

GENERAL PROVISIONS

MULTI-LEVEL COMMUTER RAIL VEHICLES REPAIR PROJECT

June 5th, 2013

CONTRACT NO. 13-627

This Agreement made this 5th day of June 2013, between the New Jersey Transit Corporation, hereinafter referred to as NJ TRANSIT, and Bombardier Mass Transit Corporation hereinafter referred to as the Contractor.

WITNESSETH:

Whereas, the said Contractor, for and in consideration of the payments hereinafter specified and agreed to be made by NJ TRANSIT, hereby covenants and agrees to perform all work and labor required to repair and overhaul seventy (70) multilevel commuter rail vehicles, in strict and entire conformity with the specifications for the project, which said specifications are as follows and are hereby made a part of this Contract as fully and with the same effect as if the same had been set forth at length in the body of this Contract:

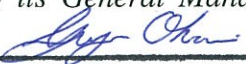
*General Provisions dated June 5th, 2013
Non-Collusion Affidavit
Debarment, Suspension and other Responsibility Matters
Ineligible Contractors Certificate
Mandatory Affirmative Action Language
Certification for Contracts, Grants, Loans and Cooperative Agreements
New Jersey Code of Ethics Affidavit of Compliance*

The Contractor agrees to make payment of all proper charges for work and labor required in the aforementioned work. The parties agree that this Contract covers only the services to be provided by the Contractor and the required material shall be purchased by NJ TRANSIT pursuant to the Material and Technical Support Agreement entered into between the Contractor and NJ TRANSIT.

The Contractor agrees to adhere to the terms of the General Provisions of this Contract.

In consideration of the premises, NJ TRANSIT hereby agrees to pay to the Contractor per the terms and payment schedules stated in Article 165 of the General Provisions for the said work.

It is also agreed and understood that the acceptance by the Contractor of the final payment shall be considered as a release in full of all claims against the Executive Director and NJ TRANSIT out of, or by reason of, the work done under this Contract.

In Witness Whereof, the Contracting Officer of NJ TRANSIT has signed this instrument and caused it to be attested, and the Contractor has caused this instrument to be signed by its Vice President, Services Business Unit and by its General Manager, Services – Sales & Business Development and attested by its By:  the day and year first written.
Gwyn Okorie
Barrister, Solicitor and Notary Public

BOMBARDIER MASS TRANSIT CORPORATION

ATTEST: 

By: 
Matthew Byrne
Vice President, Services Business Unit

ATTEST: 

By: 
Thomas Martin
General Manager, Services – Sales & Business Development

ATTEST: 

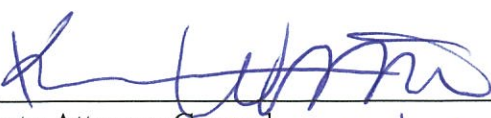
NEW JERSEY TRANSIT CORPORATION

ATTEST: 

By: 
JAMES SCHWORN
CHIEF OF PROCUREMENT

This Contract has been reviewed and approved as to form by the Office of the Attorney General of New Jersey.

~~Jeffrey S. Chiesa~~ John J. Hoffman
Attorney General of New Jersey

Acting
By: 
Deputy Attorney General
6/18/13

GENERAL PROVISIONS

13-627

MULTI-LEVEL COMMUTER RAIL VEHICLES REPAIR PROJECT

GENERAL PROVISIONS

CFR	Code of Federal Regulations.
FAA	Federal Aviation Administration
FCC	Federal Communications Commission
FRA	Federal Railroad Administration
FTA	Federal Transit Administration

Definitions

Approval: The endorsement, sanction or authorization by NJ TRANSIT of a proposal, plan, procedure, action, document, report, specification, design, or any part thereof, undertaken, promulgated or developed by the Contractor in accordance with the indicated requirements of the Contract.

Approved: Written approval from NJ TRANSIT or its designated representative.

Buyer: NJ TRANSIT.

Calendar Day: Each and every day shown on the calendar.

Change Order: A written order issued by the Contracting Officer, or his authorized representative, to the Contractor delineating changes in the Contract.

Contract: The written agreement executed by NJ TRANSIT and the Contractor which covers the performance of the Work, the furnishing of labor and the basis of payment. The Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements either written or oral. The Contract includes the General Provisions and the Purchase Order.

Contracting Officer: The Chief of Procurement and Support Services for NJ TRANSIT, or his designated representative, authorized and empowered to execute contracts and agreements on behalf of NJ TRANSIT.

Contractor: Bombardier Mass Transit Corporation

Days: Days as used in the Contract shall be understood to mean calendar days unless otherwise designated.

Defect(s) / Defective: A condition which does not meet the requirements of the Contract; causes a Vehicle or a portion of the Work to cease operating or operate in a degraded mode; or inflicts damage or harm on any other portion of a Vehicle or the Work.

Engineer: The firm or individual designated by NJ TRANSIT to provide technical and project management services for the Contract. The Engineer is the authorized representative of NJ TRANSIT acting directly or through his duly authorized representative within the scope of the duties assigned to him.

Equipment: All machinery and equipment, and also tools and apparatus necessary for the proper and acceptable completion of the Work.

Execution of the Contract: The signing of the Contract by the Contracting Officer and the authorized representative of the Contractor.

Executive Director: The chief executive officer of NJ TRANSIT appointed in accordance with N.J.S.A. 27:25-1 et seq. and NJ TRANSIT's by-laws.

Failure: Inability of a component, equipment or system to function or perform in accordance with the indicated requirements.

Federal; Federal Government: The Government of the United States of America.

Holidays: Specific days on which NJ TRANSIT is not open for business.

Inspector: NJ TRANSIT's authorized representative assigned to make detailed inspections of Contract performance furnished by the Contractor for purposes of quality assurance.

Job/Project Site: The geographical area of the property at which the Work is to be delivered, as authorized by NJ TRANSIT.

Joint: Involving mutually the Contractor and NJ TRANSIT.

Joint Inspection/Receiving Report: Description prepared by the Contractor and NJ TRANSIT of all shipping damage and missing parts upon multi-level commuter vehicle delivery to the NJ TRANSIT multi-level commuter vehicle at the NJ Transit Rail Acceptance Facility.

Contractor Facility: The plant owned by the Contractor located at 7940 State Route 415, Bath, NY 14810 or any other plant used by the Contractor for the Work.

Materials: Substances, equipment, materials, products and articles specified for use in the Work and its appurtenances.

MMC: Meadows Maintenance Complex, Kearny, New Jersey

NJ TRANSIT Rail Acceptance Facility: Meadows Maintenance Complex (MMC), Kearny, New Jersey.

Notice of Approval for Shipment: Written notification to the Contractor from NJ TRANSIT that a given multi-level commuter vehicle has met all requirements necessary and can be shipped from the Contractor facility.

Notice to Proceed (NTP): The written directive from the Contracting Officer to the Contractor to begin the prosecution of the Work in the Contract.

NJT: See NJ TRANSIT.

NJ TRANSIT: New Jersey Transit Corporation, a public instrumentality of the State of New Jersey established by the New Jersey Public Transportation Act, N.J.S.A. 27:25-1 et seq. (L. 1979, c. 150), hereinafter referred to as the Act.

Project: The specific Work required to be performed by the Contractor as described in the Contract.

Project Manager: The duly authorized individual designated by NJ TRANSIT to be its liaison with the Contractor regarding all matters pertaining to the Work.

Provide: Contractor to furnish, install and make ready for service.

Purchase Order: The written document generated by the procurement department of NJ TRANSIT and issued to the Contractor for billing purposes.

Resident Inspector: NJ TRANSIT 's authorized representative assigned to the Contractor facility to make detailed inspections of Contract performance furnished by the Contractor at that facility for purposes of quality assurance.

Specifications: The directions, provisions and requirements contained or referred to in the General Provisions, together with all written agreements made or to be made pertaining to the manner of performing the Work, the

quantities and qualities of Work to be performed under the Contract.

State: State of New Jersey.

Subcontractor: Any individual, partnership, firm or corporation who undertakes, partially or totally, one or more items of Work under the terms of the Contract, or who perform other services for the Contractor as required to fulfill the terms of this Contract by virtue of an agreement with the Contractor.

Supervisor: The Contractor's authorized representative in charge of the Work.

Technical Provisions and/or Specifications: Specific requirements setting forth the descriptions of elements of the Work to be performed or supplied, the quality of required labor, workmanship, and the performance thereof including changes or addenda made subsequent to the signature of the Contract.

Vehicle: Multi-level commuter car.

Work: Work shall mean the furnishing of labor and other incidentals necessary or convenient to the successful completion of the Project in accordance with Article 102 Scope and Agreement, including alterations, amendments or extensions thereto made by Change Order of the Project Manager.

Working day: A Working Day shall be defined as a calendar day except Saturdays, Sundays and public or local holidays in the respective country in which the Work is being performed.

102 Scope and Agreement

102.1 The Contractor agrees to furnish all management, labor, tools, machinery, facilities, data, services, transportation and incidentals necessary to perform the repair of seventy (70) multi-level vehicles (that were damaged during Superstorm Sandy including, but not limited to, eight (8) ML-a-ACES, two (2) ML2 and sixty (60) ML1 and eight (8) spare trucks). The parties agree that the number of vehicles to be repaired pursuant to this Contract can be changed by NJ TRANSIT with a prior written notice to the Contractor at least ninety (90) days prior to the change taking effect but in no case later than September 24, 2013.

More specifically, the scope for the repair of each of those vehicles is the following:

1. Outbound inspection at NJ TRANSIT site
2. Shipping Valves removed and shipped back to NJT
3. Remove lower level seats
4. Remove lower level floor heater assemblies
5. Remove lower level Nora flooring and floor panels
6. Perform openings on lower level partition walls & assess presence of water damage
7. Perform openings on lower level staircases (kick plate)
8. Remove bottom insulation on side walls, in gondola, under staircase and partition walls (if needed). Insulation to be discarded.
9. Vacuum all water and debris
10. Spray Trexicide solution and leave for 30 minutes
11. Rinse all surfaces with fresh water. After, vacuum water.
12. Dry all interior surfaces
13. Use Citisurf 2310 with a soft brush (no steel) on all corroded spots/area. Rinse with fresh water then vacuum water.
14. Dry areas where Citisurf 2310 was used.
15. Repair Battery box on Trailer vehicles
16. Inspect sound deadener and repair as needed.
17. Install new insulation on side walls, gondolas, under staircase and in partition walls.

18. Seal off lower level access points in partition walls (decorative panels) and in staircases kick plates
19. Install new floor panels on lower level
20. Install new flooring on lower level
21. Reinstall lower level floor heaters
22. Reinstall lower level seats
23. Clean vehicle interior
24. Perform continuity test and resistance test on lower level floor heater
25. Detruck
26. Pull the rollbar apart and change all seals.
27. Change the bump stop on the bolster
28. Pull the swing arm and unpress and repress the new bearings into the swing arms.
29. Replace the rubber bumpers on the swing arms and the smoke bombs.
30. Replace the rubber pad and primary suspension bump stop.
31. Reinstall the swings arms and replace the locking tabs and hardware.
32. Place the truck frame back on the axles and reinstall the hangers and bolster.
33. Repress the truck and redo the truck report and get all the serial numbers for truck history book
34. Wash entire truck with fresh water, side bearings and parking brake mechanism
35. Inspect and clean (if needed) ground brush cable and safety ground straps
36. Retruck
37. Replace traction rods, including shims and hardware
38. Remove all stoneguards, remove debris, inspect for damage, re-assemble (stoneguards on bottom of vehicle, both side + stoneguards under lower level staircases, both ends)
39. Perform the vehicle Leveling
40. Perform single vehicle air test
41. Prepare vehicle for shipment

The parties agree that all material required to perform the Work shall be purchased by NJ TRANSIT pursuant to the Material and Technical Support Agreement entered into between NJ TRANSIT and the Contractor dated May 19, 2008 and renewed as of May 18, 2013.

Periodically, the Contractor shall provide NJ TRANSIT with a list of material that will be required by the Contractor to perform the Work. NJ TRANSIT shall confirm within five (5) days of the receipt of such list, that the material has been ordered in accordance with the Contractor's instructions. NJ TRANSIT shall be responsible for any costs and expenses related to any disruption in the Work flow at the Contractor facility resulting from an omission or a delay in ordering the material in accordance with the Contractor's requirements.

The Work shall be performed in strict conformity with the Contract in a proper, thorough, skillful, and workmanlike manner.

103 Prices

103.1 Work shall be charged on a per vehicle or per truck basis at the prices hereinafter set forth.

The parties agree that the prices set forth hereinafter shall remain firm for the period provided below. The Contractor shall be liable for payment of all taxes and duties applicable and shall be added to the prices. NJ TRANSIT is exempt from New Jersey state use and sales tax and Federal excise tax. These

taxes must not be included in the Contractor's price and invoices. The State of New Jersey Tax Exemption No. is 2160000928 and Federal Tax Exemption No. is 22-75-005K.

Recurring prices: \$76,339.70 per Vehicle

\$3,828.50 for each of the eight (8) spare trucks

Non Recurring prices: \$2,381,926.00

The Contractor agrees that the rates hereinafter set forth below shall remain firm for the periods provided below.

For any additional Work on the Vehicles not included in the scope described in Article 102 of this Agreement, such Work shall be charged on a per hour basis at the rates hereinafter set forth.

For the period from Notice to Proceed through January 31, 2014

Shop Labor Rate	\$102.23 per hour
Engineer Labor Rate	\$175.86 per hour

For each subsequent calendar year following the end of the preceding period, the Shop Labor Rate and the Engineer Labor Rate shall be negotiated in good faith between the parties.

NJ TRANSIT agrees that the prices and rates set out in this Article 103 assume that: (i) the full scope of Work described in Article 102 of this Contract will be done on all seventy (70) multi-level commuter vehicles and eight (8) spares trucks; and (ii) the Work done on the Vehicles and the trucks as described in Article 102 will be substantially the same as the Work done on the first twelve (12) Vehicles/trucks and delivered back to NJ TRANSIT. If any changes in one or more of these assumptions occurs, the prices and rates set out in Article 103 of this Contract shall be subject to adjustment and such adjusted prices and rates shall be applicable for the entire scope of this Contract.

104 Project Schedule and Analysis

104.1 The Contractor shall develop, within sixty (60) days after issuance of Notice to Proceed, a proposed project schedule pursuant to which NJ TRANSIT shall make vehicles available to the Contractor at NJ TRANSIT Rail Acceptance Facility.

105 Intentionally Blank

106 Intent of Contract

106.1 The Contract is intended to describe and to provide for the Work indicated.

106.2 Should it appear that the Work to be provided or any matter relative thereto is not sufficiently detailed or explained in the Contract or is ambiguous, the Contractor shall immediately apply to NJ TRANSIT for such further written explanations as may be necessary and shall conform to the explanation provided as part of the Contract which explanation shall be final and conclusive. If doubts or questions arise regarding the true meaning of the Contract, reference shall be made to the Contracting Officer whose decision thereon will be

final and conclusive. NJ TRANSIT shall work to issue directives to the Contractor over technical solutions, approvals, directives or quality requirements. Any new differences that may arise during the Contract will be subject to the Changes provisions of the Contract.

106.6 References to Sections/Articles of the Contract shall include all of the sub-sections/sub-articles under the Section/Articles referenced and references to paragraphs similarly shall include reference to all sub-paragraphs.

107 Use of English Language

107.1 If English is not the prevalent language used at the work site(s), the Contractor shall make an interpreter available to any NJ TRANSIT personnel or representatives during all working hours, at no cost to NJ TRANSIT. All correspondence, documentation and contract data including, but not limited to, drawings, inspection reports, test reports, and product literature, shall be supplied in the English language. All price, cost and credit proposals as well all accounting and financial data being supplied shall be in United States Dollars and Cents. Weights and measures shall be in the United States system (e.g., ounces, pounds, tons, inches, feet, pints, quarts and gallons) except for European standard parts, which are not modified for the purpose of this contract.

108 Notices

108.1 Any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by this agreement to be made upon, given or furnished to, or filed with one party by another party shall be in writing and shall be deemed to have been duly given if delivered by hand or deposited in the registered mails of the United States, postage paid, in an envelope addressed as follows:

NJ TRANSIT Corporate Headquarters
One Penn Plaza East
Newark, New Jersey 07105-2246
Attn: Mr. Jose Rivera
Division of Procurement

With a copy to:
Ms. Cecilia Dziegielewska
Multi-Level II Project Manager
Capital Planning & Projects Department

If to the Contractor:
Mr. Marc Foisy
Bombardier Transportation Canada Inc.
1101 Parent Street
St-Bruno, Québec, Canada
J3V 6E6

With a copy to:
Contracts & Legal Affairs
Bombardier Transportation Canada Inc.
1101 Parent Street
St-Bruno, Quebec, Canada
J3V 6E6

108.2 Either party to the agreement may re-designate the recipient or change the address of the recipient of notifications hereunder by notifying the other party of this agreement, in writing.

109 Changes

109.1 Any proposed change in this Contract shall be submitted to the Contracting Officer or his authorized representative for his prior approval and the Contracting Officer shall approve the change in writing. Oral Change Orders are not permitted. Except to the extent expressly set forth in the Contract, no

change in or modification, termination or discharge of the Contract shall be valid or enforceable unless it is in writing and signed by the parties.

109.2 Subject to the rates for additional Work set forth in Article 103 of this Contract, the Contracting Officer may at any time, by a written Change Order, make changes within the general scope of this Contract, in any one or more portions of this Contract.

109.11 For all change order work performed by the Contractor or those under the supervision of the Contractor, the applicable rates shall be as provided in Article 103. The records of the Contractor and its subcontractors pertaining to Change Orders shall be open to inspection and audit by representative of NJ TRANSIT during the life of the Contract and for a period of not less than three (3) years after date of the issuance of the last Joint Inspection/Receiving Report of the project. The Contractor shall retain such records for the period. The Contractor shall provide adequate facilities, acceptable to NJ TRANSIT for such inspection and audit during normal business hours. The Contractor shall cooperate fully with the NJ TRANSIT representative performing the inspection and audit. The inspection and audit may begin on ten (10) days notice to the Contractor.

112 Disputes

112.1 Disputes arising in the performance of this Contract, which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the Contracting Officer. This decision shall be final and conclusive unless within ten (10) calendar days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Contracting Officer. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with performance of the Contract in accordance with the decision of the authorized representative of the Contracting Officer. The decision of the Contracting Officer shall be binding upon the Contractor and the Contractor shall abide by the decision. The "New Jersey Contractual Liability Act", N.J.S.A. 59:13-1 et seq., shall govern any action which may be brought by the Contractor as a result of NJ TRANSIT's decision.

113 Release of Claims

113.1 The Contractor warrants that all services will be delivered free from all security interests or other liens or encumbrances whatsoever. The Contractor also hereby agrees to warrant and defend same against all persons claiming the whole or any part thereof.

113.2 The Contractor shall indemnify and save NJ TRANSIT harmless from claims arising out of the demands of subcontractors, laborers, workmen, mechanics, incurred in the furtherance of this Contract. The Contractor shall, at NJ TRANSIT's request, furnish satisfactory evidence that all obligations of the nature herein above designated have been paid, discharged or waived. The final payment shall not be paid to the Contractor until such obligations have been paid, discharged or waived.

114 Assignment

114.1 The Contractor shall not transfer, assign or otherwise dispose of the Contract or Contract funds, due or to become due, or claims of any nature against NJ TRANSIT to any other party except upon the express written approval of NJ TRANSIT.

115 Suspension of Work

115.1 If the Contracting Officer deems it advisable, he may notify the Contractor in writing to suspend work on all or any part of the project, for a period of ninety (90) days (or any lesser period). After such notification

is delivered to the Contractor, and for any further period to which the parties may agree, the Contractor shall do no work where so suspended until he has received written notice from the Contracting Officer to resume work.

115.2 When work is suspended as above provided, payments for the completed parts of the work will be made as provided. For each day where the work is so suspended, NJ TRANSIT shall pay to the Contractor, all wages and other related costs and expenses paid by the Contractor to Contractor's employees and subcontractors that have been mobilized for the Project. No other compensation or allowance will be made on account of such suspension, unless the reason for the suspension is the sole responsibility of NJ TRANSIT and is not related in any manner to the Contractor not fulfilling its contractual obligations. No payment will be made for work done by the Contractor on suspended work.

115.3 Within the period of ninety (90) days (or the lesser period specified) after a Notice of Suspension is delivered to the Contractor, or within any extension of that period of which the parties shall have agreed NJ TRANSIT shall either:

- (A) Cancel the Notice of Suspension, or
- (B) Terminate the work covered by such suspension as provided in "Termination for Convenience" clause.

116 Termination for Cause

116.1 In the event that there is a material breach of a provision of the Contract on the part of the Contractor, the Contracting Officer may serve written notice upon the Contractor of his intention to terminate the Contract for cause. The Notice of Intent to Terminate for Cause shall identify the causes for the proposed termination and demand the elimination of such causes.

116.2 If the Contractor, within a period of ten (10) days after such notice or within such additional time as may be granted by the Contracting Officer, does not cure the default or, if the default cannot be cured in ten (10) days, does not make substantial efforts to cure the default, then the Contracting Officer may terminate the Contract for cause.

116.3 The Notice of Termination for Cause will terminate the Contractor's right to proceed with all items of Work except as specified in the termination notice. The latter will include all work necessary to ensure the safety of the public, to properly secure existing work already completed or partially completed. The work specified in the notice shall be performed in accordance with the Contract and may include items of work not in the original Contract. Unless otherwise specified in the notice, all insurance policies provided by the Contractor naming NJ TRANSIT and any other parties as additional insured shall remain in full force and effect until issuance by NJ TRANSIT of a Final Certificate of Payment.

116.4 Payment for completed or partially completed items of Work shall be made in accordance with the Contract. Payment for new items, if any, will be charged at the rates provided in Article 103. In no event shall NJ TRANSIT be held liable for any damage or loss arising out of or in connection with the execution of this option within the agreed upon time. No other costs or compensation will be allowed.

116.5 When all work specified in the termination notice is completed to the satisfaction of NJ TRANSIT, the Contract shall terminate upon issuance by NJ TRANSIT of a Final Certificate of Payment, except for all contractor and supplier warranties, if any, which shall remain in effect.

116.8 In terminating the Contract for cause, NJ TRANSIT does not waive its right to sue the Contractor for any costs incurred or damages suffered by NJ TRANSIT as a result of the Contractor's default and termination.

116.9 If, after a Notice of Termination for Cause has been issued, it is determined for any reason that the provisions of the Contract were not violated by the Contractor, or if the termination of the Contract for

Cause pursuant to the provisions of this Article is found by a court to be legally improper, then the termination of the Contract for Cause will be treated as if it had been a termination for convenience and such termination shall be compensated for in accordance with the provisions herein.

116.10 Unless otherwise provided in this Contract, or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this Contract for five (5) three (3) years after termination. This includes all books and other evidence bearing on the Contractor's costs and expenses under this Contract. The Contractor shall make these records and documents available to NJ TRANSIT, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

117 Termination for Convenience

117.1 NJ TRANSIT may terminate performance of Work under this Contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in NJ TRANSIT's interest.

The Contracting Officer shall terminate the Work by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

117.2 After receipt of a Notice of Termination and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

- (A) Stop work as specified in the notice.
- (B) Place no further subcontracts or orders (referred to as subcontracts in this clause) for services, or facilities, except as necessary to complete the continued portion of the Contract.
- (C) Terminate all subcontracts to the extent they relate to the work terminated.
- (D) Assign to NJ TRANSIT, as and if directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case NJ TRANSIT shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- (E) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.
- (F) Complete performance of the work not terminated.
- (G) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this Contract that is in the possession of the Contractor.

117.6 The Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination.

117.7 If the Contractor and Contracting Officer fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Contracting Officer shall pay to the Contractor the amounts determined as follows:

- (A) For Contract Work performed before the effective date of termination, the total (without duplication of any items) of:
 - (1) The work performed as per the rates provided in Article 103;

- (2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract if not included in subdivision (1) above; and

(B) The reasonable costs of settlement of the work terminated, including:

- (1) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
- (2) The termination and settlement of subcontracts (excluding the amounts of such settlements);
- (3) Any amounts, as defined and substantiated by labor contract or agreement resulting from the early termination of contract employees of the Contractor mobilized for the Project; and

117.8 Except for normal spoilage, and except to the extent that NJ TRANSIT expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under Sub-article above, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to NJ TRANSIT.

117.9 The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this Contract, shall govern all costs claimed, agreed to, or determined under this clause.

117.10 The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due, NJ TRANSIT shall pay the Contractor:

(A) The amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken, or

(B) The amount finally determined on an appeal. In arriving at the amount due the Contractor under this clause, there shall be deducted:

(A) All un-liquidated advance or other payments to the Contractor under the terminated portion of this Contract; and

(B) Any claim which NJ TRANSIT has against the Contractor under this Contract.

117.13 Unless otherwise provided in this Contract, or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this Contract for three (3) years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this Contract. The Contractor shall make these records and documents available to NJ TRANSIT, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

119 Laws to be Observed

119.1 It shall be the responsibility of the Contractor to keep himself fully informed concerning all requirements of law, including but not limited to all Federal, State and local laws, ordinances, rules and regulations which in any manner affect persons engaged or employed in the Work, or which, in any way affect the conduct of the Work, and of all such orders and decrees of bodies or tribunals having jurisdiction or authority over the same. The Contractor shall, at all times, observe and shall cause all his agents and employees to observe, all such requirements of law, and shall protect, indemnify and hold harmless NJ

TRANSIT its directors, officers, agents and employees against all claims and liabilities arising from or based upon the violation of any such requirement of law whether by the Contractor or his agents or employees. If any discrepancy or inconsistency is discovered in the Contract in relation to such requirements of law, the Contractor shall immediately report the same to the Contracting Officer in writing.

120 Permits and Licenses

120.1 The Contractor shall, without additional expense to NJ TRANSIT, be responsible for obtaining any and all necessary licenses and permits.

121 Succession

121.1 This Contract shall be binding upon NJ TRANSIT, its successor or successors, and upon the Contractor, its successor or successors.

123 NJ TRANSIT Representative

123.1 The individual(s) authorized to act for NJ TRANSIT as Contracting Officer is the Chief of Procurement & Support Services, his designees, and his superiors and their designees.

124 Contractor Representative

124.1 At the time of the signature of the Contract, the Contractor shall appoint, a representative subject to NJ TRANSIT approval as the point of contact for NJ TRANSIT. This representative shall be dedicated to the Contract until the Contract is completed. The Contractor may choose to propose another representative to act as the point of contact for customer services and warranty administration after the issuance of the last Joint Inspection/Receiving Report. The Contractor's representative shall not be reassigned from this Contract without written concurrence of NJ TRANSIT.

124.2 The individual(s) authorized by the Contractor to act on its behalf are:

Name: Marc Foisy
Title: Project Director
Address: 1101 Parent Street, St-Bruno
Quebec, Canada, J3V 6E6
Phone: 450-441-3053

125 Prohibited Interest

125.1 No member, officer, or employee of NJ TRANSIT or its subsidiaries or of a local public body during his tenure or one (1) year thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof.

126 Public Safety and Accident Prevention

126.1 If any operation, practice or condition during the course of the Work be deemed by the Project Manager to be unsafe, the Contractor shall take corrective action when notified in writing by the Project Manager. However, where, in the opinion of the Project Manager, any operation practice or condition endangers persons or property, it shall be discontinued immediately and adequate remedial action taken before the affected part of the Work is resumed. Nothing in the foregoing paragraph shall be constructed as relieving the Contractor from full responsibility for safe prosecution of the Work at all times.

127 Contractor's Standard of Performance

127.1 Contractor represents and warrants that all personnel performing Work under this Contract have the necessary licenses, credentials and expertise and are otherwise fully qualified to perform the Work.

127.4 Contractor represents and warrants that it is complying with and employing the best industry standards and practices in performing the Work.

127.5 The specification of testing methodologies and techniques to be used by the Contractor shall not relieve Contractor of any obligation under the Contract.

128 NJ TRANSIT Code of Ethics for Contractors

128.1 It is NJ TRANSIT policy that Contractors must avoid all situations where proprietary or financial interest, or the opportunity for financial gain, could lead an officer or employee of NJ TRANSIT to secure favored treatment for any organization or individual. Contractors must also avoid circumstances and conduct which may not constitute actual wrongdoing, or conflict of interest, but might nevertheless appear questionable to the general public, thus compromising the integrity of NJ TRANSIT. For the purposes of this Article only, NJ TRANSIT shall be deemed to include any person contracting with NJ TRANSIT to perform services on the Project. All Contractors must comply with NJ TRANSIT's Code of Ethics contained in this Article.

128.2 The Contractor shall not employ any NJ TRANSIT officer or employee in the business of the Contractor or in professional activity in which the Contractor is involved with the NJ TRANSIT officer or employee.

128.3 The Contractor shall not offer or provide any interest, financial or otherwise, direct or indirect, to any NJ TRANSIT officer or employee, in the business of the Contractor or in professional activity in which the Contractor is involved with the NJ TRANSIT officer or employee. The Contractor shall not cause or influence, or attempt to cause or influence, any NJ TRANSIT officer or employee to act in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of that NJ TRANSIT officer or employee.

128.4 The Contractor shall not cause or influence, or attempt to cause or influence, any NJ TRANSIT officer or employee to use or attempt to use his or her official position to secure any unwarranted privileges or advantages for that Contractor or any other person.

128.5 The Contractor shall not offer any NJ TRANSIT officer or employee any gift, favor, service or other thing of value under circumstances from which it might be reasonably inferred that such gift, service or other thing of value was given or offered for the purpose of influencing the recipient in the discharge of his or her official duties. In addition, employees or officers of NJ TRANSIT will not be permitted to accept breakfasts, lunches, dinners, alcoholic beverages, tickets to entertainment and/or sporting events, or any other item which could be construed as having more than nominal value.

128.6 In accordance with N.J.A.C. 16:72-4.1, the Contractor may be suspended and/or debarred if the Contractor:

(A) Makes any offer or agreement to pay or to make payment of, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any NJ TRANSIT Board member, officer, or employee or to any member of the immediate family of such Board member, officer, or employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such Board member, officer, or employee has an interest within the meaning of N.J.S.A. 52: 13D-13g;

(B) Fails to report to the Attorney General and to the Executive Commission on Ethical Standards in writing forthwith the solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any NJ TRANSIT Board member, officer, or employee;

(C) Undertakes, directly or indirectly, any private business, commercial, or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sale, directly or indirectly of any interest in such Contractor to, any NJ TRANSIT Board member, officer, or employee having any duties or responsibilities in connection with the purchase, acquisition, or sale of any property or services by or to NJ TRANSIT, or with any person, firm, or entity with which he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationship subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the NJ TRANSIT Board member, officer, or employee upon a finding that the present or proposed relationship does not present the potential, actuality, or appearance of a conflict of interest;

(D) Influence or attempts to influence or causes to be influenced, any NJ TRANSIT Board member, officer, or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of such Board member, officer, or employee; or

(E) Causes or influences or attempts to cause or influence, any NJ TRANSIT Board member, officer, or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the contractor or any other person.

129 Responsibilities of Project Manager and the Contracting Officer

129.1 The Project Manager shall apply the Contract and shall judge the quality of all parts of the Work. The Project Manager shall certify Contractor's invoices for Work performed and shall be given access to the Work for inspection at all times. The Project Manager has the authority to reject unsuitable Work or suspend Work that is not satisfactory. The Project Manager shall not have authority to order changes in work which alter the terms or conditions of the Contract, nor which involve additional cost, except as authorized by the Contracting Officer. He shall make recommendations to the Contracting Officer for such changes, whether or not costs are to be revised, and the Contracting Officer may act, at his discretion, on the basis of the Project Manager's recommendations.

129.2 The Project Manager shall, at all times, have access to the Work wherever it is in preparation or in progress and the Contractor shall provide facilities required for safe access to enable the Project Manager to perform his functions and responsibilities under the Contract.

129.3 The Contracting Officer is the final interpreter of the terms and conditions of the Contract. The Contracting Officer has the sole authority to execute the Contract; order additions, deductions and changes to the Work; render final decisions on disputes; and suspend or terminate the Work.

131 Consent to Jurisdiction

131.1 The Contract shall be governed by and construed in accordance with the laws of the State of New Jersey as they may from time to time be in effect, including, but not limited to, the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. The Contractor, by entering into this Contract, consents and submits to the jurisdiction of the Courts of New Jersey over any action at law, suit in equity, or other proceeding that may arise out of this Contract, and, if the Contractor is a corporation, agrees during the term of the Contract and throughout the warranty period, to maintain within the State of New Jersey an agent to accept service of legal process on his behalf. Nothing in this Article shall offset the provisions of Article 112, "Disputes," where applicable.

132 Covenant Against Contingent Fees

132.1 The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, NJ TRANSIT shall have the right to annul this Contract without liability and in its discretion to deduct from the amounts due to the Contractor or otherwise recover the, the full amount of such commission, percentage, brokerage or contingent fee.

133 Audit and Inspection of Records

133.1 The Contractor shall retain all Contract records and permit the authorized representatives of NJ TRANSIT to inspect and audit all data and records of the Contractor relating to its performance and its subcontracts under this Contract from the date of the Contract and for three (3) years after issuance of the last Joint Inspection/Receiving Report.

133.2 The periods of access and examination described above, for records which relate to appeals under the "Disputes" clause of the Contract, litigation of the settlement of claims arising out of the performance of this Contract, or costs and expenses of this Contract as to which exception has been taken by NJ TRANSIT or any of its duly authorized representatives, shall continue until such appeals, litigation, claims, or exceptions have been disposed of.

133.3 In addition to the above requirements, the Contractor shall maintain all documentation related to products, transactions or services under this Contract for a period of three (3) years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

134 Patent Rights and Rights in Data

134.1 The Contractor shall indemnify and save harmless NJ TRANSIT and its subsidiaries and their directors, officers, agents, servants and employees from any and all claims for violation of any trademark, copyright, proprietary right, or right to privacy in connection with Work agreed to be performed under this Contract, and shall indemnify NJ TRANSIT and its subsidiaries and their directors, officers, agents, servants and employees for any cost, expense or damage which it may be obligated to pay by reason of such violation at any time during the prosecution of the Work or after completion of the Work in connection with Work agreed to be performed under this Contract exclusive of NJ TRANSIT—mandated items.

134.2 License or Royalty Fees for the use of a process which is authorized by NJ TRANSIT must be reasonable, and paid to the holder of the patent, or his authorized licensee, by or through the Contractor.

134.3 NJ TRANSIT shall have the right to use, duplicate, or disclose technical data, in whole or in part, for the purposes of the use, operation, maintenance, repair and modification of the vehicle. Such technical data shall be defined as the following:

- (A) Any manuals and instructional material prepared for installation, operation, maintenance, or training purposes related to the Work covered by this Contract.
- (B) Technical data pertaining to end items, components, or processes which were prepared for the purpose of identifying sources, size configuration, mating and attachment characteristics, functional characteristics and performance requirements.
- (C) Other technical data which has been, or is normally furnished without restriction by the Contractor or his Subcontractor.

- (D) Other specifically described technical data which the parties have agreed will be furnished without restriction.

135 Air Pollution

135.1 The Contractor and suppliers must submit evidence to NJ TRANSIT that any and all governing air pollution criteria will be met as per the Technical Provision. This evidence and related documents will be retained by NJ TRANSIT for on-site examination by the Federal Transit Administration.

136 U.S. Flag Vessels

Cargo Preference - Use of U.S. Flag vessels

The Contractor agrees:

- (A) To utilize privately owned United States-Flag Commercial Vessels to ship at least fifty percent (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 section, to the extent such vessels are available at fair and reasonable rates for United States-Flag Commercial Vessels.
- (B) To furnish within thirty (30) days following the date of loading for shipments originating within the United States, or within thirty (30) working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "onboard" commercial ocean Bill of Lading in English for each shipment of cargo described in paragraph (1) above to the recipient (through the prime Contractor in the case of Subcontractor Bills of Lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C. 20230, marked with appropriate identification of the project.
- (C) To insert the substance of the provisions of this section in all subcontracts issued pursuant to this Contract.

137 Fly America Requirements

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

138 Labor Disputes

138.1 Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice in writing thereof, including all relevant information to NJ TRANSIT.

139 Clean Water and Clean Air Acts

139.1 The Contractor shall 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.; among other things:

- (a) With the provisions of the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. § 300h et seq.
- (b) With the notification of violating facilities provisions of Executive Order No. 11738; "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans", 42 U.S.C. S 7606 note. The Contractor agrees to report violations to NJ TRANSIT, FTA and to the USEPA Assistant Administrator or Enforcement.

139.2 The Contractor agrees to comply with all applicable regulations, standards, or orders implementing the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The Contractor agrees to report violations to NJ TRANSIT, FTA and to the USEPA Assistant Administrator for Enforcement. Both the Clean Water and Clean Air requirements flow down to all subcontracts which exceed \$100,000. The \$100,000 limit includes indefinite quantities where the amount is expected to exceed this limit in any year.

140 Energy Efficiency

140.1 The Contractor shall comply with the mandatory energy efficiency standards and policies contained in the State of New Jersey Conservation Plan issued in compliance with the Energy Policy and Conservation Act, 42, USC 6321 et seq.

141 Labor Provisions for Non-Construction Contracts

141.1 To the extent applicable, the Contractor agrees to comply with United State Department of Labor regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-Construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR Part 5, and agrees to incorporate into each Non-Construction subcontract \$25,000.00 or more for the project, clauses, modified as necessary to identify the affected parties, required by 29 CFR 5.5.

142 Title VI Compliance

142.1 The Contractor agrees to:

- (A) Comply with, and assure the compliance by its third party Contractors and Subcontractors under this project, with all requirements of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and USDOT regulations, "Nondiscrimination in Federally Assisted Programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act" 49 CFR Part 21, and
- (B) Include the clauses required by 49 CFR Part 21, modified as necessary to identify the affected parties, in each subcontract.

142.2 Access Requirements for Individuals with Disabilities: The Contractor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; 49 U.S.C. 5301(d); and the following regulations and any amendments thereto:

- (A) USDOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37;
- (B) USDOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27;
- (C) USDOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 CFR Part 38; Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Service," 28 CFR Part 35;
- (D) DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;
- (E) General Services Administration Regulations, "Accommodations for the Physically Handicapped," 41 CFR Subpart 101-19;
- (F) Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630;
- (G) Federal Communications Commission Regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64, Subpart F; and
- (H) FTA Regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609.

143 Contract Cost Principles and Procedures

143.1 Part 31 of the Federal Acquisition Regulations (FAR's) entitled, "Contract Cost Principles and Procedures," is incorporated by reference in this Contract.

144 Severability

144.1 If this Contract contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall, upon the application of either party, be stricken from the Contract without affecting the binding force of the Contract as it shall remain after omitting such provision.

146 No Estoppel

146.1 NJ TRANSIT shall not, nor shall any officer thereof, be precluded or estopped by any return or certificate made or given to by the Project Manager or other officer, agent or appointee thereof under any provisions of this Contract, from showing at any time either before or after the issuance of the last Joint Inspection/Receiving Report and payment therefore, the true and correct quality and character of the Work done by the Contractor or any person under this Contract, or from showing at any time that such return or certificate is untrue and incorrect or improperly made, or that Work or any part thereof do not, in fact, conform to this Contract; and NJ TRANSIT shall not be precluded or estopped, notwithstanding any such return or certificate and payment in accordance therewith, from demanding and recovering from the Contractor such damages as NJ TRANSIT may sustain by reason of its failure to comply with the Contract.

146.2 Neither the acceptance by NJ TRANSIT nor any of its employees, nor any order by NJ TRANSIT for payment of money, nor any payment for, nor acceptance of, the whole or any part of the Work by the Project Manager, nor any extensions of time, nor any possession taken by NJ TRANSIT and its employees, shall operate as a waiver of any portion of this Contract, or any power herein reserved to NJ TRANSIT, or of any right to damages herein provided, nor shall any waiver of any breach of this Contract be held to be a waiver of other or subsequent breach.

147 Equal Employment Opportunity

147.1 Equal Employment Opportunity The parties to this Contract do hereby agree that the provisions of N.J.S.A. 10:2-1 through 10:2-4 and N.J.S.A. 10:5-31 et seq. (P.L.1975, c.127) as amended and supplemented and the rules and regulations promulgated pursuant thereto, and the provisions set forth in his Contract entitled State of New Jersey EEO Provisions for Service Contracts, annexed hereto are hereby made a part of this Contract and are binding upon them.

147.2 Equal Opportunity for Individuals with Disabilities The Contractor and NJ TRANSIT agree that the provisions of Title II of the Americans with Disabilities Act of 1990 (the "Act") (42 USC 12101 et seq.), which prohibits discrimination on the basis of disability by public entities in all services, programs, and activities provided or made available by public entities, and the rules and regulations promulgated thereto, are made a part of this Contract. In providing any aid, benefit, or service on behalf of NJ TRANSIT pursuant to this Contract, the Contractor agrees that the performance shall be in strict compliance with the Act. In the event that the Contractor, its agents, servants, employees, or subcontractors violate or are alleged to have violated the Act during the performance of this Contract, the Contractor shall defend NJ TRANSIT and the State of New Jersey in any action or administrative proceeding commenced pursuant to this Act. The Contractor shall indemnify, protect, and save harmless NJ TRANSIT and the State, their agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages of whatever kind or nature arising out of or claimed to arise out of the alleged violation. The Contractor shall, at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith. If any action or administrative proceeding results in an award of damages against NJ TRANSIT or the State or if NJ TRANSIT or the State incur any expense to cure a violation of the Act, the Contractor shall satisfy and discharge the same at its own expense.

NJ TRANSIT shall, as soon as practicable after a claim has been made against it, give written notice thereof to the Contractor along with full and complete particulars of the claim. If any action or administrative proceeding is brought against NJ TRANSIT or any of its agents, servants, and employees, NJ TRANSIT shall expeditiously forward to the Contractor every demand, complaint, notice, summons, pleading, or other process received by it or its representatives.

It is expressly agreed and understood that any approval by NJ TRANSIT of the services provided by the Contractor pursuant to this Contract will not relieve the Contractor of the obligation to comply with the Act and to defend, indemnify, protect, and save harmless NJ TRANSIT pursuant to this paragraph.

The Contractor expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the Contractor's obligations assumed in this Contract, nor shall they be construed to relieve the Contractor from any liability, nor preclude NJ TRANSIT from taking any other actions available to it under any other provisions of this Contract or otherwise at law.

148 Utilization of Disadvantaged Business Enterprises

148.1 The Contractor will cooperate with NJ TRANSIT in meeting its commitments and goals regarding the

maximum utilization of Disadvantaged Business Enterprises and will use its best efforts to insure that Disadvantaged Business Enterprises shall have the maximum practicable opportunity to compete for subcontract work under this contract.

148.2 The term "Disadvantaged Business Enterprise" (DBE) means a business enterprise that is owned and controlled by one (1) or more socially or economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background, or other similar causes. Such persons would include, but not be limited to, blacks, Hispanics, Asians or Pacific Islanders, American Indians or Alaskan Natives and women, regardless of race or ethnicity.

148.3 The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The requirements of 49 C.F.R. Part 26 and NJ Transit's U.S. DOT-Approved Disadvantaged Business Enterprise (DBE) Program are incorporated in this Contract by reference. Failure by the Contractor to carry out these requirements is a material breach of the Contract, which may result in the termination of this Contract or such other remedy as NJ TRANSIT deems appropriate.

148.4 No "Disadvantaged Business Enterprise" (DBE) goal has been established for this contract.

149 Entire Contract

149.1 This Contract contain all terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto or to vary any of the terms contained herein, unless conducted in accordance with "Changes" referenced herein.

150 Ineligible Contractors/Certificate of Debarment and Suspension

150.1 The Contractor certifies that it is not included on the U.S. Comptroller General's Consolidated List of Persons or Firms Currently Debarred for Violations of Various Public Contracts Incorporating Labor Standards Provisions.

150.2 During the performance of this Contract, the Contractor and its Subcontractors must be in compliance with the requirements of the United States Department of Transportation, 49 CFR, Part 29.

150.3 The Contractor is solely responsible for ensuring compliance by all its Subcontractors. The Contractor will immediately notify NJ TRANSIT of any changes with regard to its own or its Subcontractor's status. Contractor will be responsible at its own expense for providing conforming Subcontractors, even if substitutions of proposed Subcontractors are required. Failure of a Contractor to fully comply with these requirements will be grounds for NJ TRANSIT to terminate the Contract for cause and for it to avail itself of any and all other remedies against the Contractor. Certifications are to be mailed to:

Contracting Officer: Mr. Jose Rivera
NJ TRANSIT
Procurement & Support Services Department.
6th Floor, One Penn Plaza East
Newark, New Jersey 07105-2246
Re: Contract No. 13-627 Multi-Level Commuter Rail Vehicle Repair Project

151 Limitations on Lobbying

151.1 The Contractor and its Subcontractors shall comply with 31 USC 1352, entitled, "Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions," including:

- (A) No appropriated funds may be expended by the recipient of a Federal Contract, grant, loan or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of a 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.
- (B) Any Contractor or Subcontractor at any tier who requests or receives a Federally assisted Contract or subcontract in excess of \$100,000.00 from NJ TRANSIT shall file with NJ TRANSIT the certification attached to this Contract and entitled, "Certification for Contracts, Grants, Loans and Cooperative Agreements," and the Contractor or Subcontractor, as applicable, has not made, and will not make any payment prohibited by paragraph (1) of this Article.
- (C) Any Contractor and any Subcontractor who has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action) which would be prohibited under paragraph (1) of this Article if paid for with appropriated funds, shall file with NJ TRANSIT a disclosure form entitled: "Disclosure of Lobbying Activities," which is available from NJ TRANSIT.
- (D) Any certification or disclosure form filed under paragraphs (2) and (3) of this Article shall be forwarded from tier to tier until received by NJ TRANSIT. Any certification or disclosure form shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded.
- (E) The prohibition on the use of appropriated funds does not apply in the case of a payment of reasonable compensation to an officer or employee or a Contractor or Subcontractor if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.
- (F) The prohibition on the use of the appropriated funds does not apply in the case of any reasonable payment to an officer or employee of a Contractor or Subcontractor or to a person, other than an officer or employee of a Contractor or Subcontractor, if the payment is for professional or technical services rendered directly in the preparation, submission or negotiation of any proposal or application for a Federal Contract, grant, loan or cooperative agreement.

152 Out of State Corporations

152.1 If the Contractor is a corporation organized under laws other than New Jersey, the Contractor, pursuant to N.J.S.A. 14A:2-5 and N.J.S.A. 14A:4-1, et seq., shall maintain a registered agent having a business office in New Jersey and shall file with NJ TRANSIT the name of said agent and address of said office.

153 Use of Hazardous Chemicals, Materials and Substances

153.1 The Contractor shall supply to NJ TRANSIT a representative sample of Material Safety Sheets (hereinafter MSDS) for any and all chemicals, materials or substances intended for use in the completion of said project that are covered by reference or definition by the Occupational Safety and Health Administration (hereinafter OSHA) Hazard Communication Standard (hereinafter HCS) and/or the New Jersey Worker and Community Right-to-Know Act, N.J.S.A. 34:5-1, et seq. The chemical name and Chemical Abstract Service (hereinafter CAS) number must be provided for all hazardous substances and

for the five (5) most predominant ingredients. If this information is not available on the MSDS, the information must be provided under separate cover when the MSDS is submitted.

153.2 In addition to supplying NJ TRANSIT with the MSDS, the Contractor shall obtain the expressed written approval of NJ TRANSIT to use any chemicals, materials or substances in the completion of said project which have a health, flammability or reactivity hazard of 2, 3 or 4 as defined by the National Fire Protection Association Standard NFPA704.

153.3 During the performance of said project, the Contractor shall undertake any and all necessary precautions to ensure that NJ TRANSIT personnel and property are not exposed to physical or health hazards from any of the aforementioned chemicals, materials or substances. The Contractor shall ensure that all said chemicals, materials and substances are labeled with the chemical case and CAS number of all hazardous substances and of the five (5) most predominant ingredients in accordance with the requirements of the OSHA-HCS and N.J. Worker and Community Right-to-Know Act.

153.4 In the event the Contractor obtains any new information pertaining to the aforementioned chemicals, materials or substances during the performance of said project, the Contractor shall immediately make that information available to NJ TRANSIT.

154 Insurance

154.1 The Contractor shall carry, as a minimum, the following types and amounts of insurance throughout the Contract, in addition to all other types of insurance and bonds required by the Contract:

154.2 Workmen's Compensation and Employer's Liability Insurance: Employer's Liability Insurance in an amount not less than: One Million Dollars (\$1,000,000.00) for each accident, One Million Dollars (\$1,000,000.00) for each employee disease, and adequate Workmen's Compensation insurance for all Contractors' employees who are engaged in work on the project. In any subcontract let as a result of this project, the Contractor will require the Subcontractor to maintain such insurance for all of Subcontractor's employees who are so engaged.

154.2A Property All-Risks Insurance: Property All-Risks Insurance covering for damages all property which is in the possession or under effective care, custody or control of the Contractor for the replacement value thereof.

154.3 Liability Insurance: Adequate public liability and property damage insurance, including products liability insurance, to protect the Contractor from claims from personal injury, death and damage to property which may arise in any way from operations under this Contract, whether such operations be by the Contractor or by anyone directly or indirectly employed by him.

154.4 The amounts of such insurance shall be as follows:

Public liability insurance including product liability insurance in an amount not less than Ten Million Dollars (\$10,000,000.00) per occurrence and in the aggregate for injuries, including death, to any one (1) person and in an amount not less than Ten Million Dollars (\$10,000,000.00) on account of one (1) occurrence, and property damage insurance in an amount of not less than One Million Dollars (\$1,000,000.00) for any one (1) occurrence. If any subcontract let as a result of this project, the Contractor shall require his subcontractors to maintain adequate public liability and property damage insurance to protect the Subcontractors and their employees.

154.5A In addition, with respect to operations the Contractor performs and those operations performed for the Contractor by Subcontractors, the Contractor shall carry in the name of NJ TRANSIT, owner's

liability in the amount of Five Million Dollars (\$5,000,000.00) combined single limit for bodily injury and property damage.

154.5 NJ TRANSIT shall reimburse to the Contractor the premiums for that portion of insurance required by the Contract that can be directly or indirectly attributed to the Contract.

154.6 The forms of the policies called for by this article and the companies issuing same shall be satisfactory to NJ TRANSIT and the insurance so provided shall be carried until all work (including warranty work) required to be performed under the terms of this Contract has been satisfactorily completed and the Contract has been finally accepted by NJ TRANSIT. These insurance provisions do not release the Contractor from any of his obligations under the terms of the Contract. Insurance policies, as required above, shall be issued by an insurance company satisfactory to NJ TRANSIT and one licensed to do business in the State of New Jersey.

154.7 The Contractor shall furnish NJ TRANSIT with satisfactory proof of carriage of the insurance required, which proof shall obligate the carrier to give NJ TRANSIT thirty (30) days prior written notice of its intentions to terminate and/or substantially change the coverage afforded by the policies. NJ TRANSIT shall be named as additional insured on such policies. Except to the extent specifically provided in Article 154.5 of this Contract, NJ TRANSIT shall not be liable for the payment of any premiums under the foregoing and the certificates or policies shall be endorsed to that effect.

154.8 It is specifically agreed between the parties executing this Contract that it is not intended by any of the provisions or any part of the Contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to the Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Contract.

154.9 The Contractor's obligations under Article, "Indemnification," shall not be deemed to be limited by any insurance contained in this Contract.

155 Indemnification

155.1 The Contractor shall defend, indemnify and save harmless the State of New Jersey, NJ TRANSIT, USDOT and their officers, employees, servants and agents from all suits, actions, or claims of any character including, but not limited to, expenditures and costs of investigations, hiring of witnesses, court costs, counsel fees, settlements, judgments or otherwise, brought because of any injuries or damage received or sustained by any person, persons, or property on account of the negligent operations of said Contractor or his Subcontractors in the performance of the Work specified in this Contract; or on account of or in consequence of any neglect in safeguarding the Work as specified in this Contract; or because of any act or omission, neglect, or misconduct of said Contractor or his Subcontractors in the performance of the Work specified in this Contract; or from any claims or amounts arising or recovered under the Worker's Compensation Act, or any other law, ordinance, order, or decree; and so much of the money due the said Contractor by virtue of his Contract as may be considered necessary by NJ TRANSIT for such purpose may be retained for the use of NJ TRANSIT; except that money due to the Contractor will not be withheld when the Contractor produces satisfactory evidence that he is adequately protected by public liability and property insurance.

155.2 NJ TRANSIT shall, as soon as practicable after a claim has been made against it, give written notice thereof to the Contractor along with full and complete particulars of the claim. If the suit is brought against NJ TRANSIT, NJ TRANSIT shall immediately forward to the Contractor every demand, complaint, notice, summons, pleading or other process received by NJ TRANSIT or its representatives.

155.3 The Contractor assumes the following distinct and several risks, whether they arise from acts or omissions whether negligent or not of the Contractor, its subcontractors, suppliers, employees, agents,

and others working for the Contractor on the Project, of NJ TRANSIT or of third persons, or from any other cause, and whether such risks are within or beyond the control of the Contractor, excepting only risks to the extent they arise from the acts of NJ TRANSIT subsequent to the execution of the Contract with actual and willful intent or negligence to cause the loss, damage, or injuries described in Paragraphs (a) and (b) below:

a) Risks of Loss or Damage to the Project:

During transportation of the vehicles from MMC to the Contractor facility and from the Contractor facility to MMC and while the vehicles are in the possession of the Contractor, the Contractor shall have the charge and care of the Work and of the vehicles and shall take every precaution against injury or damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the Work. The Contractor shall rebuild, repair, restore, and make good all injuries or damages to any portion of the Work occasioned by any of the above causes before acceptance and shall bear the expense thereof. However, the Contractor shall not assume the risk for damage to the Work due to acts of war.

In case of suspension of Work from any cause whatever, the Contractor shall continue to be responsible for the Project as provided above and shall take such precautions as may be necessary to prevent damage to the Project.

b) Risk of Loss to Property in Performing the Work:

The risk of loss or damage to any property of the Contractor, and of claims made against the Contractor or NJ TRANSIT for loss or damage to any property of subcontractors, supplier, workmen, and others performing the Work, and to lessors, occurring at any time prior to completion of removal of such property from the project site or NJ TRANSIT's premises or the vicinity thereof shall be borne by the Contractor.

The Contractor expressly understands and agrees that insurance protection required by the Contract, or otherwise provided by the Contractor, shall in no way limit the Contractor's responsibility to defend, indemnify and save harmless NJ TRANSIT and the State of New Jersey as herein provided. Such insurance requirements are designed to provide greater assurance to NJ TRANSIT that the Contractor will be financially able to discharge his obligations under the Subsection and as to the risks assumed elsewhere in the Contract and shall not in any way be construed as a limitation on the nature and extent of such obligations.

155.4 The Contractor shall not be liable for any NJ TRANSIT's consequential or indirect damages.

155.5 Notwithstanding anything to the contrary contained in the Contract, the aggregate liability of each party to the other for all damages, arising in connection with the Contract and/or its termination, in whole or in part, for any reason, shall not exceed the amount paid by NJ TRANSIT for the Work performed under this Contract. Such limit of liability shall not apply in the event that the damages that are claimed by one party to the other result from a third-party claim addressed to the first party.

156 Warranty

(A) General Warranty

- (1) The Contractor warrants that all Work covered by this Contract shall conform to and perform as called for in the Contract requirements and shall be free from all defects and faulty workmanship. The warranties set forth in this article are exclusive and no other warranties of any kind, whether statutory, written, orally expressed or implied (including all warranties of merchantability or fitness for particular purpose) shall apply except as otherwise provided in this Contract.

- (2) The Contractor will pay any and all expenses incurred by NJ TRANSIT in connection with the repair or replacement of any defective Work during the applicable warranty period with the exception of the cost for the transport of the multi-level commuter vehicle to the maintenance site.

Except as otherwise provided in this Contract, the warranty for all Work performed pursuant to this Contract shall extend for a period of one (1) year (the Warranty period). The Warranty period shall commence on the date each multi-level commuter vehicle is issued a Joint Inspection/Receiving Report.

- (3) Whenever during the one (1) year Warranty period, a multi-level commuter vehicle remains out of service for more than 48 hours because of the failure of the Contractor to correct any warranty deficiency that prevents use of an multi-level commuter vehicle in passenger service, the warranty period for the Work performed on the multi-level commuter vehicle pursuant to this Contract shall be extended by one day for each day beyond 48 hours that the deficiency is not corrected.

(B) Corrective Action during the Warranty Period

- (1) Warranty work will be acknowledged and monitored by the parties using a work order system.
- (2) The Contractor will provide all labor to perform the warranty work.
- (3) NJ TRANSIT will send the Contractor a written notice of observed defects or failures with reasonable promptness, but in any event no later than thirty (30) days after observing the defect or failure. Unless otherwise directed in said notice, the Contractor shall commence corrective work or provide supervision, as provided in Article 156, at the time specified by NJ TRANSIT but in no event later than two (2) working days following notification by the NJ TRANSIT of the defect or failure. The Contractor shall advise NJ TRANSIT before commencing the corrective work, and shall be prepared to demonstrate the work to NJ TRANSIT personnel and diligently pursue such corrective work to completion. To prevent delays and disruption to NJ TRANSIT's operations, NJ TRANSIT shall have the right, when practical and feasible in its opinion, to continue use of any such goods, equipment, subsystems and work deemed defective or unsatisfactory, until such can be taken out of service pursuant to the corrective work hereby undertaken by the Contractor.
- (4) In the event a defect or failure, in the opinion of NJ TRANSIT, constitutes an emergency which will jeopardize or impair the operations and schedules of revenue service, then in that event NJ TRANSIT will provide the Contractor both verbal and written notice thereof and the Contractor shall commence corrective work within twenty-four (24) hours after receipt of written notice. Nothing herein shall be construed as preventing NJ TRANSIT's forces from immediately commencing corrective work, provided all such corrective work is performed in accordance with the Operations and Maintenance Manuals furnished by the Contractor. The Contractor shall reimburse NJ TRANSIT for costs of labor, fringe benefits and overhead at the prevailing rates when the work is performed. NJ TRANSIT shall advise the Contractor of the current rates. Any corrective work by NJ TRANSIT's forces shall not be construed to invalidate Contractor's warranties and other provisions contained in this section.
- (5) Repairs provided pursuant to corrective work hereunder shall be subject to prior approval of the Project Manager and shall be tendered and performed in the same manner and extent originally delivered. Any warranty work shall be accomplished with a minimum of disruption of NJ TRANSIT operations and its maintenance and service facilities. NJ TRANSIT will

make every reasonable effort to make such facilities and multi-level commuter vehicles available to the Contractor consistent with NJ TRANSIT's operational requirements. The Contractor, at its sole expense, hereby agrees to bear all costs of corrective work which shall include, but not be limited to necessary disassembly, transportation, reassembly, repair or replacement of the defective work with the exception of the cost for the transport of the multi-level commuter vehicle to the NJ TRANSIT maintenance site.

- (6) In the event the Contractor is required to perform warranty work and is unable or fails within the time prescribed to commence and diligently pursue and complete the corrective work, NJ TRANSIT is by this provision authorized by the Contractor, at the option of the Project Manager and upon written notice to the Contractor, to contract with another or to use its own forces for the performance of the warranty work. The costs of such work may be deducted from monies due, or to become due, the Contractor. If no monies are then owed the Contractor, NJ TRANSIT shall invoice the Contractor for such costs, and the Contractor shall either pay the invoice within thirty (30) calendar days of its receipt or said monies shall be deducted from the next milestone payment due the Contractor. Contractor hereby agrees to reimburse NJ TRANSIT for all costs and expenses in connection with such corrective work.

157 Responsibilities of Project Manager and Resident Inspector

157.1 The Project Manager shall judge the acceptability of all parts of the Work performed and shall be given access to the Work for inspection at all times. The Project Manager has the authority to reject or suspend Work that is not satisfactory. The Project Manager shall not have authority to give approval or order changes in Work which alter the terms or conditions of the Contract, nor which involve additional cost, except as authorized by the Contracting Officer. He shall make recommendations to the Contracting Officer for such changes, whether or not costs are to be revised, and the Contracting Officer may act, at his discretion, on the basis of the Project Manager's recommendations.

157.2 The Project Manager shall, at all times, have access to the Work wherever it is in preparation or in progress and the Contractor shall provide facilities required for safe access to enable the Project Manager to perform his functions and responsibilities under the Contract.

157.3 The Project Manager shall interpret the performance requirements of the Contract and judge the performance by the Contractor. The Project Manager will, when required by the progress of the Work, render such interpretations as are necessary for the proper execution or progress of the Contract. No provisions of this Section shall be taken to conflict with the procedures for settling disputes.

157.4 A Resident Inspector will be provided by NJ TRANSIT in the Contractor facility from the start of any substantive work on the first multi-level commuter vehicle until the issuance of the last Notice of Approval for Shipment.

157.5 The individual will be responsible for approval of all Work performed on the multi-level commuter vehicles by the Contractor and will be NJ TRANSIT's interface with the Contractor for authorization of all Project Manager-approved and documented work and changes required.

158 Delivery

158.1 The Contractor shall diligently prosecute the Work and shall pickup and deliver the multi-level commuter vehicles as described in this section.

158.2 Pickup and delivery of multi-level commuter vehicles by the Contractor shall be at and to the Meadowlands Maintenance Complex, 1148 Newark Turnpike, Kearny, New Jersey, during normal work

hours (8:00 a.m. to 4:00 p.m.) or as otherwise agreed by NJ TRANSIT. No pickups or deliveries shall be made on Saturdays, Sundays or NJ TRANSIT observed holidays. Evening work is not contemplated. The Contractor shall be responsible for those charges incurred in the loading, unloading, shipment, delivery and receipt of the multi-level commuter vehicles to and from the delivery point (MMC). Such charges are already included in the prices set out in Article 103 of this Contract. Any labor furnished by the Contractor in relation to those charges, will be charged to NJ TRANSIT at the Shop Labor Rate set out in Article 103.1 of this Contract. NJ TRANSIT shall be responsible to ensure vehicle readiness for transportation from MMC to the Contractor facility in accordance with the project schedule to be provided by the Contractor to NJ TRANSIT pursuant to Article 104. NJ TRANSIT shall be responsible for any costs and expenses related to any disruption in the Work flow at the Contractor facility resulting from any delay in the turn-over of the vehicles. An inspection of the Vehicles at NJ TRANSIT costs and expenses may be required before transportation.

158.3 Should evening work be undertaken with the prior approval of NJ TRANSIT, all costs including NJ TRANSIT labor costs associated with evening work will be borne by the Contractor.

158.4 The Contractor shall give NJ TRANSIT at least four (4) days advanced written notice of any pickups or deliveries. The Contractor shall provide the Project Manager with a minimum of forty-eight (48) hours advanced written notice when canceling or postponing a previously scheduled multi-level commuter vehicle delivery.

158.5 Any temporary fittings and parts required for shipment of any multi-level commuter vehicles shall be furnished by the Contractor and removed by the Contractor when the multi-level commuter vehicles are delivered, as necessary. The purchase of any such fittings and parts shall be made pursuant to the Material and Technical Support Agreement and the cost for the labor of installing, removing and returning them to the Contractor shall be borne by the Contractor and charged back to NJ TRANSIT at rate provided in Article 103.

158.6 If shipped by sea, while under deck shipping is preferred, all multi-level commuter vehicles and components thereof shall be adequately protected against physical damage from handling or from exposure to the marine environment.

158.7 The Contractor shall deliver all vulnerable material as noted to the Project Manager upon delivery of each multi-level commuter vehicle and the multi-level commuter vehicle keys to the Project Manager upon delivery of each multi-level commuter vehicle.

158.8 The Contractor shall bear the risk of loss or damage to the multi-level commuter vehicles from the moment the Contractor takes charge of the vehicles at the MMC until delivery at the MMC and the issuance of the relevant Joint Inspection/Receiving Report, regardless of the cause of such loss or damage, and shall, at his own expense, repair and replace in a timely manner under the direction and to the satisfaction of NJ TRANSIT, all parts of the multi-level commuter vehicles so lost or damaged. Notwithstanding the above, the Contractor shall not be responsible for any damage to the multi-level commuter vehicles that was caused by or which resulted from the negligence of NJ TRANSIT or its employees.

158.9 Should the correction of defects require the removal of multi-level commuter vehicles from NJ TRANSIT property, all expenses and costs incurred in their removal from the designated delivery point and their return thereto shall be borne by the Contractor. All warranties for the affected vehicles shall be extended by one day for each day the vehicle is not available for revenue service.

158.10 All necessary truck overhaul tooling shall be provided and shipped to the Contractor facility by NJ TRANSIT at NJ TRANSIT's costs. NJ TRANSIT shall be responsible for any costs and expenses related to any disruption in the Work flow at the Contractor facility resulting from any delay in the delivery of all necessary truck overhaul tooling as provided in this Article. At the end of this Contract, such truck

overhaul tooling shall be returned by the Contractor to NJ TRANSIT, at NJ TRANSIT's costs, in the condition in which it was received, except for ordinary wear and tear. The Contractor shall bear the risk of loss or damage to such truck overhaul tooling which such truck overhaul tooling is in the possession and under the control of the Contractor.

160 Inspection and Acceptance

160.1 NJ TRANSIT has the right to conduct inspections by the Project Manager and its representatives of all Work from the inception of the Contract until the issuance of the last Joint Inspection/Receiving Report. NJ TRANSIT has the right to identify defects in workmanship and other errors or variations from the requirements of this Contract. No omission on the part of NJ TRANSIT or the Project Manager or any of their representatives to identify errors, variations, or defects shall give the Contractor a right or claim against NJ TRANSIT or shall in any way relieve the Contractor from its obligations according to the terms of the Contract.

160.3 Upon completion of the Work on each vehicle, the Contractor shall conduct a complete and comprehensive visual inspection, electrical inspection and mechanical inspection to ensure proper assembly and perform operational and functional tests of the vehicle to check and verify the quality of workmanship and to check for malfunctions and correct operation and performance of all vehicle systems that have been worked on by the Contractor as part of the Work. A written report of these checks, tests and inspections shall be supplied to NJ TRANSIT's in-plant inspector and included in the multi-level commuter vehicle Car History Book. This report shall include any defects, exceptions and deficiencies noted during the Work process and shall include their remedial actions.

160.4 Prior to shipment of any vehicle(s) and with proper notification, the Contractor shall notify the NJ TRANSIT inspector that the Contractor has completed its pre-shipment inspection and tests of the vehicle(s) and shall provide the NJ TRANSIT inspector with copies of the inspection and test results for review. This information shall be provided to the NJ TRANSIT inspector as a complete package at least five (5) full working days in advance of the scheduled shipment date. As a minimum, the schedule shall allocate one (1) full working day for NJ TRANSIT to perform the pre-shipment inspection of each vehicle. The Contractor shall ensure that the vehicle is positioned over a pit with stand-by power and compressed air applied. The NJ TRANSIT inspector shall perform a pre-shipment inspection of the vehicle(s) and if said vehicle(s) are found to be in conformance with the Contract, NJ TRANSIT inspector will issue a signed Approval for Shipment. The notice will identify each vehicle by serial number and road number. Only then is the Contractor authorized to ship the vehicle to MMC. If vehicles are not found to be in compliance with the Contract, NJ TRANSIT shall issue a notice stating the defects, exceptions and deficiencies, and the Contractor shall take all necessary remedial actions to correct the defects, exceptions and deficiencies. The Contractor shall notify the NJ TRANSIT inspector upon completion of the remedial action with a report for his/her review that details the remedial action taken. If the NJ TRANSIT inspector deems these remedial actions acceptable, a re-inspection shall be performed to verify the adequacy of the repair, rework or modification to remedy the defects, exceptions and deficiencies.

160.5 Upon completion of the pre-shipment inspection and acceptance of remedial actions by NJ TRANSIT, the Contractor shall provide the Project Manager with a written report signed by the Contractor's Director of Quality Assurance and the NJ TRANSIT Inspector, stating that the vehicle is ready for shipment. This report shall be included in the multi-level commuter vehicle Car History Book. The NJ TRANSIT inspector will then issue the Notice of Approval for Shipment.

160.7 All tests and inspections shall be witnessed by the Project Manager or his authorized representative and shall be performed during the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday excluding NJ TRANSIT holidays, except as agreed to by the Project Manager.

160.9 The Contractor shall prepare each multi-level commuter vehicle for shipment. Each multi-level commuter vehicle, unless explicitly agreed by NJ TRANSIT, shipped from the Contractor facility to the MMC shall be in compliance with all provisions of the Contract. All parts that must be removed to permit shipment shall be securely packaged and shipped with the multi-level commuter vehicle to which they belong. The multi-level commuter vehicle shall be secured against unauthorized entry during transit by sealing closed all doors and exterior compartments. Any special temporary Work required for shipment of the multi-level commuter vehicle shall be performed by the Contractor and charged to NJ TRANSIT at the rates indicated in Article 103. The Contractor shall take all reasonable precautions to ensure that the multi-level commuter vehicle is protected from damage during transit.

160.10 Each multi-level commuter vehicle shall be received at the MMC and will be jointly inspected by representatives of NJ TRANSIT and the Contractor within 48 hours of its arrival. Following completion of the inspection, a "Joint Inspection/Receiving Report" will be issued and signed by the Contractor's representative and signed by NJ TRANSIT's representative. This report shall provide an assessment of the "as received" condition of the multi-level commuter vehicle stating the condition of the multi-level commuter vehicle, and noting any defects or damage that may have occurred during shipment. The report shall be issued to NJ TRANSIT by the Contractor prior to commencing any adjustments, repairs and/or replacement of damaged parts.

160.11 On issuance of a report which indicates a damaged item, the Contractor shall promptly replace any missing or damaged equipment and material, at its cost, to prevent delay of the project. "Promptly" means that "in stock" items shall be shipped immediately while the repurchase of all other items shall be initiated without delay.

160.12 Spare parts and other materials including those parts that are easily stolen such as keys, radios, emergency tools, fire extinguishers, etc., shall be delivered separate from the multi-level commuter vehicle to the Receiving Department at the MMC. Along with the Contractor, the Receiving Department shall prepare and sign a Joint Inspection/Receiving Report, describing any missing parts or damage that may have occurred during shipment and that is otherwise visible after a cursory inspection.

165 Payment

A. General

NJ TRANSIT will make payments as the Work proceeds based on invoices and supporting documentation submitted in the form required by NJ TRANSIT, in such detail as requested to provide a basis for determining payments. Each invoice shall be based, as the case may be, on the corresponding milestone payment or the Work performed in the previous calendar month at the prices and rates specified in Article 103. In each instance, the request for payment must be initiated by submitting an invoice on or before the tenth (10th) Day of each calendar month. NJ TRANSIT shall make payment of undisputed invoices within thirty (30) days after receipt of approved invoices.

The Contractor shall submit its invoice (each invoice may contain multiple milestones or items) to the following:

Ms. Cecilia Dziegielewska
Multi-Level Project Mgr
Capital Planning & Projects Department
New Jersey Transit Corporation
One Penn Plaza East
Newark, New Jersey 07105-2246

Invoices shall include supporting documentation and other evidence as NJ TRANSIT may require.

All payments hereunder shall be deemed made upon mailing to the Contractor at its mailing address set forth in this Contract.

All costs incurred under this Contract by the Contractor and approved subcontractor(s), including those costs resulting from changes to, modifications of and termination of the Contract must be allowable and allocable in accordance with the cost principles of Part 31 of the Federal Acquisition Regulations (FARs) herein incorporated by reference.

NJ TRANSIT shall make milestone payments as follows:

Item No.	Milestone Description	Payment
1.	Issuance of Notice to Proceed	\$360,000
2.	Receipt and Approval of: Proposed Project Schedule; and Contractor's Quality Assurance Program Plan	\$360,000
3.	Receipt and Approval of Quality Assurance Inspection and Test Plan	\$360,000
4.	Receipt and Approval of Configuration Management Description	\$360,000
5.	Receipt and Approval of Test Procedure	\$360,000
6.	Completion of the Work on the first two multi-level Vehicles (including test, inspection and issuance of Joint Inspection/Receiving Report)	\$360,000
7.	Signature of the Contract	\$221,926.00

After the payment of milestone 7, NJ TRANSIT shall be invoiced monthly based upon any additional Work performed in the previous calendar month as per Article 103 and upon the deliveries of Vehicles and trucks made during that calendar month, at the prices and rates specified in Article 103. For greater certainty, it is understood by the parties that the prices per Vehicle provided in Article 103 shall be invoiced for the first two Vehicles in addition to milestone 6. The Non-Recurring price set out in Article 103 shall be payable at the signature of this Contract. The amount paid by NJ TRANSIT in accordance with this milestone payment schedule shall be deducted from the Non-Recurring price payable at the signature of this Contract.

167 Resident Inspectors and Office Space

167.1 NJ TRANSIT may be represented at the Contractor facility by Resident Inspectors. They shall monitor, in the Contractor facility, the Work done on the multilevel commuter vehicles under this Contract. The Resident Inspectors shall be authorized to approve the pre-delivery acceptance test results, and to issue a Notice of Approval for Shipment. Upon request to the Contractor's quality assurance supervisor, the Resident Inspectors shall have access to the Contractor's quality assurance files related to the Contract. These files shall include drawings, material standards, parts lists, inspection processing and reports, and records of defects.

167.2 No less than thirty (30) days prior to the beginning of the Work, the Resident Inspectors shall meet with the Contractor's quality assurance manager. They shall review the inspection procedures and checklists. The Resident Inspectors may begin monitoring activities two (2) weeks prior to the start of the Work on a multi-level commuter vehicle.

167.3 The presence of these Resident Inspectors in the facility shall not relieve the Contractor of its responsibility to meet all of the requirements of the Contract.

167.4 When a Resident Inspector or other authorized representative is in or about the Contractor's premises above referred to in the course of his employment, he shall be deemed conclusively to be an invitee of the Contractor. If the Contractor is not the owner of the place where fabrication, preparation or manufacture is in progress, the owner thereof shall be deemed to be the agent of the Contractor with respect to the obligations assumed hereunder. The Contractor or his agent shall be responsible for the payment of claims for injuries to the Inspector due to negligence on the part of the Contractor or its agent. The cost of providing the necessary facilities, information, assistance and protection and of satisfying claims for injuries specified above shall be included in the Price.

167.5 The Contractor shall provide office space and furnishings. The facility and its contents shall be subject to the approval of the Project Manager.

167.6 The office space and furnishings shall be ready for occupancy and use by the Resident Inspectors not later than three (3) weeks prior to start of the Project.

167.7 The NJ TRANSIT Resident Inspector shall have the right to reject all workmanship, which does not fully conform to the Contract.

168 Environmental Indemnity Clause

168.1 The Contractor shall conduct all activities in compliance with all applicable federal, state and local laws, rules and regulations designed to prevent or control the discharge of substances into the land, water and air and to protect individual health and safety. The Contractor will hold harmless and defend NJ TRANSIT, its directors, officers, employees, agents and assigns from and against any and all suits, actions, proceedings, costs, fines, penalties and claims arising from or alleged to have arisen from its violation of any such environmental, health or safety laws, rules or regulations whenever such suits, actions, claims or proceedings shall be commenced, or whenever such costs are accrued, except for any violations, if any, at the NJ TRANSIT facility existing prior to the Contractor's activities.

168.2 The Contractor will take reasonable and necessary precautions to prevent the discharge of hazardous substances, including asbestos and petroleum products onto NJ TRANSIT property or into the environment, including the air. If it is determined by NJ TRANSIT that adequate steps are not being taken by the Contractor, NJ TRANSIT may suspend the Work of the Contract immediately without benefit of prior notice to the Contractor, until such time as a plan is developed, agreed to by NJ TRANSIT and implemented by the Contractor to insure the environmental security of NJ TRANSIT's

property and abutting lands and the safety of NJ TRANSIT employees and others who work on or visit the property.

169 Quality Assurance Organization

169.1 The Contractor shall establish and maintain an effective in-plant quality assurance organization. It shall be a specifically defined organization and shall be directly responsible to the Contractor's senior management.

169.2 The quality assurance organization shall exercise quality control over all phases of the Work.

169.3 The quality assurance organization shall have the authority and responsibility for reliability, quality control, inspection planning and establishment of the quality control system.

169.4 The quality assurance organization shall include the following minimum functions:

- (A) The quality assurance organization shall verify inspection operation instructions to ascertain that the Work meets all prescribed requirements.
- (B) The quality assurance organization shall perform process audits on operation instructions and Process Control Procedures to ascertain that the Work meets all prescribed requirements.
- (C) The quality assurance organization shall maintain and use records and data essential to the effective operation of its program. These records and data shall be available for review by the Resident Inspectors. Inspection and test records for this procurement shall be available for a minimum of one (1) year after inspections and tests are completed.
- (D) The quality assurance organization shall detect and promptly assure correction of any conditions that may result in the Work being defective.

169.6 The Contractor shall provide and maintain the necessary gauges and other measuring and testing devices for use by the quality assurance organization to verify that the Work on the multi-level commuter vehicles conform to all Specification requirements. These devices shall be calibrated at established periods against certified measurement standards that have known valid relationships to national standards.

169.7 When production jigs, fixtures, tooling masters, templates, patterns, and other devices are used as media of inspection, they shall be proved for accuracy at formally established intervals and adjusted, replaced, or repaired as required to maintain quality.

169.8 The Contractor's gauges and other measuring and testing devices shall be made available for use by the Resident Inspectors to verify that the Work on the multi-level commuter vehicles conform to all Specification requirements. If necessary, the Contractor's personnel shall be made available to operate the devices and to verify their condition and accuracy.

169.10 The Contractor shall verify that all applicable Technical Provision requirements are properly included or referenced in purchase orders of articles to be used on multi-level commuter vehicles.

169.12 A system for final inspection and test of completed Work on the multi-level commuter vehicles shall be provided by the quality assurance organization. It shall substantiate the overall quality of the Work performed on each completed multi-level commuter vehicle.

169.14 Statistical analysis, tests, and other quality control procedures may be used when appropriate in the quality assurance processes.

169.15 A system shall be maintained by the quality assurance organization for identifying the inspection status of components and completed coaches. Identification may include cards, tags, or other normal quality control devices.

169.16 The quality assurance organization shall establish, maintain and periodically audit a fully documented inspection system. The system shall prescribe inspection and test of work in progress, and completed articles.

169.17 Inspection stations shall be at the best locations to provide for the work content and characteristics to be inspected. Stations shall provide the facilities and equipment to inspect structural, electrical, hydraulic, and other components and assemblies on which Work has been performed for compliance with the requirements.

169.18 Stations shall be also at the best locations to inspect or test characteristics before they are concealed by subsequent assembly operations.

169.22 The quality assurance organization shall establish and maintain a quality control audit program. Records of this program shall be subject to review by NJ TRANSIT.

178 DELETED

179 Exclusionary or Discriminatory Specifications

Except where otherwise required by Federal statute or regulations, the Contractor agrees that it will comply with the requirements of 49 USC § 5323(h)(2) by refraining from using exclusionary or discriminatory specifications in the performance of the Work.

180 No Federal Government Obligations to Third Parties

The Contractor agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to the Contractor in connection with the performance of the Project. Notwithstanding any concurrence provided by the Federal Government in or approval of the Contract, the Federal Government continues to have no obligations or liabilities to the Contractor.

181 False or Fraudulent Statements and Claims

The Contractor recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 USC §§ 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to the Project. Accordingly, by signing the Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the Contract. In addition to other penalties that may be applicable, the Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Contractor to the extent the Federal Government deems appropriate. The Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized by 49 USC § 5307, the Government reserves the right to impose on the Contractor the penalties of 18 USC § 1001 and 49 USC § 5307(n)(1), to the extent the Federal Government deems appropriate.

182 Federal Aid, Laws and Regulations

This Contract may be funded in whole or in part by the United States Government and may be subject to all Federal laws and regulations governing Federally-financed projects. The Contractor acknowledges that Federal

requirements may change and the changed requirements will apply to the project as required, unless the Federal Government determines otherwise.

106.7 All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, and are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any NJ TRANSIT requests, which would cause NJ TRANSIT to be in violation of the FTA's terms and conditions.

183 Exhibits

The following Exhibits attached hereto are incorporated into this Contract:

- Non-Collusion Affidavit (Exhibit 3)
- Debarment, Suspension and other Responsibility Matters (Exhibit 4)
- Ineligible Contractors Certificate (Exhibit 5)
- Mandatory Affirmative Action Language (Exhibit 7)
- Certification for Contracts, Grants, Loans and Cooperative Agreements (Exhibit 11)
- New Jersey Code of Ethics Affidavit of Compliance (Exhibit 12)

EXHIBIT 3

NON-COLLUSION AFFIDAVIT

STATE OF MASSACHUSETTS :

COUNTY OF SUFFOLK :

I, MATTHEW BYRNE of the City of BOSTON in the County of SUFFOLK and the State of MASSACHUSETTS of full age, being duly sworn according to law on my oath depose and say that:

I am the Vice President, Services Business Unit of the firm BOMBARDIER MASS TRANSIT CORPORATION, the Bidder making the Bid for the above-named project, and that I executed the said Bid with full authority so to do; that said Bidder has not, directly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free, competitive bidding in connection with the above-named project; and that all statements contained in said Bid and in this affidavit are true and correct; and made with full knowledge that NJ Transit Corp. relies upon the truth of the statements contained in said Bid and in the statements contained in this affidavit in awarding the Contract for the said project.

I further warrant that no person or selling agency has been employed or retained to solicit or secure such Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained BOMBARDIER MASS TRANSIT CORPORATION.

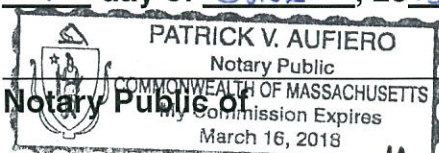
(Name of Contractor)

Matthew Byrne
Signature

Matthew Byrne
Type or Print Name

Subscribed and sworn to before me this

7 day of JUNE, 2013.



My commission expires March 16, 2018.

EXHIBIT 4

Certification Regarding Debarment, Suspension, and Other Responsibility Matters

Required for Contracts Over \$25,000

Instructions for Certification

1. By signing and submitting this bid or proposal, the prospective lower tier participant* is providing the signed certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, NJ TRANSIT may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to NJ TRANSIT if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction”, “debarment”, “suspended”, “ineligible”, “lower tier covered transaction”, “participant”, “persons”, “lower tier covered transaction”, “principal”, “proposal”, and “voluntarily excluded”, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 20]. You may contact NJ TRANSIT for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by NJ TRANSIT.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction”, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings
9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, NJ TRANSIT may pursue available remedies including suspension and/or debarment.

Exclusion - Lower Tier Covered Transaction

- (1) The prospective lower tier participant certifies by submission of this bid or proposal, that neither it nor its principals [as defined at 49 CFR 29.105(p) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.



Signature

Matthew Byrne, Vice President, Services Business
Unit

Print Name & Title



Signature

Thomas Martin, General Manager, Services – Sales &
Business Development

Print Name & Title

EXHIBIT 5

INELIGIBLE CONTRACTORS CERTIFICATE

Bombardier Mass Transit Corporation, hereby certifies that it is not listed on the "Record of Suspensions, Debarments and Disqualifications" published by the N.J. State Treasury in accordance with New Jersey Executive Order No. 34.

BOMBARDIER MASS TRANSIT CORPORATION
Company

By: 

MATTHEW BYRNE, Vice President, Services
Business Unit

Title

By: 

THOMAS MARTIN, General Manager, Services –
Sales & Business Development

Title

Date: June 11, 2013

EXHIBIT 7

P.L. 1975, C. 127 (N.J.A.C. 17:27) MANDATORY AFFIRMATIVE ACTION LANGUAGE

PROCUREMENT, PROFESSIONAL AND SERVICE CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. The contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause;

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation;

The contractor or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with the regulations promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time and the American with Disabilities Act.

The Contractor or subcontractor agrees to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action Office pursuant to N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time.

The contractor or subcontractor agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

The Contractor or subcontractor agrees to review all procedures relating to transfer,

Federal

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12/2010

upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor and its subcontractors shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Affirmative Action Office for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (N.J.A.C. 17:27).

Once the successful bidder/proposer is identified, NJ TRANSIT will need from the contractor, to whom the contract is awarded, one (1) of the following:

- a. A photocopy of the valid letter from the office of Federal Contract Compliance Programs if the contractor has a Federal Affirmative Action Plan Approval; or
 - b. A photocopy of the Certificate of Employee Information Report if the contractor has one; or
 - c. If the company has none of the above, NJ TRANSIT has to provide the contractor with a Affirmative Action Employee Information Report, A.A.
2. The appropriate Affirmative Action document must be submitted by the seventh (7th) day after the notification of intent to award a contract. NJ TRANSIT as a public agency may extend the time period to the fourteenth (14th) calendar day. If by the fourteenth (14th) calendar day the contractor does not submit the affirmative action document, NJ TRANSIT must declare the contractor as being non-responsive and award the contract to the next lowest bidder .

EXHIBIT 11

CERTIFICATION FOR CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit "Disclosure of Lobbying Activities," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



Signature

**Matthew Byrne, Vice President, Services Business
Unit**

Title of Authorized Official



Signature

**Thomas Martin, General Manager, Services –
Sales & Business Development**

Title of Authorized Official

EXHIBIT 12

AFFIDAVIT OF COMPLIANCE NJ TRANSIT'S CODE OF ETHICS FOR VENDORS AND STATE OF NEW JERSEY ETHICS LAWS

I, MATTHEW BYRNE (*name of individual*), executing this document on behalf of the undersigned company, partnership, corporation, or entity hereinafter referred to as "Contractor", presently seeking to do business with NJ Transit by way of a Request for Proposals ("RFP") or Invitation for Bids ("IFB"), hereby warrant and affirm to NJ Transit as follows:

1. I warrant and affirm that Contractor has received a copy of NJ Transit's Code of Vendor Ethics and that I have read and studied this document and distributed this document to all of Contractor's personnel involved in seeking to do business with NJ Transit and required said personnel to fully read this document. In addition, I further warrant and affirm that Contractor has received from NJ Transit a document entitled "Important Notice to All Contractors and Consultants" and that I have read and studied this document, including the page setting forth various New Jersey statutory provisions, and that Contractor has distributed this document to all of Contractor's personnel involved in seeking to do business with NJ Transit and required said personnel to fully read this document..

2. Contractor warrants and affirms that it has issued written instructions to all of Contractor's personnel involved in seeking to do business with NJ Transit instructing and requiring same to strictly adhere to the Contractor's responsibilities as set forth in NJ Transit's Code of Vendor Ethics and in the "Important Notice to All Contractors and Consultants".

3. Contractor warrants and affirms that during the bidding or proposal process for the contract with NJ Transit, no gratuities or other inducements have been offered or given or will be offered or given in any form including gifts, gratuities, benefits, inducements, meals (other than *de minimis* valued snacks such as coffee, tea, soda, pretzels, cookies, or similar non-meal items), entertainment, or any other thing of value or favors of any kind to any member of NJ Transit's Board of Directors, officer or employee of NJ Transit.

4. The Contractor warrants and affirms that during the RFP or IFB process for the contract with NJ Transit, Contractor has not and will not make any offers of employment to any member of the NJ Transit Board of Directors, officer or employee directly involved with this contract or solicit or interview therefor, directly or indirectly, without first seeking and obtaining written approval from NJ Transit's Ethics Liaison Officer.

5. The Contractor warrants and affirms that during the RFP or IFB process for the contract with NJ Transit it has and shall promptly report in writing to NJ Transit every instance that comes to the Contractor's attention and knowledge regarding any member of NJ Transit's Board of Directors, officer or employee of NJ Transit who has solicited or asked Contractor to provide gifts, gratuities, benefits, inducements, meals (other than *de minimis* valued snacks such as coffee, tea, soda, pretzels, cookies, or similar non-meal items), entertainment or any other thing of value or favors of any kind or has made any solicitation or request, directly or indirectly, for employment with or through the Contractor.

6. The Contractor acknowledges and accepts that for breach or violation of the foregoing warranties and affirmations, NJ Transit shall have the discretion and legal right to disqualify Contractor from bidding or proposing for a contract between the Contractor and NJ Transit.

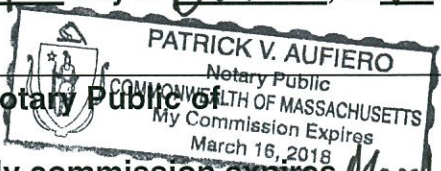
BOMBARDIER MASS TRANSIT CORPORATION
(Print Name of Contractor)


(Signature of Authorized Principal or Officer)

Matthew Byrne, Vice President, Services Business Unit
(Print Name and Title of Signator)

Subscribed and sworn to before me this

7 day of June, 2013.


My commission expires March 16 2018.