

BIDDER'S ACKNOWLEDGMENT

- 1.0 The Bidder, _____ (Insert full legal name, including state of incorporation, if any) acknowledging that it has satisfied itself as to the nature, location and site conditions of the Work, and carefully examined all of the Contract Documents, offers to perform for the Railroad all the Work described in said Contract Documents in strict conformity with each and every provision of said Contract Documents at the price(s) set forth in the applicable schedule and within the time(s) set forth in the Contract Documents.
- 2.0 Bidder agrees that the amount of the required bid bond, certified check or official bank check, in no way limits the damages recoverable by the Railroad to that amount, in case the Bidder shall fail, by omission or commission, in any of its obligations pursuant to these Contract Documents.

In addition, the Bidder acknowledges that the bid security provided may be applied in whole or in part for damages incurred by the Railroad, as provided herein.

The Bidder also acknowledges that upon such failure and without further notice to the Bidder, the Railroad may proceed to execute a contract with any of the original Bidders as the Railroad considers to be in its best interest, or may invite further bids, and the Bidder shall thereupon, in either case, be liable to the Railroad for all loss and damages sustained by the Railroad by reason of such failure of the Bidder. The loss and damages will result and be recovered as follows:

- 2.1 The Railroad will incur additional administrative costs associated with making a contract with any of the original Bidders. Inasmuch as the amount of such loss and damage will be extremely difficult to ascertain, it is expressly understood and agreed that such loss and damage will be liquidated at dollar amount to be determined and paid out of the security. If, in addition, it becomes necessary for the Railroad to re-bid and/or invite further bids to award a contract, this additional cost will be liquidated at an additional \$ to be determined increasing the total amount to be liquidated to a dollar amount to be determined.
- 2.2 The Railroad may also incur damage by reason of ultimately entering into a contract for this Work at a higher price than that offered by the Bidder. In such event, the Bidder shall be liable to the Railroad for the excess of the amount of the bid price ultimately accepted by the Railroad over the gross sum bid of the Bidder. To the extent possible such difference shall be paid out of the bid security.
- 2.3 In the event the security is insufficient for Item 2.1 and/or Item 2.2 of this Schedule, the Bidder shall pay to the Railroad any deficiency.

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Remedies provided herein are not exclusive and are in addition to any other rights and remedies provided by law or these Contract Documents.

- 3.0 Further, upon submission of this bid, the Bidder acknowledges and agrees to the following:
- 3.1 The offer made by the Bidder shall be irrevocable for 90 calendar days after the date on which the Railroad opens the same without regard to any bid rejection, conditional acceptance or counter offer.
 - 3.2 The Bidder understands that the Railroad reserves the right to require the Bidder, prior to the award of the Contract, to submit a financial statement and experience data in a form and content satisfactory to the Railroad, and to be examined thereon and on its experience in the Railroad's sole judgment, in order to enable the Railroad to determine whether the undersigned appears to have the financial and technical capability to perform the Work; and that failure to comply with these requirements may preclude the award of the Contract to the Bidder.
 - 3.3 As provided in the Contract Terms and Conditions Section, Article titled, New York State and Local Taxes, the Bidder understands that it shall not, and represents that it has not included in the price(s) set forth in the bid any amount on account of possible State of New York sales or compensating use taxes on the sale or transfer to it of any personal property which will become an integral component part of the Work.
 - 3.4 Upon acceptance of this bid, as evidenced by the issuance to the Bidder of the Notice of Award, a valid and binding Contract shall thereby be created and the undersigned does hereby bind itself to acknowledge the said Contract and to redeliver an executed copy of the Notice of Award as evidence of such acknowledgment to the Railroad, along with the required bonds in the same form as those included in the Contract document, insurances, accompanied by a current Certificate of Qualification pursuant to Section 1111 of the Insurance Law, and other documents as may be required by the Railroad, within fifteen (15) days of the receipt of such Notice of Award, subject only to delays resulting from the issuance of a court order or other legal compulsion expressly preventing the undersigned from performing such act. The Railroad shall advise if the bonds and insurances submitted are satisfactory. The amount of each bond shall be for 100% of the award amount for the Work and remain in effect for the life of the Contract and as further detailed below. The proposed surety must be a corporate surety licensed to do business in the State of New York and in good standing under the laws of the State with an

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approved capacity to exceed the total amount of the bid. Further, in order to be approved, surety must hold a Certificate of Authority, as acceptable sureties issued by the Department of Treasury, Fiscal Service, with an underwriting limitation of no less than \$1,000,000.00 or be rated A.M. Best & Co., at B+ or higher.

The bond(s) shall not be canceled until the statutory time within which liens may be filed by subcontractors, laborers and material suppliers has expired, nor unless the various insurances provided in accordance with the provisions of these articles afford the Railroad, in its judgment, satisfactory protection nor until the Contractor has, in the Railroad's sole discretion, otherwise satisfactorily complied with the terms of this Contract. The required Form of these Bonds is in Section (to be determined) of these Contract Documents.

- 4.0 The Bidder understands and agrees that a conditional bid, or one which varies from any provision of the Contract Documents, or fails to meet any requirement thereof, may be considered non-responsive and rejected; and that the Railroad reserves the right to waive informalities in or to reject any and all bids, as it may determine in its sole and absolute discretion.
- 5.0 A protest by a Bidder, of any contemplated or actual award shall be submitted in accordance with the latest issue of the Railroad's Protest Procedure, a copy of which may be obtained upon written request to the Procurement Officer.

In accordance with the Federalism Executive Order wherein government intrusion into the conduct of a grantee (i.e. LIRR) is to be limited, and that the government will not substitute its judgment for that of the grantee (i.e. LIRR) judgment, the FTA will only entertain a request for FTA review of a protest that alleges the grantee (i.e. LIRR) failed to have a protest procedure or failed to review a complaint or a protest. All such protests to the FTA must be filed in accordance with FTA circular 4220.1F.