformance, to repay such portion of the contract as is equitable under the circumstances if the Customer elects not to require correction or replacement. When supplies are returned to the Service Provider, the Service Provider shall bear the transportation cost from the original point of delivery to the Service Provider's plant and return to the original point when that point is not the Service Provider's plant. If the Service Provider fails to perform or act as required in paragraph (l)(1) or (l)(2) of this clause and does not cure



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such failure within a period of 10 days (or such longer period as the Customer may authorize in writing) after receipt of notice from the Customer specifying such failure, the Customer shall have the right by contract or otherwise to replace or correct such supplies and charge to the Service Provider the cost occasioned the Customer thereby.

2. Service Provider Warranty

(a) *Definitions.* As used in this clause-

Acceptance means the act of an Authorized Representative, duly designated in writing by the Director of the Customer, by which the Customer assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services rendered, as partial or complete performance of the contract.

Defect means any condition or characteristic in any supplies or services furnished by the Service Provider under the contract that is not in compliance with the requirements of the contract.

Products means the end items furnished by the Service Provider and related services required under this contract. Except when this contract includes the clause entitled Warranty of Data, supplies also mean "data."

(b) Service Provider warrants that the Products shall be free from defects in material and workmanship under normal use and service when correctly installed, used, and maintained. Service Provider also warrants that the Services will be performed in a workman like manner. These warranties shall terminate (1) year after delivery of the Products, or provision of Services, to Customer and shall not apply to Products which have been subjected to misuse, abuse, neglect or improper storage, handling, or maintenance. Should the Products not conform to such warranty, and upon confirmation by Service Provider that the Products have been delivered, stored, installed, operated and maintained in accordance with proper standards, Service Provider shall, upon prompt notice from Customer, and at Service Provider's option, in the instance of Products manufactured by Service Provider, either repair or replace the defective part or parts and, in the instance of goods of Customer which are processed by Service Provider, either reprocess the defective part or parts or adjust the price paid by Customer in an amount attributable to the defective part or parts. Should the Services not conform to such warranty, Service Provider shall, upon prompt notice from Customer, correct such defective Services in a workman like manner. Such remedies shall be Customer's sole and exclusive remedies for breach of warranty. Notwithstanding the above, to the extent the Products provided by Service Provider include third party manufactured goods ("Third Party Components"), the warranty for such Third-Party Components shall be limited to the warranty,



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if any, that Service Provider is authorized to pass through to Customer for such Third-Party Components. THE FOREGOING WARRANTIES SHALL NOT APPLY TO DAMAGE OR DEFECTS CAUSED BY DELIVERY, STORAGE, INSTALLATION, OPERATION OR MAINTENANCE BY ANY PERSON OTHER THAN SERVICE PROVIDER, OR BY ORDINARY WEAR AND TEAR, NOR SHALL IT APPLY TO CONSUMABLE TOOLING OR MATERIALS, OR NORMAL REPLACEMENT ITEMS, AND ARE THE SOLE AND EXCLUSIVE WARRANTIES BY SERVICE PROVIDER IN LIEU OF ALL OTHER WARRANTIES WHETHER WRITTEN, ORAL OR IMPLIED. SERVICE PROVIDER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS AND EXCLUDES ANY WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTIES ARISING BY USAGE OF TRADE, COURSE OF PERFORMANCE OR COURSE OF DEALING. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, INCLUDING BUT NOT LIMITED TO STATEMENTS REGARDING PERFORMANCE OF THE GOODS OR SERVICES, WHICH ARE NOT CONTAINED IN THIS AGREEMENT WILL BE DEEMED TO BE A WARRANTY OR REPRESENTATION. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, SERVICE PROVIDER'S TOTAL CUMULATIVE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT, OR OTHERWISE, SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER TO SERVICE PROVIDER UNDER THIS AGREEMENT. IN NO EVENT SHALL SERVICE PROVIDER BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, REVENUE, DATA, OR BUSINESS OPPORTUNITIES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE. The parties expressly waive the Statute of Limitations and agree that any claim by the Customer with reference to the Products or Services for any cause, shall be deemed waived by the Customer unless filed within one (1) year from accrual of the cause of action therefore. In the event that Customer makes a warranty claim pursuant to Paragraph 7, Products may be returned, D.D.P. Destination (Incoterms 2010), only after Customer receives written approval from Service Provider (including an RMA #) to return the Products and upon receipt by Customer of shipping instructions from Service Provider.



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FAR COMMERCIAL PRODUCT CLAUSES

FAR 52.252-1 Solicitation Provisions Incorporated By Reference (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the procurement manager or Port representative will make their full text available. Also, the full text of a clause may be accessed electronically at this address: <https://www.acquisition.gov/far/>

- [52.212-1 Instructions to Offerors—Commercial Products and Commercial Services.](#)
- [52.212-2 Evaluation—Commercial Products and Commercial Services.](#)
- [52.212-3 Offeror Representations and Certifications—Commercial Products and Commercial Services.](#)
- [52.212-4 Contract Terms and Conditions—Commercial Products and Commercial Services.](#)
- [52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services.](#)

52.212-2 Evaluation—Commercial Products and Commercial Services.

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors shall be used to evaluate offers:

Technical conformance to specifications and delivery schedule.

Technical and past performance, when combined, are equal in importance in terms of the selection criteria.

(b) *Options.* The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(c) A written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.



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[SIGNATURE PAGE FOLLOWS]



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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date by their respective officers thereunto duly authorized.

[ALABAMA STATE PORT AUTHORITY]

By _____
Name: Douglas C. Otto, Jr., P.E.,
Title: Interim Director

[CORPORATION]

By _____
Name:
Title:



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EXHIBITS

A - SCHEDULE OF SUPPLIES & SPECIFICATIONS, BID SCHEDULES, AND OTHER IMPORTANT ITEMS

B - FEDERAL RAILROAD ADMINISTRATION CONTRACT PROVISIONS;

C - FEDERAL RAILROAD ADMINISTRATION (FRA) BUY AMERICA CERTIFICATE OF COMPLIANCE FORM(s) [3 Separate Certificates]

D - U.S DEPARTMENT OF TRANSPORTATION, FEDERAL RAILROAD ADMINISTRATION GRANT FORMS

E - U. S DEPARTMENT OF TRANSPORTATION, FEDERAL RAILROAD ADMINISTRATION - Equivalent Labor Protections - Appendix



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EXHIBIT A

“SCHEDULE OF SUPPLIES & SPECIFICATIONS”

1. Statement of Work (SOW)

The Service Provider shall be responsible for the initial fabrication, delivery, site build, commissioning, training and maintenance of a Container Reach Stacker, a 6,000 lb. capacity Forklift , and a single axle Terminal Tractor at the Alabama Port Authority, Montgomery Inland Port.

NOTE: The Alabama Port Authority’s Montgomery Intermodal Container Transfer Facility (ICTF) Project is currently under construction. The ICTF construction contractor’s actual completion of the concrete parking areas in Montgomery designated for these specified items of equipment cannot be accurately determined at this time. Therefore, the below stated delivery periods establish both the earliest and latest contractual delivery date window(s) for these items of equipment. As the Port will be monitoring the ICTF on-site construction progress, the equipment contract service provider shall be notified twenty (20) business days prior to the actual need date within each contract window, to establish each items final contract delivery date.

Delivery Period Requirements:

- Container Reach Stacker – 1 February 2027, Not later than 31 March 2027
- 6000 lb. Forklift - Deliver by 30 November 2026, Not Later Than 26 February 2027
- Terminal Tractor - Deliver by 30 November 2026, Not Later Than 26 February 2027

Maintenance Requirement:

The service provider will be responsible for all warranty maintenance as well as the general and preventative maintenance on all equipment purchased through this agreement.

The vendor must have the capabilities to respond to equipment failures within four hours and preferably be located in the general area of the Montgomery Inland Port to ensure consistent service. The vendor may also have the ability to enter into a business/service agreement to utilize our on-site Maintenance Shop and warehouse to repair the purchased equipment, house certain inventory parts required for routine and normal maintenance, and potentially staff the facility based on frequency of use and need.

Pricing Schedule and Specs on Requested Equipment:

Item #1: **Container Reach Stacker: Build America, Buy America Compliant**

Drivetrain:

- Emissions Compliant Diesel Engine with Fuel/Water Separator - Tier 4+
- Air Cleaner with raised air intake, safety element, and restriction indicator
- Powertrain protection system



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- Powershift Transmission - minimum 4 speeds with Inching capabilities, modulated, ESC, Air/Oil Cooling and automatic powershift control
- Planetary Drive Axle with wet disk hydraulic brakes
- Parking Brake
- Hydrostatic Steering

Chassis:

- Steel Frame with bolted on counterweight
- Bolt on steps and handrails
- Locking fuel cap with strainer
- Rear view mirrors
- Hydraulic Tank Breathers
- Hydraulic Tank fitted with straining system and filters

Lifting:

- 20-40 ISO Container Handling Spreader
- Lifting capacity @ 60,000+ lbs.
- Capable of Stacking ISO Containers 5 high
- Power On Demand Option preferred
- 4 Lifting Eyes

Cab:

- Operator Seatbelt System - anti-cinch
- Right and Left side access doors
- Air Ride swivel seat - fully adjustable
- Electric Joystick and Switch Controls
- Heavy Duty air conditioning system
- Front, Top, and Rear Windshield Wipers and Washers
- Cab step lights
- Tinted glass is a must

Electrical

- 24 volt system
- Rear facing camera
- Full compliment of tail lights, turn signals, and stop lights
- USB and USB-C Ports
- Strobe Light



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- Twistlock Engagement Lights
- Air Horn
- Warning Alarms
- Hour Meter

Item #2: **6000 lb. Capacity Forklift: Build America, Buy America Compliant**

Drivetrain:

- Emissions Compliant Diesel Engine -Tier 4+
- Air Cleaner
- Air Intake and pre-cleaner
- Single speed, powershift transmission
- Automatic Engine Shutdown
- Planetary Drive Axle and wet disk brakes
- Steel Steer Axle
- Parking Brake System

Chassis:

- Single, piece all welded steel frame
- Bolted on counterweight
- Anti-skid side steps
- Clam shell hood or something similar

Lifting:

- Nested and interlocked I-beam Mast Rails
- 6,000 lbs lifting capacity
- Hook Type carriage
- Pin mounted mast

Cab:

- ANSI Standard operator platform
- Ingress/Egress Handrails
- Operator presence system
- Convex rear facing mirrors
- Tilt Steering Wheel
- Dual brake pedal with inching capabilities
- Operator Cab Display



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Electrical:

- 12 Volt
- Horn
- Strobe light
- Warning alarms

Item #3: **Terminal Tractor(Single Axle): Build America, Buy America Compliant**

Chassis and Drivetrain:

- Galvanized and rust resistant frame
- ~130" wheelbase preferred
- Hydraulic Steering and tight turning radius capable (~50 degrees)
- 5th wheel with 75,000+ lift capacity
- 3 piece bumper
- Emissions Compliant Diesel Engine -Tier 4+
- 185+ Horsepower
- 6 speed transmission preferred
- Engine and Transmission protection systems
- Cooling systems - robust for warmer climate operations
- Noise cancelling material in cab
- Differential lock on rear axle
- Full compliment of mud guards
- Warning alarms

Cab:

- Unobstructed glass areas all around
- Easy access controls for 5th wheel and other internal, cab controls
- Multi-position operator seat
- Air Horn
- 12 volt electrical system
- Wide angle mirrors

Access and Utilities:

- Low steps on both sides
- Dual Access Cab
- Safety Handrails
- Rear cabin protection
- High mount air intake



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- Slip resistant steps
- Air ride suspension on cab
- Full compliment light package

Maintenance:

- Cab tilt with electric motors
- Easy access dash removal, oil dipstick
- Exterior mounted site glasses

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2.2 PRICING SCHEDULE BS-2

[illegible]

Freight for all equipment is FOB: ICTF Facility, Montgomery, AL. Delivery/ Freight costs are to be provided for, included within the Final Negotiated Price (Line Item 2 / Total).

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2.3 PRICING SCHEDULE BS-3

<u>No.</u>	<u>DESCRIPTION</u>	<u>PRICE TYPE</u>	<u>PRICE</u>	
3.	One (1) EA Terminal Tractor as Per the following Specifications:	Firm-Fixed	\$	
	Total		\$	

Freight for all equipment is FOB: ICTF Facility, Montgomery, AL. Delivery/ Freight costs are to be provided for, included within the Final Negotiated Price (Line Item 3 / Total).



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2.4 CONTRACT AWARD PRICING SCHEDULE BS-4

No.	DESCRIPTION	PRICE TYPE	PRICE	
BS-1	One (1) EA Reach Stacker.	Firm-Fixed	\$ _____	
BS-2	One (1) EA Forklift.	Firm-Fixed	\$ _____	
BS-3	One (1) EA Terminal Tractor	Firm-Fixed	\$ _____	
	Grand Award Total		\$ _____	

Freight for all equipment is FOB: ICTF Facility, Montgomery, AL. Delivery/ Freight costs are to be provided for, included within the Final Negotiated Price (Line Item 1 / Total).



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3. INVOICING / PAYMENT TERMS:

All payments shall be rendered in accordance with terms and conditions of the Contract. Payment Terms are NET 30 days, upon receipt of each invoice. Invoices may be submitted upon completion of the Delivery, Inspection, and Final Acceptance of each item of equipment.

4. MANUALS & DOCUMENTATION

Operation & Maintenance Manuals

- The General Operation and Maintenance Manuals typically provided shall constitute the extent of documentation materials to be provided to the Customer



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**EXHIBIT B – [FRA CONTRACT PROVISIONS]
ALL PROVISIONS THAT ARE APPLICABLE WILL BE APPLIED**

U.S Department of Transportation
Federal Railroad Administration
Grant Contract Provisions

Cargo Preference - Use of United States-Flag Vessels

The contractor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this contract to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
2. To furnish within 20 days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in subsection (1) above to the recipient (through the prime contractor in the case of subcontractor bills-of lading) and to the Division of Cargo Preference and Domestic Trade, Maritime Administration, 1200 New Jersey Avenue, SE, Washington, D.C. 20590, marked with appropriate identification of the Project.
3. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract."

Debarment and Suspension

1. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
2. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.



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3. This certification is a material representation of fact relied upon by Alabama State Port Authority. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available Alabama State Port Authority, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
4. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C 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.

Drug Free Workplace

The contractor agrees to comply with 49 C.F.R. part 32.

Disadvantaged Business Enterprises

1. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The ASPA's overall goal for DBE participation is 7.68 %. A separate contract goal of 7.68% been established for this procurement. The contractor is required to make a good faith effort to use DBE's to the maximum extent practicable. As a demonstration of these good faith efforts, each bidder must submit, concurrent with and accompanying their sealed bid, Forms 1 and 2 included in the appendix of the project specifications. Forms 1 and 2 must address:
 - a. The names and addresses of DBE firms that will participate in this contract;
 - b. A description of the work each DBE will perform;
 - c. The dollar amount of the participation of each DBE firm participating;
 - d. Written documentation of the bidder/offeree's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;

Bidders must present the information required above as a matter of responsiveness.

The successful bidder/offeree will be required to report with each request for payment its DBE participation obtained through race-neutral means throughout the period of performance.



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2. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as ASPA deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).
3. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the ASPA. In addition, is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.
4. The contractor must promptly notify ASPA, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of ASPA.

Freedom of Information

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(A) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(B) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FRA.



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Buy America

The Contractor agrees to comply with 49 U.S.C Section 22905 (a), which states that no federal funds can be obligated unless steel, iron, manufactured products and construction materials are manufactured in the United States, unless a wavier has been granted by FRA.

A bidder or offeror must submit to the ASPA the appropriate Buy America certification included in the appendix of the project specifications with all bids or offers on FRA-funded contracts except those subject to a general wavier. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Civil Rights

The following requirements apply to the underlying contract:

1. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, and as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FRA may issue.
2. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
 - a. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, 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. Parts 60 et seq ., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FRA may issue.



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- b. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623, 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 FRA may issue.
 - c. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FRA may issue.
3. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FRA, modified only if necessary to identify the affected parties

Clean Air Act

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The contractor agrees to report each violation to the Alabama State Port Authority and understands and agrees that the Alabama State Port Authority will, in turn, report each violation as required to assure notification to the Federal Railroad Administration, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FRA.

Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The contractor agrees to report each violation to Alabama State Port Authority and understands and agrees that the Alabama State Port Authority will, in turn, report each violation as required to assure notification to the Federal Railroad Administration, and the appropriate Environmental Protection Agency Regional Office.



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3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FRA.

Text Messaging While Driving

In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, financial assistance recipients and subrecipients of grants and cooperative agreements are encouraged to:

- A. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving
 - i. Company-owned or rented vehicles or Government-owned, leased or rented vehicles; or
 - ii. Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.
- B. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as
 - i. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
 - ii. Education, awareness and other outreach to employees about the safety risks associated with texting while driving.
- C. *Assistance Awards.* All recipients and subrecipients of financial assistance to include: grants, cooperative agreements, loans and other types of assistance, shall insert the substance of this clause, including this paragraph (C), in all assistance awards.

Conflict of Interest

- i. In the procurement of property or services by recipients and subrecipients, the conflict-of-interest rules in 2 CFR 200.317 and 2 CFR 200.318(c) shall apply. In all cases not governed by 2 CFR 200.317 and 2 CFR 200.318(c), recipients and subrecipients must follow the requirements contained in paragraphs ii-v below.
- ii. General prohibition. No person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient or subrecipient and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have a financial interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has immediate family or business ties, during his or her tenure or for one year thereafter. Immediate family ties include (whether by blood, marriage or adoption) the spouse, parent (including a stepparent), child (including a stepchild), brother, sister (including a stepbrother or stepsister), grandparent, grandchild, and in-laws of a covered person.



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Trafficking in Persons

a. Provisions applicable to a recipient that is a private entity.

i. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—

i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;

ii. Procure a commercial sex act during the period of time that the award is in effect; or

iii. Use forced labor in the performance of the award or subawards under the award.

ii. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —

i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or

ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—

a) Associated with performance under this award; or

b) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 C.F.R. part 1200.

b. Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

1) Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or

2) Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph

a.1 of this award term through conduct that is either—

a) Associated with performance under this award; or

b) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 C.F.R. part 1200.

c. Provisions applicable to any recipient.

1) You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.

2) Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:

i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. § 7104(g)), and

ii. Is in addition to all other remedies for noncompliance that are available to us under this award.



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3) You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. Definitions. For purposes of this award term:

1) “Employee” means either:

- i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
- ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2) “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

3) “Private entity”:

i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. § 175.25.

ii. Includes:

(a) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 C.F.R. § 175.25(b).

(b) A for-profit organization.

4) “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at

section 103 of the TVPA, as amended (22 U.S.C. § 7102).

5) “Recipient” and “subrecipient” include for-profit entities for the purpose of this award term only.

Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

The Recipient acknowledges that Section 889 of Pub. L. No. 115-232 and 2 C.F.R. 200.216 prohibit the Recipient and all subrecipients from procuring or obtaining certain telecommunications and video surveillance services or equipment under this award.

Davis-Bacon and Related Acts Provisions

In accordance with 49 U.S.C. § 22905(c)(2)(A), if the Project funded by this Agreement uses rights-of-way owned by a railroad, then, the Grantee will ensure compliance with the standards of 49 U.S.C. § 24312 with respect to the Project in the same manner that Amtrak is required to comply with those standards for construction work financed under an agreement made under 49 U.S.C. § 24308(a). For these purposes, wages in collective bargaining agreements negotiated under the Railway Labor Act are deemed to comply with Davis-Bacon Act requirements.



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Labor Protective Arrangements

In accordance with 49 U.S.C. § 22905(c)(2)(B), if the Project funded by this Agreement uses rights-of-way owned by a railroad, then the Grantee will ensure compliance with the protective arrangements that are equivalent to those established under Section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976, 45 U.S.C. § 836, as such protective arrangements are described in the final FRA guidance titled Equivalent Protections for Railroad Employees and effective December 28, 2022.



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EXHIBIT C

FEDERAL RAILROAD ADMINISTRATION (FRA) BUY AMERICA CERTIFICATE OF COMPLIANCE FORM

Montgomery Intermodal Container Transfer Facility (ICTF) Project - Container Reacher Stacker

As a condition of the Alabama Port Authority receiving federal financial assistance for this project from the Federal Railroad Administration (FRA), recipients / contractors are required to use iron, steel, manufactured goods, and construction materials that are produced in the United States in a manner that complies with FRA Buy America and the Build America, Buy America Act (BABA) requirements, for construction and infrastructure related projects. For more information about FRA Buy America requirements visit the FRA website:

<https://railroads.dot.gov/legislation-regulations/buyamerica/buy-america>. As a bidder for the project listed above, I acknowledge and certify that I have read, understand, and will comply with FRA Buy America (49 U.S.C. § 22905 (a)), any and all applicable provisions of BABA (Pub. L. 117-58 §§ 70901-53), and the Uniform Guidance (2 CFR 200.322, 2 C.F.R. Part 184). Steel, iron, and manufactured goods used in the Project are subject to FRA Buy America (49 U.S.C. 22905(a)).

Furthermore, I understand and acknowledge that FRA Buy America / BABA provisions apply to any and all portions of the project listed above, including subcontracted portions, regardless of whether FRA funds are used. I certify to the best of my knowledge and belief that the steel, iron, manufactured products and construction materials described in this bid are produced in the United States in compliance with applicable requirements, except for the items listed by the bidder as an attachment to this certification, if any. If an attachment is provided by the bidder, it must include documentation demonstrating that said products and materials are not domestically available.

I understand that a false statement on this certification may be grounds for rejection or termination of any award.

Signature of Bidder: _____ Date: _____

Printed Name and Title of Bidder: _____

Name of Bidder's Company: _____

Bidder's Company Address: _____

Bidder's Telephone Number: _____



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EXHIBIT C

FEDERAL RAILROAD ADMINISTRATION (FRA) BUY AMERICA CERTIFICATE OF COMPLIANCE FORM

Montgomery Intermodal Container Transfer Facility (ICTF) Project - Forklift

As a condition of the Alabama Port Authority receiving federal financial assistance for this project from the Federal Railroad Administration (FRA), recipients / contractors are required to use iron, steel, manufactured goods, and construction materials that are produced in the United States in a manner that complies with FRA Buy America and the Build America, Buy America Act (BABA) requirements, for construction and infrastructure related projects. For more information about FRA Buy America requirements visit the FRA website: <https://railroads.dot.gov/legislation-regulations/buyamerica/buy-america>. As a bidder for the project listed above, I acknowledge and certify that I have read, understand, and will comply with FRA Buy America (49 U.S.C. § 22905 (a)), any and all applicable provisions of BABA (Pub. L. 117-58 §§ 70901-53), and the Uniform Guidance (2 CFR 200.322, 2 C.F.R. Part 184). Steel, iron, and manufactured goods used in the Project are subject to FRA Buy America (49 U.S.C. 22905(a)).

Furthermore, I understand and acknowledge that FRA Buy America / BABA provisions apply to any and all portions of the project listed above, including subcontracted portions, regardless of whether FRA funds are used. I certify to the best of my knowledge and belief that the steel, iron, manufactured products and construction materials described in this bid are produced in the United States in compliance with applicable requirements, except for the items listed by the bidder as an attachment to this certification, if any. If an attachment is provided by the bidder, it must include documentation demonstrating that said products and materials are not domestically available.

I understand that a false statement on this certification may be grounds for rejection or termination of any award.

Signature of Bidder: _____ Date: _____

Printed Name and Title of Bidder: _____

Name of Bidder's Company: _____

Bidder's Company Address: _____

Bidder's Telephone Number: _____



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EXHIBIT C

FEDERAL RAILROAD ADMINISTRATION (FRA) BUY AMERICA CERTIFICATE OF COMPLIANCE FORM

Montgomery Intermodal Container Transfer Facility (ICTF) Project - Terminal Tractor

As a condition of the Alabama Port Authority receiving federal financial assistance for this project from the Federal Railroad Administration (FRA), recipients / contractors are required to use iron, steel, manufactured goods, and construction materials that are produced in the United States in a manner that complies with FRA Buy America and the Build America, Buy America Act (BABA) requirements, for construction and infrastructure related projects. For more information about FRA Buy America requirements visit the FRA website: <https://railroads.dot.gov/legislation-regulations/buyamerica/buy-america>. As a bidder for the project listed above, I acknowledge and certify that I have read, understand, and will comply with FRA Buy America (49 U.S.C. § 22905 (a)), any and all applicable provisions of BABA (Pub. L. 117-58 §§ 70901-53), and the Uniform Guidance (2 CFR 200.322, 2 C.F.R. Part 184). Steel, iron, and manufactured goods used in the Project are subject to FRA Buy America (49 U.S.C. 22905(a)).

Furthermore, I understand and acknowledge that FRA Buy America / BABA provisions apply to any and all portions of the project listed above, including subcontracted portions, regardless of whether FRA funds are used. I certify to the best of my knowledge and belief that the steel, iron, manufactured products and construction materials described in this bid are produced in the United States in compliance with applicable requirements, except for the items listed by the bidder as an attachment to this certification, if any. If an attachment is provided by the bidder, it must include documentation demonstrating that said products and materials are not domestically available.

I understand that a false statement on this certification may be grounds for rejection or termination of any award.

Signature of Bidder: _____ Date: _____

Printed Name and Title of Bidder: _____

Name of Bidder's Company: _____

Bidder's Company Address: _____

Bidder's Telephone Number: _____



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EXHIBIT D

U.S Department of Transportation
Federal Railroad Administration
Grant Forms

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS--PRIMARY COVERED TRANSACTIONS**

**(1) The prospective primary participant certifies to the best of its knowledge and belief,
that it and its principals:**

**(a) Are not presently debarred, suspended, proposed for debarment, declared
ineligible, or voluntarily excluded by any Federal department or agency;**

**(b) 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;**

**(c) 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 (1)(b) of this certification;**

**(d) Have not within a three-year period preceding this application/proposal had
one or more public transactions (Federal, State or local) terminated for cause
or default.**



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(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Signature / Authorized Certifying Official Typed Name & Title

Applicant / Organization Date Signed



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Forms 1 & 2 for Demonstration of Good Faith Efforts

[Forms 1 and 2 should be provided as part of the solicitation documents.]

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

This contract is being awarded as a Race-Neutral contract.

_____ The bidder/offeror is committed to a minimum of _____ % DBE utilization on this contract.

Project Name _____

Project # _____ Task # _____

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____

(Signature)

Title



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FORM 2: LETTER OF INTENT

Project Name _____

Project # _____ Task # _____

Name of bidder/offeree's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by DBE firm:

The bidder/offeree is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$ _____ or _____ % of the total contract value.

Affirmation

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value or percentages stated above.

By _____

(Signature) (Title)

If the bidder/offeree does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

(Submit this page for each DBE subcontractor.)



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**Certification requirement for procurement of steel, iron, or manufactured products
Certificate of Compliance with 49 U.S.C. 5323(j)(1)**

**The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1)
and the applicable regulations in 49 C.F.R. Part 661.5.**

Signature: _____

Title: _____

Company: _____

Date: _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

**The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C.
5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C.
5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.**

Signature: _____

Title: _____

Company: _____

Date: _____



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49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, 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 making lobbying contacts to 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 Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]

(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.



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This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date



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**AFFIDAVIT AND CERTIFICATE OF COMPLIANCE
FORM FOR SECTIONS 9 (a) and (b) BEASON-HAMMON ALABAMA TAXPAYER AND CITIZEN
PROTECTION ACT; CODE OF ALABAMA, SECTIONS 31-13-9 (a) and (b) AFFIDAVIT FOR
BUSINESS ENTITY/EMPLOYER /CONTRACTOR**

(To be completed as a condition for the award of any contract, grant, or incentive by the State of Alabama, any political subdivision thereof, or any state-funded entity to a business entity or employer that employs one or more employees)

State of _____

County of _____

Before me, a notary public, personally appeared _____ (print name)
who, being duly sworn, says as follows:

As a condition for the award of any contract, grant, or incentive by the State of Alabama, any political subdivision thereof, or any state-funded entity to a business entity or employer that employs one or more employees, I hereby attest that in my capacity as

_____ (state position) for _____ (state business
entity/employer/contractor name) that said business entity/employer/contractor shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien.

I further attest that said business entity/employer/contractor is enrolled in the E-Verify program.

(ATTACH DOCUMENTATION ESTABLISHING THAT BUSINESS
ENTITY/EMPLOYER/CONTRACTOR IS ENROLLED IN THE E-VERIFY PROGRAM)

_____ Signature of Affiant

Sworn to and subscribed before me this ____ day of _____, ____.

I certify that the affiant is known (or made known) to me to be the identical party he or she claims to be.

_____ Signature and Seal of Notary Public



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FEDERAL RAILROAD ADMINISTRATION
Equivalent Labor Protections Appendix E

This Appendix provides guidance on the protective arrangements equivalent to the protective arrangements established under Section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976, with respect to employees affected by actions taken in connection with a Project financed in whole or in part with financial assistance subject to 49 U.S.C. § 22905(c)(2)(B). Fluctuations and changes in volume or character of employment brought about solely by other causes are not within the scope of this Appendix.

1. Definitions. Whenever used in this Appendix, capitalized terms shall have the meanings below:

(a) “Average Monthly Compensation” means the total compensation received by a Displaced Employee or a Dismissed Employee during the last twelve (12) months in which they were employed immediately preceding the date of their displacement or dismissal, divided by twelve (12). The Average Monthly Compensation shall be adjusted to reflect subsequent general wage increases.

(b) “Average Monthly Time” means the total number of hours worked by a Displaced Employee during the last twelve (12) months in which they were employed immediately preceding the date of their displacement, divided by twelve (12).

(c) “Day” means one 24-hour calendar day (including holidays and weekends) for purposes of calculating deadlines and other timeframes in this Appendix.

(d) “Displaced Employee” means a Protected Employee who remains employed by a Railroad but, as a result of a Project, is placed in a worse position with respect to compensation and rules governing working conditions. A Protected Employee’s status as a Displaced Employee begins on the date said employee is harmed.

(e) “Dismissed Employee” means a Protected Employee who: (1) as a result of a Project, is deprived of employment with the Railroad because (i) the Railroad eliminates the Protected Employee’s position, or (ii) the Railroad eliminates another employee’s position (and that employee’s exercise of seniority rights results in the Protected Employee’s inability to secure another position by the exercise of the Protected Employee’s seniority rights); and (2) is unable to secure another position by exercise of their seniority rights. A Protected Employee’s status as a Dismissed Employee begins on the date said employee is deprived of employment.

(f) “Project” means any action financed in whole or in part with financial assistance subject to 49 U.S.C. § 22905(c)(2)(B).

(g) “Protected Employee” means an employee of a Railroad who is affected by actions taken pursuant to a Project, whether the Project is initiated by a Railroad or a Recipient. If a Railroad rearranges or adjusts its forces in anticipation of a Project with the purpose or effect of depriving an employee of benefits to which they otherwise would have become entitled under this Appendix, then that employee is a Protected Employee under this Appendix. An employee’s status as a Protected Employee shall continue for the duration of the applicable Protective Period. An employee who solely benefitted as a result of a Project shall not be a Protected Employee under this Appendix.



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(h) "Protective Period" means that period during which a Displaced Employee or a Dismissed Employee is provided the protections described in this Appendix. The Protective Period begins on the date an employee of a Railroad is displaced or dismissed and ends after six (6) years. However, the Protective Period for any particular employee shall not continue longer than the period of time the Railroad employed the employee prior to the date of their displacement or dismissal. For purposes of this Appendix, an employee's length of service shall be determined in accordance with the provisions of Section 7(b) of the Washington Job Protection Agreement of May 1936, as amended.

(i) "Recipient" means any person or entity receiving financial assistance subject to the requirements of 49 U.S.C. § 22905(c), including grantees, subrecipients, contractors, and subcontractors.

(j) "Railroad" means (1) a railroad carrier as defined in 49 U.S.C. § 20102(3), or (2) any person deemed a rail carrier pursuant to 49 U.S.C. § 22905(b).

2. Flow Down.

(a) In accepting financial assistance for a Project, the Recipient is responsible for ensuring compliance with the protections provided in this Appendix. The Recipient shall make the acceptance of this Appendix a condition of any new contract (or incorporate its terms into any existing contract by amendment) that uses funds subject to the requirements of 49 U.S.C. § 22905(c). These conditions shall apply to a Recipient, any Railroad and any contractor of any tier with which the Recipient contracts using funds subject to the requirements of 49 U.S.C. § 22905(c).

(b) The Recipient shall require in an agreement (either in a new agreement or as an amendment to an existing agreement) with a Railroad owning the right-of-way to be improved by a Project that the Railroad notify its employees (or their representatives) of the Project being funded with financial assistance subject to 49 U.S.C. § 22905(c) and the applicability of these protections.

(c) Any Railroad employee (or their representatives) may notify a Recipient of a dispute or controversy relating to the requirements of this Appendix to ensure compliance with 49 U.S.C. § 22905(c)(2)(B).

3. Collective Bargaining Agreements.

(a) Existing Agreements. The rates of pay, rules, working conditions, and all collective bargaining and other rights, privileges, and benefits (including continuation of pension rights and benefits) of a Railroad's employees under applicable laws, regulations, and/or existing collective bargaining agreements shall be preserved and remain applicable unless changed by future collective bargaining agreements or applicable statutes or regulations. As applied to the regulation of subcontracting by the Railroads of a Project, the provisions of this section shall mean that a determination of whether or not such work validly may be subcontracted by a Railroad shall not be affected by the fact that the work is being financed by funds subject to the requirements of 49 U.S.C. § 22905(c)(2)(B). Nothing in this Appendix shall be construed as depriving any Railroad employee of any rights or benefits or eliminating any obligations that such employee may have under any existing contractual or statutory arrangement, including job security agreements, protective conditions, or arrangements.



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(b) Election by Protected Employee. Where a Protected Employee is eligible for protections under both this Appendix and another contractual or statutory arrangement, the Protected Employee shall elect between the protection under this Appendix and protection under such other arrangement. After such an election, the Protected Employee shall be protected only by the arrangement that they elect. The Protected Employee shall not be entitled to any protection or benefit (regardless of whether such benefit is duplicative) under the arrangement that they do not elect. However, if the elected protection expires pursuant to the terms of the arrangement that governs the elected protection, the Protected Employee is entitled to protection under the arrangement not originally elected for the remainder, if any, of the Protective Period.

4. Change in Operations, Services, Facilities, or Equipment.

(a) Notice. When a Railroad contemplates a change or changes in its operations, services, facilities, or equipment as a result of a Project, which may cause the dismissal or displacement of Protected Employees or rearrangement of forces involving such employees, it shall give at least sixty (60) days' written notice of such intended changes to both Protected Employees and their duly authorized representatives (if applicable). Such notice shall contain a full and adequate description of the proposed changes, including an estimate of the number of Protected Employees of each class affected by the intended changes.

(b) Negotiations.

(i) Initiation of Negotiation. Within sixty (60) days after the Railroad issues a notice under Section 4(a) of this Appendix, the Railroad or the Protected Employees (or their representatives) may, by written notice to the other party, request a meeting and opportunity to negotiate an agreement with respect to the application of the terms and conditions of this Appendix. These negotiations shall commence within fourteen (14) days from the receipt of such request.

(ii) Subject of Negotiations. Each change to rail operations, services, facilities, infrastructure, or equipment (including rights-of-way, track, and signal and crossing systems) that may result in dismissal or displacement of Protected Employees or rearrangement of forces involving such employees shall be subject to review and negotiation by the parties, but only to the extent necessary to ensure compliance with this Appendix. For any contemplated rearrangement of rail forces, the Railroad and the representative(s) of the Protected Employees shall agree on the method of selection of employees to be moved, and the assignment of those employees to new roles.

(c) Arbitration. If the Railroad and the representative(s) of the Protected Employees fail to agree within forty-five (45) days from the initial meeting and opportunity to negotiate, either party may submit the dispute for arbitration in accordance with the following procedures:

(i) Notice & Selection of Arbitrator. Within ten (10) days after either party has notified the other in writing of their desire to submit the dispute for arbitration, the parties shall select a neutral arbitrator. If the parties cannot agree upon the selection of said arbitrator, then the parties shall submit a request to the National Mediation Board to appoint an arbitrator. In either case, a hearing shall be scheduled no later than thirty (30) days after an arbitrator has been appointed.



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(ii) **Binding Decision.** The decision of the arbitrator shall be final, binding, and conclusive and shall be rendered within thirty (30) days from the date of the commencement of the hearing of the dispute.

(iii) **Expenses.** The salary and expenses of the arbitrator shall be borne equally by the parties to the proceeding; all other expenses shall be paid by the party incurring them.

(d) **Implementation.** If a notice is issued under Section 4(a), the Railroad shall not implement such a change or changes until: (i) sixty (60) days after the notice in accordance with Section 4(a), if no party requests a meeting and opportunity to negotiate; (ii) the parties reach agreement pursuant to Section 4(b), if a party requests a meeting and opportunity to negotiate; or (iii) a referee has rendered a decision pursuant to Section 4(c).

5. Protections for Displaced Employees

(a) **Displacement Allowances.**

(i) **In General.** If a Displaced Employee is unable, in the normal exercise of such employee's seniority rights under existing agreements, rules and practices, to obtain a position that is compensated equal to or exceeding the compensation the Displaced Employee received in the position from which such employee was displaced, then the Displaced Employee shall, during the Protective Period, be paid a monthly displacement allowance equal to the difference between the monthly compensation received by the Displaced Employee in the position in which such employee is retained and the Average Monthly Compensation received by the Displaced Employee in the position from which such employee was displaced (the "Displacement Allowance").

(ii) **Application of Displacement Allowance.** If a Displaced Employee's compensation in that employee's retained position is less in any month in which such employee performs work than the Average Monthly Compensation, then the Displaced Employee shall be paid the difference between the current compensation and the Average Monthly Compensation. However, the Displacement Allowance shall be reduced by the Displaced Employee's time lost as a result of voluntary absences, to the extent that the Displaced Employee is not available for service equivalent to the Displaced Employee's Average Monthly Time. If, on the other hand, the Displaced Employee, in such employee's retained position, works in excess of the Average Monthly Time in any given month, then the Displaced Employee shall be additionally compensated for such excess time at the rate of pay of the employee's retained position.

If a Displaced Employee fails to exercise their seniority rights to secure another position available to the employee which does not require a change in such employee's place of residence, to which the employee is entitled under the working agreement, and which carries a rate of pay and compensation exceeding those of the position that the employee elects to retain, then the Displaced Employee shall thereafter be treated for the purposes of this section as occupying the position such employee elects to decline.

(iii) **Early Expiration.** The Displacement Allowance shall cease prior to the expiration of the Protective Period in the event of the Displaced Employee's resignation, death, retirement, or dismissal for justifiable cause.



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(b) **Moving Expenses.** Any Protected Employee retained in the service of a Railroad, or who is later restored to service after being entitled to receive a Dismissal Allowance, and is required to change the point of such employee's employment as a result of the Project, and within the employee's Protective Period is required to move the employee's place of residence, shall be reimbursed for all expenses of moving the employee's household and other personal effects, including travel expenses, temporary living expenses, and any actual wage loss during the time necessary to make the move, and for a reasonable time thereafter, not to exceed five (5) days.

(i) **Prior Agreement.** The exact extent of the responsibility of a Railroad under this Section and the ways and means of transportation shall be agreed upon in advance by the Railroad and the Protected Employee or their representatives.

(ii) **Exception.** Changes in residence that are not a result of a Project, which are made after the initial change and that grow out of the normal exercise of seniority rights, are not within the purview of this Section.

(iii) **Furloughed Employees.** The Railroad shall, to the same extent provided above, assume the moving expenses outlined in Section 5(b) for an employee furloughed within three (3) years after changing such employee's point of employment as a result of a Project, who elects to move their place of residence back to their original point of employment.

(iv) **Reimbursement.** A claim for reimbursement shall be paid under the provisions of this Section within sixty (60) days after it is submitted, unless disputed by the Railroad, but no claim shall be paid if presented to the Railroad more than ninety (90) days after the date on which the expenses were incurred.

(c) **Losses from Home Sale or Contract Termination.** Any Displaced Employee who is retained in the service of a Railroad (or who is later restored to service after being entitled to receive a dismissal allowance), and who is required to change the point of such employee's employment during the Protective Period as a result of a Project, is entitled to the following:

(i) **Home Sale for Less Than Fair Market Value.** If the Displaced Employee owns their place of residence in the locality from which such employee is required to move, then at the Displaced Employee's option, the Railroad shall reimburse the Displaced Employee for the difference between the actual sale price and the fair market value of the employee's place of residence.

The Railroad shall pay such difference within sixty (60) days after the Displaced Employee has filed a claim for such loss in accordance with Section 5(c)(vi), unless a controversy arises as to which Section 5(c)(vii) applies. In each case, the fair market value of the home in question shall be determined without consideration of the Project. The Railroad shall in each instance be afforded an opportunity to purchase the home at such fair market value before it is sold by the Displaced Employee to any other person.



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(ii) **Election to Receive Closing Costs.** The Displaced Employee may elect to waive the provisions of Section 5(c)(i) and to receive, in lieu thereof, an amount equal to the closing costs that are customarily paid for and assumed by a seller of real estate in the jurisdiction in which the employee's residence is located. Such costs shall include customary fees paid to a licensed realtor (not to exceed six percent (6%) of the final sale price) and any prepayment penalty required by any mortgagor or beneficiary of a deed of trust. Such costs shall not include the payment of any mortgage discount points or similar interest discount fees by the Displaced Employee.

(iii) **Pending Contract to Purchase.** If a Displaced Employee has entered into a contract to purchase a place of residence, but due to a Project must cancel that contract, the Railroad shall indemnify the Displaced Employee against any losses due to such cancellation, and shall relieve the Displaced Employee from any further obligation under the contract.

(iv) **Unexpired Lease.** If the Displaced Employee holds an unexpired lease of a dwelling as the employee's primary place of residence, and the Displaced Employee must cancel the lease due to a Project, the Railroad shall indemnify the Displaced Employee from all costs and liability arising from said cancellation.

(v) **Exclusions.** Any change in residence that is not due to or caused by a Project, or that resulted from the normal exercise of a Protected Employee's seniority rights, shall not be within the purview of this Section.

(vi) **Notification of Claims.** A Displaced Employee shall notify, in writing, the Railroad of such employee's claim arising from this Section 5(c) within one (1) year of the date the Displaced Employee's claim accrues.

(vii) **Home Value Disagreements.** In the event of disagreement between a Railroad and a Displaced Employee as to the value of a Displaced Employee's claim, either party (or their representatives) may request, in writing, a joint conference to resolve the disagreement.

A. **Real Estate Appraisers.** If the parties are unable to resolve the disagreement, either party may refer the disagreement to two licensed real estate appraisers, one of whom shall be selected by the Displaced Employee (or such employee's representatives), and one of whom shall be selected by the Railroad. If the two selected real estate appraisers are unable to agree on a valuation within thirty (30) days, the selected real estate appraisers shall designate (or agree to a method by which to select) a third licensed real estate appraiser within ten (10) days. If unable to agree on a selection, either party may request the National Mediation Board to designate within twenty (20) days a third licensed real estate appraiser. A decision by two of the three licensed real estate appraisers shall be required to determine the value in dispute. Said decision shall be final and conclusive.

B. **Payment of Expenses.** The salary and expenses of the third or neutral appraiser shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

(d) **Failure to Exercise Seniority Rights.** If a Displaced Employee is able but does not exercise such employee's seniority rights to secure another position that does not require a change in the employee's primary place of residence, the Displaced Employee shall not be entitled to moving expenses or protections due to the sale of a home outlined in Sections 5(b)&(c).



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6. Protections for Dismissed Employees.

(a) **Dismissal Allowance.** A Dismissed Employee shall be paid a monthly dismissal allowance from the date they are deprived of employment through the Protective Period.

(i) **Monthly Dismissal Allowance Calculation.** The monthly dismissal allowance shall be equivalent to the Average Monthly Compensation received by the Dismissed Employee in the last twelve (12) months of employment prior to the employee's dismissal.

(ii) **Submission of Claim.** A claim for the initial month of a dismissal allowance shall be paid within ninety (90) days and a claim for a subsequent month shall be paid within sixty (60) days after the claim is filed by the Dismissed Employee, unless the claim is disputed by the Railroad pursuant to Section 8 of this Appendix.

(iii) **Reduction or Suspension of Dismissal Allowance.** If a Dismissed Employee accepts new employment (or reemployment by the dismissing Railroad) during the Protective Period, the dismissal allowance shall be reduced such that the accepted monthly compensation at the then-current position (including any unemployment insurance compensation received) plus the dismissal allowance is equivalent to the Dismissed Employee's Average Monthly Compensation. If the compensation of the Dismissed Employee's then-current employment is greater than the dismissal allowance, the dismissal allowance shall be suspended. Such reduction or suspension shall continue for the duration of the Protective Period, unless and until the Dismissed Employee's then-current compensation is reduced or eliminated. Prior to dismissal, such Dismissed Employee (or their representative) and the dismissing Railroad shall agree upon a procedure by which such Railroad shall be informed of the earnings and benefits of such Dismissed Employee in their new position of employment.

(iv) **Early Termination.** The dismissal allowance shall cease prior to the expiration of the Protective Period in the event of the Dismissed Employee's resignation, death, retirement, dismissal for justifiable cause under existing agreements, failure without good cause to return to service after being notified in accordance with an applicable working agreement, or failure without good cause to accept a comparable position that does not require a change of residence, for which the Dismissed Employee is qualified and eligible with the Railroad from which such employee was dismissed after being notified, if the employee's return does not infringe upon employment rights of other employees under a working agreement.

(b) **Separation Allowance.** A Dismissed Employee may, at such employee's option, within seven (7) days of dismissal or an arbitration award establishing the employee's status as a Dismissed Employee, resign and (in lieu of all other benefits and protections provided in this Appendix) accept a lump sum payment computed in accordance with Section 9 of the Washington Job Protection Agreement of May 1936, as amended.

(c) **Priority of Employment or Re-Employment.** Any Protected Employee whose employment is terminated or who is furloughed as a result of a Project shall, if they so request, be granted priority of employment or re-employment to fill a position comparable to that which they held on the Railroad (even if in a different craft or class), so long as they are qualified, or by training or retraining can become physically and mentally qualified, for the position. However, such priority of employment or re-employment must not be in contravention of any relevant collective bargaining agreements.



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(i) **Training or Re-Training.** In the event such training or retraining is requested by a Protected Employee pursuant to Section 6(c), the Railroad shall provide such training or retraining at no cost to the Protected Employee.

(ii) **Waiver of Protections.** If a Protected Employee who has made a request under Section 6(c) fails without good cause within ten (10) days to accept an offer of a comparable position for which such employee has satisfactorily completed such training, the Protected Employee shall, upon the expiration of such ten (10) day period, forfeit all rights and benefits under this Appendix.

7. Fringe Benefits. No Protected Employee shall be deprived during the Protective Period of any (non-salary) rights, privileges, or benefits attached to such employee's previous employment under the terms and conditions of an existing employment agreement (including, but not limited to, free transportation, hospitalization, pensions, insurance, or vacation benefits), so long as such rights, privileges, or benefits continue to be accorded to other employees of the Railroad, in active service or on furlough as the case may be, to the extent that such rights, privileges, or benefits can be so maintained under present authority of law, corporate action, or through future authorization.

8. Arbitration of Disputes.

(a) **Scope.** Any dispute under these conditions not settled by the relevant parties will be resolved in arbitration as provided herein. In the event a Railroad and the Protected Employee(s) (or their representatives) cannot settle a dispute or controversy with respect to the interpretation, application, or enforcement of any provision of this Appendix (other than those Sections of this Appendix that provide for another means of dispute resolution) within thirty (30) days after the dispute arises, either party may refer the dispute to an arbitration committee. The affected Protected Employee(s) (or their representatives) may notify a Recipient of a dispute or controversy under this Section 8 to ensure compliance with 49 U.S.C. § 22905(c)(2)(B).

(b) **Notice.** The party referring the dispute to an arbitration committee shall notify the other party in writing of its intent to refer a dispute or controversy to an arbitration committee.

(c) **Selection of Members.** Within ten (10) days of receipt of the written notice, each party to the arbitration shall select one (1) member of the committee, and the members thus chosen shall select an additional, neutral member to serve as chairman. If any party fails to select its member of the arbitration committee within the prescribed time limit, the general chairman of the involved labor organization or a senior officer designated by the Railroad or the Recipient, as the case may be, shall be deemed the selected member. Should the members be unable to agree upon the appointment of the neutral member within ten (10) days, the parties shall then within an additional ten (10) days agree to a method by which a neutral member shall be appointed; failing such agreement, either party may request the National Mediation Board to designate within twenty (20) days the neutral member whose designation will be binding upon the parties.

(d) **Multiple Representatives.** In the event a dispute involves more than one labor organization, each will be entitled to a representative on the arbitration committee, in which event the Railroad or Recipient may appoint additional representatives equivalent to the number of labor organization representatives; provided, however, that the decision in such case shall be made by the neutral member.



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(e) **Decisions Binding.** The decision, by majority vote except as provided otherwise in paragraph (d) of this Section, of the arbitration committee shall be final, binding, conclusive, and rendered within forty-five (45) days after the hearing of the dispute or controversy has been concluded and the record closed.

(f) **Expenses.** The salaries and expenses of the neutral member shall be borne equally by the parties to the proceeding, and all other expenses shall be paid by the party incurring them.

9. **Classification of a Protected Employee.** In the event an employee (or their representatives) cannot settle a dispute or controversy with the Railroad or the Recipient as to whether or not a particular employee would be affected by a Project, either party may refer the dispute to an arbitration committee within thirty (30) days after the dispute arises pursuant to the arbitration procedures in Section 8. For any such dispute, the employee of a Railroad shall have the burden to identify, with reasonable specificity, the Project that allegedly affected them, and to specify the pertinent facts of that Project, including the change or changes resulting from the Project that allegedly affected them. The burden shall then shift to the Railroad or Recipient to show that factors other than a change resulting from the Project affected the employee. The employee shall prevail on this issue if it is established that the Project had an effect upon the employee, even if other factors also may have affected the employee.

10. **Resolution of Disputes for Non-Bargaining Unit Protected Employees.** Any Protected Employee who is not represented by a labor organization shall be afforded substantially the same levels of protection as are afforded to members of labor organizations under this Appendix. In the event any dispute arises between a Railroad and an employee not represented by a labor organization with respect to the interpretation, application, or enforcement of any provision of this Appendix that cannot be settled by the parties within thirty (30) days after the dispute arises, either party may, as an alternative to the dispute resolution procedures outlined in this Appendix, refer the dispute within ninety (90) days after the dispute arises to the Secretary of Labor for determination. The determination of the Secretary of Labor, or their designated representative, shall be final and binding on the parties.

11. **Severability.** In the event any provision of this Appendix is held to be invalid or otherwise unenforceable under applicable law, the remaining provisions of this Appendix shall not be affected.