



## **VIRGINIA RAILWAY EXPRESS**

### **REQUEST FOR PROPOSALS**

**(RFP) No. 025-006**

## **CONSTRUCTION MANAGEMENT SERVICES FOR CONSTRUCTION OF VRE FRANCONIA- SPRINGFIELD STATION IMPROVEMENTS**

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**RFP Issued: November 12, 2024**

**Contact:** Ramon Paez, Contract Administrator  
Virginia Railway Express, 1500 King Street, Suite 202, Alexandria, VA 22314  
**Main Office:** (703) 684-1001 **Direct/Fax:** (703) 838-5447 **Email:** [rpaez@vre.org](mailto:rpaez@vre.org)

**Contact:** Kristin Nutter, Director of Purchasing and Contract Administration  
Virginia Railway Express, 1500 King Street, Suite 202, Alexandria, VA 22314  
**Main Office:** (703) 684-1001 **Direct/Fax:** (703) 838-5441 **Email:** [knutter@vre.org](mailto:knutter@vre.org)

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## TABLE OF CONTENTS

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<b>I.</b>	<b>INTRODUCTION TO RFP</b> .....	3
<b>II.</b>	<b>PROCUREMENT SCHEDULE</b> .....	5
<b>III.</b>	<b>INSTRUCTIONS FOR OFFERORS</b> .....	6
<b>IV.</b>	<b>PROPOSAL REQUIREMENTS</b> .....	17
<b>V.</b>	<b>SUBMISSION OF PROPOSAL</b> .....	22
<b>VI.</b>	<b>EVALUATION PROCESS AND CRITERIA</b> .....	25
<b>VII.</b>	<b>CONTRACT AWARD/EXECUTION</b> .....	37
<b>VIII.</b>	<b>SPECIAL PROVISIONS</b> .....	40
<b>IX.</b>	<b>GENERAL PROVISIONS</b> .....	41
<b>X.</b>	<b>INSURANCE REQUIREMENTS</b> .....	77
<b>XI.</b>	<b>SMALL BUSINESS AND VETERAN BUSINESS CONCERNS</b> .....	83
<b>XII.</b>	<b>ATTACHMENTS</b> .....	86

**Attachment A-** Scope of Work

**Attachment B-** Representations, Certifications and Other Statements of Bidders/Offerors

**Attachment C-** VRE Safety and Security Guidelines

**Attachment D-** Federal Transit Administration (FTA) Third Party Contract Provisions

**Attachment E-** Disadvantaged Business Enterprise (DBE) Provisions and Forms

**Attachment F-** Site Specific Safety Plan



## I. INTRODUCTION TO RFP

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### 01. PURPOSE

The purpose of this Request for Proposals (RFP) is to establish a Contract with one (1) qualified and experienced Contractor to provide professional construction management services for the construction of improvements at VRE's Franconia-Springfield Station located at 6880 Frontier Drive in Springfield, Virginia.

### 02. VRE BACKGROUND

- A. The Virginia Railway Express (VRE) is a commuter rail service linking the District of Columbia and Northern Virginia. The Northern Virginia Transportation Commission (NVTC) and the Potomac and Rappahannock Transportation Commission (PRTC) are transportation districts established under Virginia law and jointly own this service. An Operations Board consisting of members from each of the jurisdictions within the VRE service area governs the development and operation of VRE and serves as an advisory board to the NVTC and PRTC governing boards. Use of the term VRE in this RFP refers to NVTC and PRTC.
- B. VRE began operations in 1992 on two (2) lines, Fredericksburg and Manassas. In January 2014, VRE's Operations Board adopted System Plan 2040 which calls for expansion of service, requiring the addition of railcars, expansion of station and yard facilities, as well as expanding operations to meet the goal of doubling ridership by 2040. VRE's multi-prong program addresses short term growth needs, as well as longer term capacity improvements and investments in maintaining and servicing VRE's equipment and facilities.
- C. The primary mission of VRE is to provide commuter-oriented passenger rail service between the outlying suburbs and the Washington-Arlington-Alexandria urban core. Some tourists and "day-trippers" also ride the trains. The service is heavily oriented towards that core area in the morning peak and in the opposite direction in the evening peak.

### 03. PROJECT BACKGROUND

- A. The Franconia-Springfield Station improvements will extend the existing platforms to better accommodate up to 8-car train consists, allowing all car doors to open, and improving the efficiency of boarding. The improvements will also enhance the existing Americans with Disabilities Act (ADA) compliant access to the Barry Road cul-de-sac, by constructing a new pedestrian ramp and tunnel extending along the existing tracks toward the cul-de-sac. This tunnel is designed to maintain continuous pedestrian access to the existing VRE and Washington Metropolitan Area Transit Authority (WMATA) stations, to include providing access upon completion of the Virginia Passenger Rail Authority's (VPR) Franconia to Lorton Third Track project, which will construct a 3<sup>rd</sup> track through



the limits of the Franconia-Springfield Station. Lastly, the improvements encompass repairs to the existing station, including but not limited to, concrete repairs, steel repairs, cleaning and painting.

- B. The scope of work shall include comprehensive construction management services for construction of extended platforms along both Track 3 and Track 2 as well as rehabilitation of the stair/elevator towers, platforms, and canopies, and pedestrian ramp/tunnel construction. See Exhibit A to the Scope of Work for the project overview.

**04. FUNDING**

This project is funded in whole or part by Federal and State grants and is subject to certain provisions required by the respective Federal and State agencies. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any VRE requests which would cause VRE to be in violation of Federal and State agency terms and conditions.



## II. PROCUREMENT SCHEDULE

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<b>RFP Issued</b>	<b>November 12, 2024</b>
<b>Confirm Attendance at the Pre-Proposal Meeting</b>	<b>November 20, 2024</b> at 3:00 P.M. EST
<b>Pre-Proposal Meeting</b>	<b>November 21, 2024</b> at 1:00 P.M. EST
<b>Submission of Written Questions</b>	<b>December 3, 2024</b> at 2:00 P.M. EST
<b>Proposals Due (Closing Date and Time)</b>	<b>December 18, 2024</b> at 2:00 P.M. EST
<b>Interviews (Optional)</b>	<b>February 4, 2024</b> from 10:00 A.M. to 4:00 P.M. EST

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Virginia Railway Express (VRE) reserves the right to make changes to the above-mentioned schedule. All such changes shall be made by an addendum to the solicitation. Offerors must frequently monitor VRE's website at [www.vre.org](http://www.vre.org) for information concerning this solicitation, including any addenda or notices.

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### III. INSTRUCTIONS FOR OFFERORS

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**01. COMPETITIVE NEGOTIATION FOR PROFESSIONAL SERVICES**

This solicitation is a competitive negotiation for professional services, as defined in the PRTC and VRE Public Procurement Policy and Procedures Manual. The content of the Proposals and the identity of the Offerors are not public record until a Notice of Intent to Award has been issued. The opening of Proposals is therefore not public.

**02. PROPOSAL AND CONTRACT REQUIREMENTS**

- A. Federal funds may be used for the subsequent Contract. Federal requirements are subject to change. The Offeror is responsible for complying with the most current regulations. The Offeror agrees that the most recent of such Federal requirements will govern the administration of the Contract at any particular time during performance of the Contract, unless VRE issues a written determination otherwise.
- B. Additionally, VRE follows Virginia procurement laws. Accordingly, all applicable Federal and State requirements will apply. Offerors are expected to become familiar with these requirements and shall not submit Proposals if unable to execute a Contract containing such provisions.
- C. VRE will provide a Contract containing these provisions for execution by the prospective Contractor that is selected. Offerors shall not use their own standard contracts for this engagement.

**03. OBLIGATION OF CONTRACTOR**

- A. Before submitting a Proposal, the Offeror shall be responsible for reading and examining the solicitation documents including these Instructions for Offerors. Submission of a Proposal shall be deemed verification of such reading and examination by the Offeror.
- B. By submitting a Proposal, the Contractor agrees that it has satisfied itself from a personal investigation of the conditions to be met, that the obligations herein are fully understood, and no claim may be made, nor will there be any right to cancellation or relief from the Contract because of any misunderstanding or lack of information.

**04. COMPETITION INTENDED**

It is VRE's intent that this solicitation promotes competition. It shall be the Offeror's responsibility to advise VRE if any language or requirements included in this RFP restrict or limit the purchase to a single source. Such notification must be received by the VRE Director of Purchasing and Contract Administration, in writing, not later than fifteen (15) calendar days prior to the date and time set for



receipt of Proposals. A review of such notifications will be made, and the Offeror notified of the results of the review.

**05. INTEREST IN MORE THAN ONE PROPOSAL AND COLLUSION**

Reasonable grounds for believing that an Offeror is interested in more than one Proposal for a solicitation, including both as an Offeror and as a Subcontractor for another Offeror, or that collusion exists between two or more Offerors, will result in rejection of all affected Proposals. However, an individual or entity acting only as a Subcontractor may be included as a Subcontractor on two or more different Offerors' Proposals. Offerors rejected under this provision will also be disqualified if they respond to a re-solicitation for the same work.

**06. POINT OF CONTACT**

- A. All inquiries or correspondence shall be directed to the VRE Contract Administrator and the Director of Purchasing whose names and contact information appear on the face of this solicitation.
- B. Communications relating to this RFP, other than to the Contract Administrator and the Director of Purchasing, are prohibited during the RFP response period. **Do not contact VRE consultants, or VRE personnel other than the Contract Administrator and Director of Purchasing regarding this solicitation.**

**07. WRITTEN COMMUNICATIONS**

- A. VRE will assume no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of the Contract, unless included in this RFP or related documents or addenda thereto.
- B. Oral explanations or instructions given before award of the Contract will not be binding.

**08. CLARIFICATION OF TERMS**

If an Offeror has questions about the solicitation documents, the Offeror shall contact the VRE Contract Administrator and Director of Purchasing whose names appear on the face of the solicitation. Any revisions to the solicitation will be made only by addendum issued by VRE.

**09. AVAILABILITY OF SOLICITATION DOCUMENTS**

The electronic versions of the solicitation documents are intended to provide convenience to prospective Offerors. Be advised that it is the responsibility of prospective Offerors to monitor VRE's website for any addenda, notices or postings. Failure to submit signed addenda may be grounds to declare a Proposal non-responsive.

**10. PRE-PROPOSAL MEETING**

- A. A **non-mandatory pre-proposal meeting** to discuss the requirements of this solicitation will be held for prospective Offerors at the **VRE Franconia-Springfield Station** located at 6880 Frontier Drive, Springfield, VA 22150. *The*



*date and time are specified in PART II. – PROCUREMENT SCHEDULE* of this RFP.

- B. Attendance at the pre-proposal meeting is limited to no more than two (2) representatives of each firm.
- C. Parking shall be the responsibility of prospective Offerors. Offerors are responsible for the payment of any parking charges or fines from illegal parking.

**11. CONFIRM ATTENDANCE AT THE PRE-PROPOSAL MEETING**

Offerors must confirm their attendance at the non-mandatory pre-proposal meeting by contacting the Contract Administrator whose name and contact information appears on the face of this solicitation, prior to the *date and time specified in PART II. – PROCUREMENT SCHEDULE* of this RFP. *It is recommended that prospective Offerors monitor VRE’s website for an addendum which may change the format of the pre-proposal meeting.*

**12. SITE VISITS**

- A. On **November 21, 2024**, following the pre-proposal meeting, a non-mandatory site visit will be held at:

VRE Franconia-Springfield Station  
6800 Frontier Drive  
Springfield, VA 22150

- B. The station platform at Franconia-Springfield is publicly accessible. However, Offerors are encouraged to attend the site visit in preparation of their Proposal. VRE will not provide any other opportunities to any Offerors for site visits.

- 1. If Offerors cannot attend the site visit, they may and are encouraged to visit the Franconia-Springfield Station at their option in preparation for submitting a Proposal. When visiting the Franconia-Springfield Station, Offerors shall adhere to the safety guidelines below in Provision 13.

- C. Offerors **must** confirm their attendance for the site visit by registering with the Contract Administrator whose name and contact information appears on the face of this solicitation, no later than **November 20, 2024 by 3:00 P.M.**

- 1. A sign-in sheet will be provided at the site visit.
- 2. Offerors are cautioned that any information that may be provided during the site visit, which conflicts with, supersedes, or adds to requirements in this Request for Proposals, must be confirmed by written addendum before such information can be considered to be part of this solicitation.

- D. Attendance at the site visit is limited to no more than two (2) representatives of each firm.





- E. Transportation to the site shall be the responsibility of the prospective Offerors.
- F. PARKING - Offerors are directed to park at the WMATA Franconia-Springfield Station Parking Garage.
- G. Any questions Offerors have during the site visit regarding this solicitation, including but not limited to, the solicitation process, requirements, scope of work, etc., must be submitted in writing per the instructions in Provision 14 below.

**13. SAFETY GUIDELINES FOR SITE VISIT**

- A. Safety and security are two (2) critical areas that contribute to VRE's success. Therefore, VRE's policy is to comply fully with all applicable laws and regulations concerning project activities on Host Railroad and VRE property.
- B. VRE personnel will conduct a safety briefing prior to entry at the site. Offerors are directed to meet on the platform at the VRE Franconia-Springfield Station.
- C. At the site. Offerors shall adhere to the following guidelines which serve as a standard of conduct to ensure safety while on Host Railroad and VRE property:
  - 1. Provide required identification, sign in and be present for a safety briefing.
  - 2. Wear Personal Protective Equipment (PPE), including appropriate hard soled shoes with a defined heel and ankle support, safety vests and safety glasses. See VRE's website at <https://www.vre.org/careers/contractors/> for more information.
  - 3. The site visit at the VRE Franconia-Springfield Station will be in the vicinity of active railroad operations. At no time shall Offerors be permitted to access the railroad tracks or any adjacent railroad property.

**14. SUBMISSION OF WRITTEN QUESTIONS**

- A. **Deadline:** All questions and requests for clarification regarding the meaning or interpretation of this RFP and other solicitation documents, or any ambiguities, discrepancies, inconsistencies, or conflicts in or between any of the technical, pricing, or contractual provisions, must be submitted no later than the ***date and time specified in PART II. – PROCUREMENT SCHEDULE*** of this RFP. Questions and clarifications requested after such time will not be answered unless VRE elects, at its sole discretion, to do so.
- B. **Format for Questions:** Questions must be submitted in Microsoft Word format and include the related Section number and title.
- C. **VRE Point of Contact:** Questions must be submitted to the VRE Contract Administrator and Director of Purchasing in writing via electronic mail as listed on Page 1 of this RFP. No questions or requests for additional information, clarification or any other communication should be directed to any other individual.



- D. **No oral communication will be accepted.** VRE will not be bound by any oral communications, or written interpretations or clarifications that are not set forth in an addendum.
- E. Questions and responses will be posted on VRE's website at [www.vre.org](http://www.vre.org).
- F. Any interpretation of a question made by VRE will be responded to and distributed in the form of an addendum to the RFP and will be available to all interested Offerors through VRE's website.

**15. ADDENDA**

VRE may issue addenda to the RFP. Addenda, if any, will be issued at least five (5) calendar days prior to the Proposal closing date. Any addendum issued less than five (5) calendar days prior to the closing date will, if necessary, contain a provision modifying the Proposal closing date to a date that will provide Offerors adequate time to respond to the addendum.

**16. MODIFICATION OF PROPOSAL CLOSING DATE**

VRE reserves the right to modify the Proposal closing date and/or time. If Offerors have already submitted their Proposals to VRE when the Proposal closing date and/or time are modified, VRE will afford those Offerors the opportunity to revise or withdraw their Proposals.

**17. VRE INCLEMENT WEATHER POLICY**

In the event of inclement weather conditions, such as heavy snowfall, icy streets and sidewalks, flooding, earthquakes, tornadoes, and other natural disasters, which result in the cancellation of VRE service operation, the Proposal due date will be extended to the next business day VRE service operates. Notifications of service operation interruptions and the resumption of service are generally posted on VRE's website. An official addendum to the solicitation will be posted on VRE's website at the earliest opportunity once VRE service resumes operation.

**18. CANCELLATION/WITHDRAWAL OF RFP**

VRE reserves the right to cancel or withdraw in whole or in part this RFP at its sole discretion. Offerors will be notified in the event the RFP is cancelled via VRE's website.

**19. WAIVER OF INFORMALITIES**

VRE reserves the right to waive informalities and minor irregularities in Proposals.

**20. WITHDRAWAL OF PROPOSAL PRIOR TO CLOSING DATE**

Proposals may be withdrawn by written notice from the Offeror to the VRE Director of Purchasing prior to the RFP closing date and time. The withdrawal shall be made by the person signing the Proposal or by any individual who is authorized by the Offeror. The Offeror must provide written evidence of the individual's authority to withdraw the Proposal if the individual withdrawing the



Proposal is other than the person signing the Proposal. Proposals may be withdrawn no later than two (2) business days prior to the closing date.

**21. LATE PROPOSALS**

Proposals received after the Proposal closing date and time shall not be considered. Late Proposals will be returned to the Offeror UNOPENED, if the solicitation number, closing date and Offeror's return address are shown on the package.

**22. WITHDRAWAL OF PROPOSALS AFTER PROPOSAL OPENING**

- A. Requests for withdrawal of Proposals after opening of such Proposal, but prior to award, shall be transmitted to the VRE Director of Purchasing. The Offeror shall give notice in writing of its claim of right to withdraw its Proposal accompanied by full documentation supporting the request (original work papers, documents, and materials used in the preparation of the Proposal). If the request is based on a claim of error, documentation must show the basis of the error. Proposals may be withdrawn within two (2) business days of the conclusion of the Proposal opening procedure.
- B. Proposals may be withdrawn for good cause after the closing date and prior to award. No Offeror who is permitted to withdraw a Proposal shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the Contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn Proposal was submitted.
- C. If VRE denies the withdrawal of a Proposal within ten (10) calendar days after receiving notice from the Offeror under the provisions of this Section, VRE will notify the Offeror in writing stating the reasons for its decision and award the Contract to such Offeror, provided such Offeror is a responsible and responsive Offeror and negotiations are successful with respect to price/cost.

**23. REJECTION OF PROPOSALS**

- A. VRE expressly reserves the right to reject any or all Proposals or any part of a Proposal, and to resolicit the services in question, if such action is deemed to be in the best interest of VRE.
- B. Proposals which fail to meet the solicitation requirements, or which are incomplete, conditional or obscure, or which contain additions not called for, erasures, alterations or irregularities of any kind or in which errors occur, or which contain abnormally high or abnormally low prices, for any class or item of work, may be rejected as invalid at VRE's discretion.
- C. The receipt of more than one (1) Proposal from the same Offeror, whether or not the same or different names appear on the signature page, shall result in none of the Offeror's Proposals being considered.



D. Reasonable proof for believing that any Offeror has an interest in more than one (1) Proposal for the work contemplated will cause the rejection of all Proposals made by the Offeror directly or indirectly.

E. Any or all Proposals shall be rejected if there is reason to believe that collusion exists among the Offerors.

**24. DISPOSITION OF PROPOSALS**

Offerors' Proposals will not be returned. VRE will retain the original Proposal for the contract file and destroy the remaining copies.

**25. PROPOSAL PREPARATION COSTS**

This RFP does not commit VRE to an award, nor to pay any costs associated with the preparation and/or submission of any Proposal. VRE shall not reimburse any costs incurred by Offerors in responding to this RFP or in competing for Contract award.

**26. QUALIFICATION OF OFFERORS**

VRE may make such reasonable investigations as deemed proper and necessary to determine the ability of the Offeror to furnish the services and/or goods required in the performance of this Contract. The Offeror shall provide to VRE all such information and data for this purpose as may be requested. VRE further reserves the right to reject any Proposal if the evidence submitted by, or investigations of, such Offeror fails to satisfy VRE that such Offeror is properly qualified to carry out the obligations of the Contract and to provide the services and/or goods contemplated therein.

**27. ADDITIONAL INFORMATION**

VRE reserves the right to ask any Offeror to clarify its Proposal.

**28. PRE-AWARD SURVEY**

A. After the due date and prior to Contract award, VRE shall have reviewed and evaluated all data submitted by the Offeror.

B. VRE reserves the right to perform or have performed a financial review of the successful Offeror's resources, and to require the submission of a statement of work in progress by the Offeror.

C. VRE may make such reasonable investigations as deemed proper and necessary to determine the Offeror's responsibility and ability to perform the Contract. The Offeror shall furnish VRE such information and data for this purpose as may be requested. VRE reserves the right to inspect the Offeror's physical firm prior to award to satisfy questions regarding the Offeror's capabilities.

**29. FINANCIAL STATEMENT**

A. VRE will conduct a pre-award evaluation of the selected Offeror's "professional services" cost proposal having a value greater than \$100,000 prior to award of a Contract. The Offeror is required to submit a Federal Acquisition Regulation



(FAR) audit meeting the requirements of Part 31 of Title 48 of the Code of Federal Regulations when a prime or combined prime and subconsultant cost proposal has a value of \$100,000 or more.

- B. Failure to submit a financial statement upon request will be grounds for immediate disqualification. If the financial statement is not for the identical organization submitting the Proposal, the Offeror must submit a written explanation of the relationship and financial responsibility of the organization whose financial statement is provided (e.g., parent-subsubsidiary).
- C. VRE will return the financial statement at the conclusion of the award process only upon receipt of a written request signed by an officer of the organization or the same person who signed the original Proposal. VRE considers a non-public financial statement submitted pursuant to this Section to be proprietary information that is not subject to disclosure under the Virginia Freedom of Information Act.

**30. DEBARMENT STATUS**

- A. By submitting a Proposal, and completing the representations and certifications, the Offeror certifies that it is not currently debarred, suspended, declared ineligible or voluntarily excluded from submitting Proposals on contracts by any agency of the Commonwealth of Virginia or the U.S. Federal Government, nor are they an agent of any person or entity that is currently debarred from submitting Proposals on contracts by an agency of the Commonwealth of Virginia or the U.S. Federal Government. Contractors debarred by the Commonwealth Transportation Board and/or the U.S. Federal Government shall be ineligible to submit a Proposal to VRE.
- B. By submitting a Proposal, the Contractor further certifies that it is not debarred, suspended, declared ineligible, or voluntarily excluded from participating in contracts with the Commonwealth of Virginia or the U.S Federal Government, and that it will refrain from awarding any subcontract to a debarred or suspended Subcontractor.
- C. In addition, prospective contractors agree to comply with the requirements of Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 USC Section §6101 note; and U.S. DOT regulations, "Government Debarment and Suspension (Non-procurement)," within 49 CFR Part 29.

**31. CONFLICT OF INTEREST STATEMENT**

- A. A conflict situation can arise when an Offeror acts or has interests that interfere with the Offeror's ability to perform its work objectively and effectively. The Director of Purchasing may preclude those entities from receiving an award for any such work reasonably deemed to pose a conflict of interest with the work provided hereunder.
- B. Prior to submitting a Proposal in response to this solicitation, each Offeror shall conduct an internal review of its current affiliations, its joint venture partners, as



well as any subsidiaries of a joint venture partner, to include any companies sharing common ownership with a joint venture partner, to identify potential conflicts of interest relative to the anticipated contract. The Offeror shall also require its team members (proposed Subcontractors) to identify potential conflicts of interest they may have in regard to this procurement.

- C. If a potential conflict of interest or competitive advantage is identified, the organization shall submit in writing the pertinent information to the VRE Director of Purchasing and Contract Administration, whose name and contact information appear on the face of this solicitation, so that a determination can be made as to the extent of the conflict or competitive advantage. The statement shall have the notarized signature of a principal of the Offeror.
- D. VRE, in its sole discretion, will make a formal written determination relative to each potential organizational conflict of interest, and its ability to mitigate such a conflict. If VRE determines that a conflict of interest cannot be mitigated, the organization determined to have the conflict of interest shall not be allowed to participate in response to the solicitation. Failure to abide by VRE's determination in this matter may result in a Proposal being declared non-responsive.
- E. The Offeror, any of its joint venture partners, any subsidiaries of a joint venture partner, any companies sharing common ownership with a joint venture partner, or any of its Subcontractors will be precluded from providing other services to VRE (i.e., planning, design, construction or construction management services) which conflict with its services under this Contract.

**32. INSPECTION OF PROPOSALS**

The Virginia Freedom of Information Act, §2.2-3700 *et seq.* shall govern the release of public records related to this procurement. Trade secrets or proprietary information related to a procurement may not be subject to public disclosure, provided the requirements of §2.2-4342F VA Code Ann. are met.

**33. TRADE SECRETS OR PROPRIETARY INFORMATION**

- A. Trade secrets or proprietary information submitted by an Offeror in connection with a procurement transaction submitted pursuant to the Code of Virginia, subsection F of §2.2-4342 shall not be subject to the Virginia Freedom of Information Act (§ 2.2- 3700 *et seq.*).
- B. However, the Offeror shall:
  - 1. Invoke the protections of this Section prior to or upon submission of the data or other materials;
  - 2. Identify the data or other materials to be protected by clearly marking each individual page with "PROPRIETARY"; and
  - 3. State the reason why protection is necessary.



- C. It is the Offeror's sole responsibility to defend such exemptions if challenged in a court of competent jurisdiction.
- D. Except for the foregoing limitation, VRE may duplicate, use, and disclose in any matter and for any purpose whatsoever and have others do so, all data furnished in response to this RFP. VRE has the right to release trade secrets or proprietary information to a third party which may assist VRE in the review and evaluation of Proposals.

**34. REPLACEMENT OR AUGMENTATION OF KEY PERSONNEL OR SUBCONTRACTORS**

The Key Personnel and Subcontractors in an Offeror's proposal are considered essential to the Offeror's qualifications and may not be replaced or substituted, nor may additional personnel or Subcontractors be added, after qualification of the Offeror's proposal unless VRE approves the changes in advance in writing.

**35. REGISTRATION OF PROFESSIONAL SERVICE PROVIDERS**

A. A person, corporation, partnership or other entity engaging in the practice of architecture, professional engineering, land surveying, certified landscape architecture or any combination thereof shall not offer to provide or provide such services to VRE unless:

1. It is registered with the Commonwealth of Virginia State Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects ("Board") in accordance with the Code of Virginia, Sections 54.1-411 (business entities) or 13.1-549 (professional corporations): or
2. It is exempt from registration because of its status as a sole proprietorship, as defined in the statute.

B. By submitting a signed Proposal, an Offeror certifies that it has the required registration or is exempt from the requirement. VRE may also require an Offeror to provide proof of registration or exemption. For further information on the registration requirement, contact the Board at the Virginia Department of Commerce, 3600 West Broad Street, Richmond, Virginia 23230, telephone number (804) 367-8500.

**36. AUTHORITY TO TRANSACT BUSINESS**

A. Any Offeror organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership must be authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity, if so required by Title 13.1 or Title 50 of the Code of Virginia, or as otherwise required by law. The proper and full legal name of the entity and the identification number issued to the Offeror by the Virginia State Corporation Commission must be included in the Representations, Certifications and Other Statements of Bidders/Offerors provided as an attachment to this solicitation.



- B. Any Offeror that is not required to be authorized to transact business in the Commonwealth must include in its Proposal a statement describing why the Offeror is not required to be so authorized. VRE may require an Offeror to provide documentation that 1) clearly identifies the complete name and legal form of the entity and 2) establishes that the entity is authorized by the State Corporation Commission to transact business in the Commonwealth of Virginia. Failure of an Offeror to provide such documentation may be grounds for rejection of its Proposal or cancellation of any award. For further information, refer to the Commonwealth of Virginia State Corporation Commission's website at: [www.scc.virginia.gov](http://www.scc.virginia.gov).

**37. EXCEPTION TO TERMS AND CONDITIONS**

- A. The Offeror must state whether it requests revisions to any of the terms and, if so, the Offeror must explain the reason(s) for the request(s) and propose alternative language. An Offeror who does not request a revision in its Proposal may not object or request revisions to any contract terms during the negotiation process.
- B. VRE will review any request for revisions to terms after selection of an Offeror for negotiation. Such requests will not factor into the evaluation of Proposals.

**38. INSURANCE**

Each Offeror must be able to demonstrate proof of the specific coverage requirements and limits applicable to this solicitation.

**39. IMMIGRATION REFORM AND CONTROL ACT OF 1986**

By submitting a Proposal and completing the Representations and Certifications, the Contractor certifies that it does not and will not, during the performance of the Contract, employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986. Unauthorized alien means, with respect to the employment of an alien (which is defined as any person not a citizen or national of the United States), at a particular time, that the alien is not at that time either (a) an alien lawfully admitted for permanent residence, or (b) authorized to be so employed by the Act or by the United States Attorney General.





## IV. PROPOSAL REQUIREMENTS

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### 01. GENERAL REQUIREMENTS

- A. The requirements included in this Section are purposely established to facilitate an objective, timely and efficient evaluation by VRE. The Offeror is advised to ensure that their Proposal complies with all such requirements.
- B. Proposals shall include all of the requirements requested in this RFP. Failure to include all the information requested may adversely affect the evaluation. Noncompliance with the RFP requirements will affect the evaluation of the Offeror's technical and/or past performance and may be grounds to eliminate the Proposal from consideration.
- C. Offerors are advised their Proposal represents their company's or team's best efforts and most complete responses to this solicitation. Assurance of experience, capability, and qualifications that clearly demonstrate and support the Offeror's claim are essential. The absence of such evidence will adversely influence evaluation of the Proposal.
- D. Offerors are to submit Proposals that present the Offeror's qualifications and understanding of the overall work to be performed.
- E. Proposals must provide a clear and concise response to the requirements of the solicitation.
- F. The Offeror's submission of a Proposal represents their firm will comply with all the requirements specified in this RFP.
- G. Offerors must submit the required information identified in this Section as a complete Proposal package. Information in addition to that requested below will not be considered in evaluating the Proposal and shall not be provided. **Incomplete Proposals may cause the Proposal to be deemed non-responsive.**
- H. Offerors are to submit Proposals that present the Offeror's qualifications and understanding of the overall work to be performed. Offerors are directed to **PART VI. - EVALUATION PROCESS AND CRITERIA** and shall respond to each factor in detail so VRE may properly evaluate the Offeror's capabilities to perform the work described in this RFP.

### 02. OFFEROR'S RESPONSIBILITY FOR ERRORS OR OMISSIONS IN DOCUMENTS

- A. Each Offeror is responsible for having determined the accuracy and/or completeness of the solicitation documents, including electronic documents, upon which it relied in making its Proposal and has an affirmative obligation to notify



the VRE Director of Purchasing immediately upon discovery of an apparent inaccuracy or error in or omission from the solicitation documents.

- B. If the successful Offeror is aware of such an error or omission and has not notified the VRE Director of Purchasing, the Offeror must perform any work described in such incomplete or missing documents at no additional cost to VRE.

**03. PROPOSAL SUBMITTAL ELEMENTS**

- A. The Proposal must be submitted in a binder separated with the respective **numbered and titled tabs** and include all written documentation outlined below:

**TAB 1- Table of Contents:** Furnish a table of contents to delineate all the sections of the Proposal package.

**TAB 2- Title Page:** Furnish the name and address of the firm, local address, if any; name, title, address, email address, and telephone number of the *contact person* and the *company officer* responsible for ascertaining the correctness of the Proposal.

**TAB 3- Transmittal Letter (Maximum 1 page):** Submit a one-page transmittal letter dated and signed by a company officer authorized to bind the firm(s) or entity in a Contract. Failure to manually sign the letter may disqualify the Proposal. The following information shall be provided in the transmittal letter:

- a. Type and size of business;
- b. Years of operation; and
- c. Description of the company (or other structure in the case of a partnership or joint venture), and relevance of services to this RFP.

**TAB 4- Evaluation Criteria No. 1 (Maximum 18 pages excluding the Subcontractor Form):**  
Response to Criteria No 1. (See Part VI. - Evaluation Process and Criteria)

**TAB 5- Evaluation Criteria No. 2 (Maximum 15 pages):**  
Response to Criteria No. 2. (See Part VI. - Evaluation Process and Criteria)

**TAB 6- Evaluation Criteria No. 3 (Maximum 2 pages):**  
Response to Criteria No. 3. (See Part VI. - Evaluation Process and Criteria)

**TAB 7- Evaluation Criteria No. 4 (Maximum 5 pages including the organizational chart):**  
Response to Criteria No. 4. (See Part VI. - Evaluation Process and Criteria)



**TAB 8- Evaluation Criteria No. 5 (Maximum 5 pages):**  
Response to Criteria No. 5. (See Part VI. - Evaluation Process and Criteria)

**TAB 9- Subcontractors:** Identify any Subcontractors and the type of work anticipated to be performed on the Contract by completing the **SUBCONTRACTOR FORM** included below.

- a. During Contract performance, **ALL** Subcontractors shall be approved in advance by VRE.
- b. The Offeror shall ensure lower-tier Subcontractors in support of this solicitation comply with the certifications included herein, including the insurance coverage described in this solicitation and all requirements to Federal and State procurement regulations referenced herein.
- c. Exhibits B, C (if applicable) and E from Attachment E shall be included as part of Tab 9.

**TAB 10- Exceptions to the Solicitation:** State whether the Special Provisions and General Provisions are accepted as presented in this solicitation or if exceptions are taken; identify exceptions taken to the solicitation; provide rationale in support of the exception and fully explain its impact, if any, on the performance, schedule, cost, and specific requirements of the solicitation; and relate each exception specifically to each section/paragraph and/or specific part of the solicitation to which the exception is taken. If no exceptions are taken to the solicitation, the Offeror shall state so.

**TAB 11- Acknowledge Receipt of Addenda Issued:** Include a signed acknowledgement of receipt of all addenda issued to this solicitation.

**TAB 12- Representation and Certifications:** Complete and sign forms in the **REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF BIDDERS/OFFERS ATTACHMENT** included herein.

**TAB 13- Appendix:** Shall include full resumes for each Key Personnel.

- B. Price will not be considered by VRE in the evaluation process. Offerors **SHALL NOT** include an estimate of man-hours or cost for services as part of their Technical Proposal. Any Offeror that submits cost information with their Technical Proposal may be deemed non-responsive.
- C. Offerors shall submit one (1) USB memory device, containing one (1) continuous electronic copy of the financial statements in **PDF**, separate from the Proposal USB memory devices. The electronic copy shall be labeled appropriately with the



RFP number and title, company's name and date. **A hard copy is not required.** Due to the sensitive nature of the financial statements, the USB memory device may be enclosed in a separate envelope addressed to VRE's Chief Financial Officer and included in the Proposal package. The financial information will remain confidential and be discarded upon completion of the financial analysis.

1. Offerors shall furnish complete financial statements for the current fiscal year (interim statements are acceptable) and the past two (2) years. The financial statements shall include the following:
  - a. Statement of Financial Position (Balance Sheet)
  - b. Results of Operation (Income Statement)
  - c. Statement of Cash Flow (if available)
  - d. Statement of Current and Retained Earnings
2. These statements (a through d) shall be certified indicating disclosure of all facts that could impair or affect the statements presented.
3. The term "certified" is defined to mean that an officer of the corporation includes a statement that the financial statements fairly present the financial position of the Offeror. The term "officer" is defined to mean the President, Chief Financial Officer, or Treasurer. Audited financial statements with the auditor's opinion meet this requirement. Audited statements must be submitted, if available.
4. The certified statement provided with the financial statements must read as follows:

*"The financial information provided is correct to the best of my understanding."*
5. If audited financial statements are not available, the above statement shall also note the following:

*"No audited statements are available for the periods reported in the accompanying information."*
6. VRE reserves the right to request additional financial information as may be required to determine the Offeror's financial responsibility. If required, a formal request shall be made by VRE to the Offeror.



**SUBCONTRACTOR FORM (TAB 9)**

*(Offerors shall make additional copies of this form.)*

No Subcontractors will be utilized.

1. Firm Name: \_\_\_\_\_

2. Address: \_\_\_\_\_

3. Contact: \_\_\_\_\_ Title: \_\_\_\_\_

4. Phone No.: \_\_\_\_\_ Email Address: \_\_\_\_\_

5. **Check (☑) all of the following which apply:**

Small, Woman-owned and Minority-owned Business (SWaM)

\*Certified by: \_\_\_\_\_

**\*(The SWaM certification must be attached)**

Disadvantaged Business Enterprise (DBE)

\*Certified by: \_\_\_\_\_

**\*(The DBE certification must be attached)**

6. **Annual Gross Receipts:**

Indicate by checking (☑) the appropriate block that applies to your firm:

Less than \$7,500,000

More than \$7,500,000

7. Type of work to be performed by the Subcontractor: \_\_\_\_\_

\_\_\_\_\_

8. Location of work: \_\_\_\_\_

9. Estimated percentage of the work: \_\_\_\_\_

***NOTE: The following certifications included herein must be attached for each Subcontractor:***

- 1) *Certification of Primary Participants Regarding Debarment, Suspension, and Other Ineligibility and Voluntary Exclusion*
- 2) *Certification of Restrictions on Lobbying*
- 3) *Non-Collusion Affidavit*

\_\_\_\_\_  
(Prime Contractor)



## V. SUBMISSION OF PROPOSAL

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### 01. **PROPOSAL ORGANIZATION**

- A. **Binding**: The Proposal shall be in a loose-leaf, three-ring binder. Elaborate format and binding are neither necessary nor desirable. All binders must be capable of lying flat when opened.
- B. **Cover**: The covers must be titled “Technical Proposal” and clearly identify the Offeror’s name, RFP number, RFP title and copy number (e.g. copy 1 of 4). The original shall be conspicuously marked “**ORIGINAL**” and the copies shall be conspicuously marked “**COPY**.”
- C. **Tabs**: Tabs must be included in the original binder and each copy and identified by the respective numbers and titles as outlined in **PART IV. – PROPOSAL REQUIREMENTS**.

### 02. **PROPOSAL FORMAT**

- A. **Text**: The Proposal must be typed. Type size must not be smaller than Microsoft Word Times New Roman 11-point font, normal proportional spacing. Text lines must be single-spaced. Type size for custom graphics, charts, headers, footers, tables and captions must not be smaller than Microsoft Word Times New Roman 9-point font.
- B. **Page**: A page shall be:
1. 8-1/2” x 11” sheet of paper (minimum of 1/2” margins);
  2. 11” x 17” sheet of paper for a foldout only such as illustrations, charts, appendices, graphs, drawings, photographs, diagrams and tables and shall count towards one (1) page;
  3. Printed on one-side only; and
  4. White or ivory stock background color.
- C. **Proposals shall not exceed the number of pages listed per tab in Section 03-Proposal Submittal Elements above.** This page limit encompasses all documentation the Offeror may wish to submit in describing its organization, responsibilities, team, and Subcontractors. Tabs 9, 10, 11 and 12 as well as the financial statements and the appendix for resumes do not count towards the page limit.

### 03. **HARD COPY**

Offerors shall submit **one (1)** signed hard copy and **one (1) copy** of the Proposal in a sealed package.




**04. ELECTRONIC COPY**

Offerors shall submit **two (2)** USB memory devices, each containing one (1) continuous electronic copy of the “Technical Proposal” package in PDF. Additionally, Offerors shall submit one (1) USB memory device, containing one (1) continuous electronic copy of the financial statements in **PDE**, separate from the Technical Proposal USB memory device. Each electronic copy shall be labeled appropriately with the RFP number and title, Offeror’s name and date.

**05. IDENTIFICATION OF PROPOSAL PACKAGE**

- A. The “Technical Proposal” shall be *clearly marked* in a sealed package.
- B. It is *imperative* that the label shown below is filled in and pasted on the lower left corner of the sealed package conspicuously identified.

<b>SEALED PROPOSAL IN RESPONSE TO:</b>	
	<b>RFP No.: 025-006</b>
	<b>Title: Construction Management Services for Construction of VRE Franconia-Springfield Station Improvements</b>
<b>Proposals Due Date:</b>	
<b>Name of Offeror:</b>	
<b>Point of Contact:</b>	
<b>E-mail Address for Offeror’s Point of Contact:</b>	

- C. Failure to properly identify the Proposal package may result in the premature opening of or a failure to open such Proposal, which may result in the disqualification of the Proposal.

**06. HAND DELIVER OR MAILING OF PROPOSALS**

- A. Offerors shall deliver or mail Proposals to:

Kristin Nutter  
Director of Purchasing and Contract Administration  
Virginia Railway Express  
1500 King Street, Suite 202  
Alexandria, VA 22314

- B. A Proposal may be mailed, delivered by private courier, express mail or delivered in person to VRE in Alexandria, VA prior to the Proposal closing date and time,



between **9:00 A.M. and 5:00 P.M. EST**, Monday through Friday, on days that VRE service is in operation.

- C. It is the responsibility of the Offeror to assure that its Proposal is delivered to the place designated for receipt of Proposals on or before the day and time set for receipt of Proposals.
- D. Proposals will be time stamped by VRE's official time clock at the receptionist's desk in the foyer.
- E. Electronic, facsimile or verbal Proposals shall **not** be accepted.
- F. Proposals shall be kept unopened until after the closing date and time.

**07. PROPOSALS DUE (CLOSING DATE)**

Proposals must be received by VRE at **2:00 P.M. EST on the date specified in PART II. – PROCUREMENT SCHEDULE** of this RFP. Proposals received after the Proposal closing date and time **will not be considered**.





## VI. EVALUATION PROCESS AND CRITERIA

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### 01. EVALUATION PROCESS

- A. A Technical Evaluation Team (TET) will review and evaluate all written proposals based on the criteria identified in this section. VRE reserve the right to request additional information during the evaluation and selection process from any or all Offeror(s) which may be necessary to clarify their proposals. Subsequent evaluations, such as to select firms for negotiation, may include, but are not limited to oral presentations from the highest ranked, short-listed firms. Any such subsequent evaluations will be based on the same criteria.
- B. Upon selection of the highest ranked firm, VRE will request a binding Cost Proposal and begin fee negotiations. If negotiations with the top ranked firm are not successful, VRE will begin negotiations with the next most qualified, short-listed Offeror, until a Contract award can be made to the Offeror whose price is determined to be fair and reasonable. If the pool of qualified Offerors is exhausted without an agreement, the solicitation will be canceled.

### 02. GENERAL

Proposals will be evaluated based on the evaluation criteria as stated below. A 1000-point scale will be used to create the final evaluation recommendation. When assessing points, a 1-10 scale will be utilized and multiplied by the weight assigned.

### 03. SCORING METHODOLOGY

The TET will review and evaluate the Proposals using the following scale:

Points	Guidance
9 - 10	<b><u>Outstanding</u></b> : Meets all of the requirements / exceeds expectations / excellent probability of success in achieving all objectives / very innovative.
6 - 8	<b><u>Above Average</u></b> : Exceeds minimum requirement / sound response / very good probability of success.
4 - 5	<b><u>Average</u></b> : Meets minimum requirement / has a reasonable probability of success.
2 - 3	<b><u>Fair</u></b> : Partially responsive / falls short of meeting basic expectations / has a low probability of success.
1	<b><u>Poor</u></b> : Inadequate / fails to meet the requirement.
0	<b><u>Failure</u></b> : No response / the information is missing altogether.



**04. EVALUATION CRITERIA AND WEIGHTS**

The following criteria and weighting scheme will be utilized to evaluate Proposals. The criteria are listed in descending order of importance with the first having the most weight (points) and each of the following criterion having less or equal weight (points) than the one preceding it:

**Criteria No. 1- Capability, Expertise and Past Performance of the Prime Firm and Proposed Team/Subcontractor(s) (Maximum 18 pages excluding the Subcontractor Form):** Describe in concise detail the capability, expertise and past performance of the Offeror and proposed Project Team/Subcontractor(s), if applicable, that demonstrates competence in performing work of similar size, scope and complexity as set forth in the Scope of Work (SOW). All Subcontractors must be clearly identified as well as their roles and responsibilities. The description shall include the following:

- a. The Offeror shall describe its prior work experience, qualifications and past performance in providing work as described in the Scope of Work to include:
  1. Experience performing construction management services for on-site construction management for work as described in the Scope of Work. Ideally, the experience should be representative of projects in a Commuter and/or Freight Rail setting.
  2. Experience in Stakeholder Coordination with multiple entities such as those enumerated in the SOW (Section III. A. 6).
  3. Experience in establishing and implementing project controls for projects/working environments/stakeholders similar to those enumerated in the SOW (Section III.).
  4. Experience in project compliance with Federally and State funded projects and compliance with Federal, State and local regulations, codes and statutes.
- b. The Offeror shall identify any Subcontractors, and the type of work anticipated to be performed on the Contract; complete the **SUBCONTRACTOR FORM** included herein this RFP. List specific relevant experience and the role each is expected to play in this project.
  1. Experience performing construction management services for on-site construction management for work as described in the Scope of Work. Ideally, the experience should be representative of projects in a Commuter and/or Freight Rail setting.



2. Experience in Stakeholder Coordination with multiple entities such as those enumerated in the SOW (Section III. A. 6).
  3. Experience in establishing and implementing project controls for projects/working environments/stakeholders similar to those enumerated in the SOW (Section III.).
  4. Experience in project compliance with Federally and State funded projects and compliance with Federal, State and local regulations, codes and statutes.
  5. Information shall be on projects performed by each of the Offeror's Subcontractors that are considered most relevant in demonstrating their ability to support the Offeror in the effort, including rationale supporting the Offeror's assertion of relevance. At VRE's direction, any proposed Subcontractor(s) identified by the Offeror may be contacted for the purpose of determining the responsibility of the Offeror.
- c. Identify SWaM businesses and their role(s).
  - d. Provide specific relevant experience of the firm(s) working together on previous projects.
  - e. Examples of methods and procedures for quality assurance and quality control used in previous projects that improved the services provided and/or project deliverables.
  - f. Identify three (3) projects on which comparable work has been done by the **Prime Contractor and each Subcontractor** in the past eight (8) years or is currently being performed. A minimum of one (1) of the foregoing projects must have completed construction within the past eight (8) years. If applicable, the following information must be provided:
    1. Project name, location and brief description of work completed;
    2. Similarity or relevance of work completed;
    3. Name of the Owner's representative, title, address, email, and telephone number;
    4. Detailed project description;
    5. Roles and responsibilities of the firm;
    6. Dollar value of services provided;
    7. The date the project started, the construction duration, and the actual project completion date, as compared to the planned completion date at the time of award; and



8. Explanation of variance between original budget, award amount, and final cost (if any).

Project sheets shall be two (2) page per project.

The Owner's representative contact person submitted by the Offeror must be someone with personal knowledge of the project and the Offeror's performance. The contact person must be informed they are being used by the Offeror as a reference and that VRE may call or email them to discuss the Offeror's performance. More than one contact person can be listed; however, all must have knowledge of the specific project identified by the Offeror.

Do not list principals, officers, board members or representatives who do not have intimate knowledge of project specific information. Failure of the references to have the ability to respond to project inquiries may negatively impact the Offeror's rating for this criterion.

- g. A list of contracts for the Prime Contractor and all Subcontractors within the past five (5) years, if any, on which failure to complete the work within the specified time frame resulted either in the assessment of liquidated damages, penalties or contract termination.

**Criteria No. 2- Knowledge, Qualifications and Relevant Experience of the Proposed Project Manager and Key Personnel (Maximum 15 pages excluding resumes):** Furnish a summary of the knowledge, prior work experience and qualifications of the proposed Project Manager and Key Personnel to perform the work described in the Scope of Work. An individual whose qualifications are presented must be committed to the project and available for its duration unless otherwise approved by VRE.

- a. One (1) of the proposed Key Personnel must be the designated **Project Manager**, with experience managing project(s) of comparable size, scope and complexity as detailed in the Scope of Work.

The Project Manager's (PM) primary responsibility shall be to perform as the advocate of VRE relating to the project from the solicitation/procurement phase through final completion and acceptance of the work. The PM will oversee the performance of all assigned personnel for the project. The PM alongside the Construction Manager shall ensure that all personnel assigned to the project are knowledgeable of the contract and schedule requirements, terms and conditions and deliverables.

The PM shall be responsible for ensuring that all personnel assigned to the project will meet the contract requirements for personnel qualifications for each job description. The PM shall oversee the



performance of the Contractor's team and provide oversight and address any performance issues with assigned team members.

1. The Project Manager shall have a minimum of fifteen (15) years of progressively responsible experience in construction management services and project management, to include using various project delivery systems and tools for similar projects or projects similar in magnitude. Successful delivery of construction projects on time and within budget is a prerequisite for serving as the PM for this project.

The work may have been performed by the Project Manager with the offering firm or other firm(s) identified in the Offeror's Proposal.

- i. PM shall have a Bachelor's Degree or twenty (20) years of construction and project management experience. Recognition as a Certified Construction Manager through the Construction Management Association of America (CMAA) or similar Professional Registration/Certification is preferred.
  2. Knowledge of, and relevant experience with, techniques for timely delivery of work as described in the Scope of Work. Ideally, the experience should be representative of projects in a Commuter and/or Freight Rail setting.
  3. Experience coordinating and monitoring stakeholders, permitting agencies and utilities as described in the Scope of Work.
  4. Demonstrated ability to control project overhead costs.
  5. Experience in change management and compliance with applicable laws, rules, ordinances and regulations; experience in all construction project phase services including pre-design, design/pre-bid, bid, construction, and post-construction as well as experience in government contract administration.
  6. Indicate estimated availability to the contract as the Project Manager including identification of potential competing commitments.
- b. One (1) of the proposed Key Personnel must be the designated **Construction Manager (CM)** with experience managing project(s) of comparable size, scope and complexity as detailed in the Scope of Work. The CM shall act as construction "Project Coordinator" and the point of contact for all communications and interaction with the construction



contractor and VRE. The CM shall be fully aware of the contract requirements and ensure the project is constructed in accordance with the contract documents and shall also ensure the construction contractor meets all of their obligations under the contract. The CM is responsible for the day-to-day on-site project activities as well as delivering the project on time and within budget and as such will proactively and aggressively manage issues, concerns and potential problems. The CM is supported by and manages appropriate Construction Management staff.

1. The CM shall have a minimum of ten (10) years of experience as a Construction Manager managing construction projects and conducting similar services as described in this RFP. Experience shall include management services from pre-construction through construction and project closeout. The work may have been performed by the Construction Manager with the offering firm or other firm(s) identified in the Offeror's Proposal.
2. The CM shall have a Bachelor's Degree or fifteen (15) years of field construction experience or recognition as a Certified Construction Manager through the Construction Management Association of America (CMAA) or similar Construction Manager Certification.
3. Minimum of ten (10) years of field construction experience.
4. Knowledge of, and relevant experience with, techniques for timely delivery of work as described in the Scope of Work. Ideally, the experience should be representative of projects in a Commuter and/or Freight Rail setting.
5. Demonstrated knowledge of Federal and State regulations governing federally and state funded projects.
6. Demonstrated capacity to successfully comply with regulatory requirements for federally and state funded projects. Prior experience working with projects funded by Federal and State dollars is preferred, but not required.
7. Thorough knowledge of construction management techniques.
8. Considerable knowledge of local and state building codes and zoning ordinances.
9. Ability to prepare estimates and reports.
10. Ability to interpret plans, specifications and contracts.



11. Ability to plan, coordinate and supervise the work of contractors, subcontractors and other personnel.
- c. One (1) of the proposed Key Personnel must be the designated **Construction Engineer (CE)**.

The CE shall serve as a deputy to the Construction Manager, but shall not act solely on behalf of the CM. They shall provide technical and engineering support and shall receive supervision from the CM. Their primary responsibility shall be assisting the CM in coordinating all project information between the construction contractor, VRE and the Engineer-of-Record. This shall include, but is not limited to, the following:

1. Maintain and distribute current contract plans and specifications.
2. Confirm the construction contractor's maintenance of record drawings.
3. Assure timely response to RFIs and submittals.
4. Thoroughly review construction contractor progress payments.
5. Coordinate change order documentation.

The Construction Engineer may or may not be stationed at the project site but must be able to travel to the site when called upon to do so. The CE shall be fully aware of the contract requirements and shall ensure the project is constructed in accordance with the contract documents and that the construction contractor meets all of their obligations under the contract. The CE shall coordinate with surveying, testing and inspection staff and may be called upon to serve as a Field Engineer when work or personnel schedules deem necessary.

1. Minimum education requirements include a degree in engineering, architecture or construction management or six (6) years of field construction experience.
  2. Minimum of three (3) years of experience as a Construction Engineer conducting similar services as described in the Scope of Work.
  3. Minimum of three (3) years of field construction or construction management experience.
- d. One (1) of the proposed Key Personnel must be the designated **Field Engineer (FE)**.



The Field Engineer is primarily responsible for observing, documenting and reporting construction activities at the project site. Such observation requirements may include the construction contractor's mechanical, electrical and plumbing work to ensure the contractor and all subcontractors(s) are complying with the technical specifications, drawings and contract requirements. Concerns about non-compliance shall be brought to the Construction Manager's attention for disposition and action.

The FE shall maintain a presence on the project during times when the construction contractor and their subcontractor(s)' activities are underway. Supervision is received from the Construction Manager.

The Field Engineer shall coordinate with the construction contractor's testing subcontractor to schedule testing as required. The FE shall ensure that materials and equipment are fabricated and tested in accordance with contract documents in advance of installation. The FE shall advise the construction contractor of non-compliance.

1. The FE shall have an Associate's Degree with a minimum of ten (10) years of field inspection experience or twenty (20) years of field inspection experience, to include a working knowledge of construction methods, materials, standards, construction symbols and terminology.
  2. Must have experience in variance documentation and reporting, oversight of construction and renovation projects, as well as review and coordination of permitting and government agency approvals.
  3. Possess strong written and verbal communications skills, especially with technical information and procedures.
- e. Identify three (3) projects on which comparable work has been done by **each of the Key Personnel** in the past ten (10) years or is currently being performed. A minimum of one (1) of the foregoing projects must have completed construction within the past ten (10) years. The projects must show the applicable skills and experience appropriate for the requirements described in the Scope of Work. The following information must be provided:
1. Project name and location;
  2. Detailed project description;
  3. Similarity or relevance of work completed;
  4. Name of the Owner's representative, title, address, email, and telephone number;





5. Roles and responsibilities of the individual, to include notable accomplishments of the individual on the project;
6. Dollar value of services provided; and
7. The date the project started, the construction duration, and the actual project completion date, as compared to the planned completion date at the time of award.

**Project sheets shall be no more than two (2) projects per page.**

The Owner's representative contact person submitted by the Offeror must be someone with personal knowledge of the project and the Offeror's performance. The contact person must be informed they are being used by the Offeror as a reference and that VRE may call or email the contact person to discuss the Offeror's performance. More than one contact person can be listed; however, all must have knowledge of the specific project identified by the Offeror.

Do not list principals, officers, board members or representatives who do not have intimate knowledge of project specific information. Failure of the references to have the ability to respond to project inquiries may negatively impact the Offeror's rating for this criterion.

- f. In addition to the relevant experience required above, full resumes for each of the Key Personnel shall be included as an appendix. **Resumes shall not count towards the overall page limit.** Resumes must include education, experience, certifications, background, accomplishments and other pertinent information.
- g. Personnel whose qualifications are submitted by the Offeror must be committed to the project and have availability for the duration of the Contract unless otherwise approved by VRE.

**Criteria No. 3- Project Approach and Understanding (Maximum 2 pages):** Furnish a clear and concise summary of the proposed project approach to properly perform the work outlined in the Scope of Work. The summary must fully describe the means, methods and technical expertise to perform the requirements identified in the Scope of Work and shall include the following:

- a. Understanding of the project scope, technical requirements, and VRE's needs.
- b. Describe the technical methodology and expected level of effort required to complete the project.



**Criteria No. 4- Project Management and Quality Control Plan (Maximum 5 pages including the organizational chart):** The Offeror shall submit a Project Management Plan that includes a Quality Assurance/Quality Control (QA/QC) Plan to ensure the availability of adequate resources to meet the requirements identified in the Scope of Work. The plan must include, at a minimum, the following:

- a. Overall management philosophy, including reporting hierarchy of staff and subcontractors.
- b. Procedures or programs for managing schedules and cost, to ensure the on-time completion of milestones.
- c. Methods and internal processes and procedures to ensure quality assurance/quality control of the services provided and project deliverables.
- d. An organizational chart (1 page; 11"x17" acceptable) with identification of the proposed team for each project task, including the task leader and key personnel, definition of the responsibilities of all personnel thereon, and firm name.
- e. Role of the Construction Manager that will be assigned to the project.
- f. List of other personnel, positions, titles of each individual that will participate or may participate in the project, as well as the role they will serve.
- g. Project role(s) that will be filled by the Prime Contractor and Subcontractors(s), if applicable.
- h. Ability to readily provide staffing and resources to adhere to the project budget and schedule, and to respond on short notice and within tight timelines to complete concurrent tasks if needed.
- i. Location(s) of the Prime Contractor's and each Subcontractor's main, local, and branch offices.
- j. Use of technology such as e-Builder, Primavera P6 and other applicable programs.
- k. Methods and procedures to address company and project-specific safety and security measures.



**Criteria No. 5- Workplace Safety and Security Plan (Maximum 5 pages):**

Furnish a summary of previous experience and efforts to enforce workplace safety and security to include the following:

- a. Submit a plan for monitoring the construction contractor’s safety and security program ensuring compliance with safety and security protocols for a construction site. This shall include a narrative that at a minimum includes graphics that describe the Offeror’s project-specific safety program and procedures to ensure the construction contractor complies with their safety and security protocols. This plan shall be adopted by the Offeror and shall apply to all members of the Offeror’s team during the Contract period of performance.
- b. Individuals who will be providing site safety and security management and their qualifications and experience.

Evaluation Criteria		Maximum Points	Weight	Maximum Score
1.	Capability, Expertise and Past Performance of the Prime Firm and Proposed Team/Subcontractor(s)	10	30	300
2.	Knowledge, Qualifications and Relevant Experience of the Proposed Project Manager and Key Personnel	10	30	300
3.	Project Approach and Understanding	10	20	200
4.	Project Management and Quality Control Plan	10	10	100
5.	Workplace Safety and Security Plan	10	10	100
<b>TOTAL POINTS</b>				<b>1000</b>

**05. SELECTION PROCESS**

- A. The Technical Evaluation Team will review the Proposals using written score sheets. Proposals will be evaluated based on the evaluation criteria as stated above.
- B. Offerors will be in ranked order according to the scores of the TET and a short list of the most qualified Offeror(s) will be created. Selection shall be made of one (1) short-listed Offeror deemed to be the best for the project on the basis of the evaluation factors.



**06. INTERVIEWS (OPTIONAL)**

- A. VRE reserves the right to conduct oral interviews with short-listed firms, based on the results of the TET, prior to making a selection. *The date and time for interviews is specified in PART II. – PROCUREMENT SCHEDULE* of this RFP and shall be reserved for possible interviews. Interviews will be held via video conference or at the VRE Offices located at 1500 King Street, Suite 202, Alexandria, Virginia 22314.
- B. The interview will provide an opportunity for Offeror(s) to clarify their Proposal in response to questions from the TET. This is a fact-finding and explanation session only and does not include negotiations.
- C. As interviews are *optional* for VRE, Offerors must treat their Proposals as a final product.
- D. Upon selection of the most technically qualified Offeror, VRE shall commence negotiations.

**07. NEGOTIATIONS**

- A. VRE will request the selected Offeror to submit a binding Cost Proposal. Negotiations shall commence with the selected Offeror to achieve a binding price and agreement on Contract terms. If negotiations with the top-ranked Offeror are not successful, discussions will commence with the next highest ranked short-listed Offeror, and negotiations will continue in this manner until an agreement is reached.
- B. Successful negotiation of the selected Offeror’s labor, overhead, and fee rates will result in a Contract.



## VII. CONTRACT AWARD/EXECUTION

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**01. GENERAL**

VRE may cancel this RFP or reject Proposals at any time prior to an award and is not required to furnish a statement of the reason why a particular Proposal was not deemed to be the most advantageous (Code of Virginia, § 2.2-4359D).

**02. TYPE OF CONTRACT**

VRE contemplates award of a firm fixed price Contract from this solicitation.

**03. AWARD DOCUMENTS**

The award document will be a Contract incorporating by reference the Request for Proposals, Special Provisions, General Provisions, Scope of Work/Services and the Contractor's Proposal as negotiated.

**04. NOTICE OF INTENT TO AWARD**

VRE will post the "Notice of Intent to Award" on its website at [www.vre.org](http://www.vre.org), for a minimum of ten (10) calendar days. The "Notice of Intent to Award" shall not be construed as a "Notice-To-Proceed (NTP)."

**05. NOTICE OF AWARD**

A "Notice of Award" will be posted on VRE's website at [www.vre.org](http://www.vre.org). The successful Offeror will be notified in writing by VRE.

**06. PROTEST OF AWARD**

- A. An Offeror wishing to protest an award or a decision to award a Contract must submit the protest, in writing, to the VRE Director of Purchasing no later than ten (10) calendar days after either the decision to award or the award, whichever occurs first. The protest must include the basis for the protest and the relief sought. Within ten (10) calendar days after receipt of the protest, the Chief Executive Officer of VRE will issue a written decision stating the reasons for the action taken. This decision is final. Further action, by an Offeror, may be taken by instituting action as provided by the Code of Virginia.
- B. VRE policy and procedure for the administrative resolution of protests is set forth in §3.8 of the Public Procurement Policy and Procedures Manual (Procurement Manual). The Procurement Manual contains rules for the filing and administration of protests. The Contract Administrator shall furnish a copy of §3.8 upon request. Chapter VII, Sec. 1.b. of the Federal Transit Administration (FTA) Circular 4220.1F addresses protests where Federal funds are involved.
- C. If the project is funded in whole or in part by grants from The Federal Transit Administration (FTA), FTA will only review protests regarding the alleged failure of VRE to have written protest procedures; an alleged failure to follow those procedures; or violation of Federal law or regulation. A protestor must exhaust all



administrative remedies with VRE before pursuing a protest with FTA. Any party wishing to file a protest with the FTA should do so no later than five (5) calendar days after a final decision is rendered under VRE's protest procedure. Further details regarding this process may be found in the FTA Circular C4220.1F, Chapter 7.

- D. VRE may proceed with award of the Contract and Notice-To-Proceed while a protest is pending if it is determined to be in VRE's best interest to do so.

**07. DELAYS IN AWARD**

Delays in award of a Contract, beyond the anticipated starting date, may result in a change in the Contract period indicated in the solicitation. If this situation occurs, VRE reserves the right to award a Contract covering the period equal to or less than the initial term indicated in the solicitation.

**08. AWARD FOR ALL OR PART**

Unless otherwise specified, VRE may, if it is in the best interest of VRE to do so, award all or part of the Proposal to any Contractor whose offer is the most responsible and responsive and whose Proposal best meets the requirements and criteria set forth in the solicitation.

**09. CONTRACT DOCUMENTS**

- A. The successful Offeror shall execute and deliver the following Contract documents to VRE:

- 1. Signed Contract
- 2. Insurance Certificates
- 3. Form W-9 Request for Taxpayer Identification Number and Certification

- B. The aforementioned documents must be submitted to VRE not later than ten (10) calendar days after receipt of the Contract and "Notice of Intent to Award."

- C. The Contract shall be in writing. The Contractor shall execute the Contract in the number of copies required by VRE. One (1) fully executed original shall be delivered to the Contractor.

**10. FAILURE TO EXECUTE CONTRACT**

Should the successful Offeror fail to execute the Contract within ten (10) calendar days after receipt and submit the required Insurance Certificates, VRE may at its option, determine that the Offeror has abandoned the Contract, and thereupon, the Proposal and acceptance shall be null and void. VRE may also seek all available remedies at law and equity.



11. **NOTICE-TO-PROCEED (NTP)**

A “Notice-To-Proceed” (NTP) will be issued separately at a time subsequent to execution of the Contract. Contract performance shall begin on the date set forth in the written NTP. The NTP shall start the time for which the Contractor is responsible for completion of the project.



## VIII. SPECIAL PROVISIONS

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**01. SIGNATURES**

All documents to be delivered pursuant to this solicitation, requiring a signature, may be executed via handwritten (manual), stamped, electronic (portable document format), photocopied, digital or scanned signature. A signed copy of the documents transmitted by any of the means listed above shall be deemed to have the same legal effect as delivery of an original executed copy.

**02. FAIRFAX COUNTY SPECIAL INSPECTIONS PROGRAM**

All required special inspections shall be performed in accordance with the most recent Fairfax County Special Inspections Program, which can be found at <https://www.fairfaxcounty.gov/landdevelopment/special-inspections-program>.





## IX. GENERAL PROVISIONS

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**01. PRECEDENCE OF TERMS**

- A. In the event of an inconsistency between the Request for Proposals or Invitation for Bids, the Contract Terms and Conditions, other included documents, or the Federal Transit Administration (FTA) Master Agreement and state procurement law, the inconsistency shall be resolved by the following order of precedence:
1. Federal Transit Administration Master Agreement (31) (May 2, 2024) and FTA Circular 4220.IF, dated November 1, 2008, as amended;
  2. Virginia’s Public Procurement Act, as amended;
  3. Invitation for Bids (IFB)/Request for Proposals (RFP);
  4. Special Provisions;
  5. General Provisions; and
  6. Contractor’s Bid/Proposal.
- B. Where the terms of these Contract Documents vary the most stringent shall apply.

**02. VRE CONTRACT MANAGEMENT**

- A. Contract Administrator: During the term of the Contract, matters relating to bonding, insurance, terms and conditions, and other contract administration matters shall be directed to the Contract Administrator. Changes to the Contract value, scope, or schedule will require consultation with the Contract Administrator.
- B. Contracting Officer: The Contracting Officer is the only individual who can legally commit or obligate VRE for the expenditure of federal/public funds. The technical administration of the Contract shall not be construed to authorize the revision of the terms and conditions of the Contract. Any such revision shall be authorized in writing only by the Contracting Officer. The Contracting Officer may designate personnel to act as their authorized representatives for one or more contract administration functions not involving a change in the scope, price, terms, or conditions of the Contract. Such designation will be in writing, set forth by a separate letter signed by the Contracting Officer, and will contain specific instructions as to the extent to which the representative may take action for the Contracting Officer. Such designation will not contain authority to sign contractual documents, nor will it authorize the designee to order contract changes, modify contract terms, or create any liability on the part of VRE.
- C. Project Manager: During the term of the Contract, the Contracting Officer may designate a Project Manager (PM) to represent VRE and assist in monitoring the work under the Contract. The PM is responsible for the overall project management and serves as the technical liaison to the Contractor. The PM is responsible for the day-to-day clarification and guidance of the Contractor’s personnel as may be required under the Contract. The VRE Project Manager will



conduct ongoing reviews of the Contractor's progress in performing the work and will furnish comments in a timely manner. Only the PM consulting with the Contract Administrator and/or the Contracting Officer, as necessary, is authorized to provide direction to the Contractor. All communications to other agencies shall be through the VRE Project Manager, unless directed otherwise.

**03. PRIME CONTRACTOR RESPONSIBILITIES**

- A. The Contractor shall be responsible for completely supervising and directing the work under this Contract and all Subcontractor(s) that it may utilize, using adequate skill and attention. Subcontractor(s) who perform work under this Contract shall be responsible to the Prime Contractor.
- B. During the period of performance, the Contractor shall not substitute key personnel without the written approval of VRE. The Contractor shall provide VRE with information as to the circumstances necessitating the proposed change and other information as requested. Periodically, the VRE Project Manager may request an updated list of personnel.
- C. The Contractor agrees that it is fully responsible for the acts and omissions of its Subcontractor(s) and of persons employed by the Subcontractor as it is for the acts and omissions of its own employees.
- D. The VRE Project Manager shall coordinate the work on this Contract with VRE's ongoing operations and other activities performed by VRE or other contractors.

**04. STANDARD OF CARE**

- A. VRE is entering into this Contract in reliance on the Contractor's experience and abilities with respect to performing the services hereunder. In performing the work, the Contractor shall ensure that it and its agents and employees exercise the degree of skill and care that is normally accepted by members of the same profession currently practicing under similar conditions in the same locality ("Customary Standard of Care"). The Contractor shall re-perform, without additional compensation, any services not meeting this Customary Standard of Care.
- B. The Contractor shall be responsible for the professional quality, completeness, technical accuracy and coordination of all designs, drawings, specifications, cost estimates and other services or materials provided, regardless of whether such drawings and documents are prepared by the Contractor or the Contractor's subcontractors. The plans, drawings, specifications and other documents that the Contractor prepares must be free from material errors, complete and appropriate for the purposes intended; and the project, if constructed in accordance with such plans, drawings, specifications, and other documents, shall be structurally sound and complete and shall result in a properly functioning facility suitable for the purposes for which it is intended.
- C. The Contractor is responsible for all costs and expenses incurred by VRE, including increased construction costs, when such costs and expenses are the



result of any violation of this Standard of Care provision. VRE's review, approval or acceptance of or payment for any services required under this Contract does not release the Contractor from any liability for breach of this Standard of Care provision.

**05. CONFORMITY WITH SCOPE OF WORK**

All deviations from the Scope of Work shall be authorized in writing by VRE. No extra compensation for material or labor shall be allowed for work necessary within the general intent of the Scope of Work.

**06. TERM OF CONTRACT**

The term of the Contract shall be **31 consecutive calendar months** from the date set forth in the written Notice-To-Proceed (NTP).

**07. LABOR RATES**

The Contract shall contain labor rates on a manhour basis for various disciplines. Each rate shall include direct costs, overhead, General and Administrative expenses (G&A), and profit. (The number and type of disciplines are subject to final determination during negotiations with the selected Contractor). Rates will remain fixed for the term of the Contract. At VRE's discretion, labor rates may be adjusted should the term of the Contract be extended over one (1) year.

**08. PAYMENTS**

**A. Payments Under Fixed Price Architect-Engineering Contracts**

Payments shall be made monthly for the amount and value of the work and services performed by the Contractor under this Contract. Payment applications shall be prepared by the Contractor and accompanied by all supporting data required by the VRE Project Manager.

**B. Terms**

1. The Contractor shall submit monthly invoices for work/goods ordered, delivered, and accepted by VRE by the 15th of each month. ***The invoice period shall be the calendar month.*** This payment schedule shall be maintained throughout the duration of the project, unless directed otherwise.
2. If no charges have been incurred for a particular month, no invoice is required. However, the VRE Project Manager shall be notified that no invoice will be submitted.
3. Any Contractor's payment terms requiring payment in less than thirty (30) days will be regarded as requiring payment thirty (30) days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than thirty (30) days.
4. If funds are not appropriated for purposes of the Contract for the current or any succeeding fiscal year subsequent to the one in which the Contract is entered into, then VRE may terminate the Contract upon prior written notice to the Contractor. Should termination be accomplished in accordance with this



Section, VRE shall be liable only for payments due through the date of termination.

**C. Billing Instructions**

1. Invoices shall be submitted electronically in one (1) continuous electronic copy in PDF in e-Builder's VRE's Project Management Information System.
2. The VRE Project Manager shall be indicated on the invoice cover sheet.
3. At a minimum, invoices shall contain the following information:
  - a. Name, address and telephone number of Contractor
  - b. VRE Contract number
  - c. Contractor's invoice number
  - d. Sequential invoice number for the project
  - e. Date of invoice
  - f. Period of invoice
  - g. Summary description of work performed
  - h. Percentage of the scope of work complete
  - i. Percentage of the budget complete
  - j. Breakdown of invoice amount by Prime Contractor and Subcontractor
  - k. Total invoice amount
  - l. Total cumulative amount invoiced
  - m. Contractor's signature
4. If invoices fail to meet all of the above requirements, they will not be processed for payment and will result in the invoice being returned to the Contractor for correction and resubmission. VRE may request additional substantiating documentation, as necessary.

**D. Progress Payments**

1. Payments shall be made monthly for the amount and value of work and services performed by the Contractor under this Contract. Progress payments will only be made for work that has been delivered and which VRE has approved and accepted.
2. Payment applications shall be prepared by the Contractor and accompanied by any supporting data, to include a detailed progress report, required by the Project Manager. With advance VRE approval, progress payments may be authorized based on a set of milestones for work not specifically resulting in deliverable products.



3. VRE may require substantiating information such as Contractor's Affidavit of Payments, Subcontractor's Affidavit of Payments, invoices, etc.

E. **Final Payment**

1. Final payment is dependent on completion of the work and submission of the Contract deliverables. This approval will constitute a representation that, to the best of VRE's knowledge, information and belief, and on the basis of observations and inspections, the work has been completed in accordance with the terms and conditions of the Contract documents and that the entire balance is found to be due to the Contractor.
2. The final payment shall be made after the Contractor submits the following to VRE:
  - a. An affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the work for which VRE or VRE's property might be in any way responsible, have been paid or otherwise satisfied.
  - b. If required by VRE, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by VRE.
3. All provisions in this Contract, including without limitation those establishing obligations and procedures, shall remain in full force and effect, notwithstanding the making or acceptance of final payment prior to the date of completion of the project.

**09. PAYMENTS TO SUBCONTRACTOR**

In the event that the Contractor utilizes a Subcontractor for any portion of the work under this Contract, the Contractor hereby agrees to:

1. Provide payment of Subcontractors within seven (7) days of receipt of payment by VRE for work completed and approved expenses. The Contractor shall take one (1) of the two (2) following actions within seven (7) days after receipt of amounts paid to the Contractor by VRE for work performed by a Subcontractor under the Contract.
  - a. Pay a Subcontractor for the proportionate share of the total payment received from VRE attributable to the work performed and completed by that Subcontractor under the Contract; or
  - b. Notify VRE and any Subcontractors, in writing, of its intention to withhold all or a part of the Subcontractor's payment with the reason for nonpayment.



2. The Contractor shall be obligated to pay interest to a Subcontractor on all monies owed by the Contractor that remain unpaid after seven (7) days following receipt by the Contractor of payment from VRE for work performed by a Subcontractor under the Contract, except for amounts withheld under subsection 1.b. of this Section. Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent (1%) per month. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary Contract.
3. The Contractor's obligation to pay an interest charge to a Subcontractor pursuant to the provisions of this Section may not be construed as an obligation by VRE. A contract modification may not be made for the purpose of providing reimbursement for any such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

**10. TRAVEL EXPENSES**

- A. VRE will not reimburse the Contractor for travel-related expenses for employees located within the greater Baltimore-Washington Metropolitan Area, as defined by the United States Office of Management and Budget.
- B. VRE will compensate the Contractor for Reimbursable Expenses for employees located outside of this area, and only if they are pre-approved by VRE and in accordance with the Contract. **When authorized by the Project Manager**, expenses may include:

**1. Lodging/Meals/Incidental Expenses:**

- a. Each Contractor required to travel overnight in the performance of this Contract shall be reimbursed for lodging, meals and incidental expenses at the rates specified by the U.S. General Services Administration (GSA) (<https://www.gsa.gov/> – search “Per Diem”) for the locations being visited.
- b. **Lodging:** VRE will reimburse actual lodging costs at a reasonably priced commercial facility in the immediate area of where the work is performed, up to the GSA’s daily rates for the destination, current for the date of travel. Receipts for lodging must be itemized. Only room and tax charges will be reimbursed; no reimbursement will be made for additional expenses, including but not limited to, room service, laundry, telephone and in-room movies. If the Contractor or its employee shares a room with another person who is not connected with the performance of the work, including a spouse, VRE will reimburse for only the cost of a single room.
- c. **Meals:** The amount for meals and incidental expenses includes state sales tax (where applicable) and a 15% gratuity. On the day of departure, 75% of the applicable rate will apply. On the last day of travel, 75% of the applicable rate will apply.



2. **Air Travel:**

VRE shall reimburse for air travel at the coach rate. The Contractor is expected to obtain discount airfares to the extent possible. Travel shall be by the route that is most cost effective to VRE. Tickets must be purchased at least seven (7) calendar days in advance, unless otherwise approved by VRE. The Contractor shall bear any additional costs incurred as a result of deviations from this route for personal reasons. Travel time shall not be compensated. Legible receipts are required.

3. **Local Transportation:**

Reservations must be made in advance whenever possible to take advantage of all available discounts.

a. **Taxi/limousine/bus** – Reasonable expenses reimbursable at **actual cost**. Receipts are required. Transportation expenses between places of lodging or business and places where meals are taken are not allowed unless suitable meals cannot be obtained at the site.

b. **Rental automobiles** – Reasonable expenses reimbursable at **actual cost**. Rental automobiles shall be used only when it will affect a savings or other advantage or when the use of other transportation is not feasible. Rental automobiles should be limited to sub-compact models when available. A legible copy of the rental agreement is required to support costs. Rental of anything other than a sub-compact is allowable when sub-compacts are not available. Any reimbursement will cover only those rental charges, insurance and/or fuel fees allocable to work on the Contract and will not cover the purchase of liability insurance and/or collision/comprehensive insurance. Legible receipts are required.

c. **Private automobile** - Use of private automobiles will be reimbursed at the current U.S. Internal Revenue Service (IRS) business mileage rate.

d. Tolls and parking charged for the use of ferries, roads, bridges, and tunnels while traveling to and from commercial carriers and parking charges at destination are reimbursable at **actual cost**. Legible receipts are required.

4. **Telephone:**

Actual cost of business telephone charges incurred by the Contractor while in travel status is reimbursable. Personal telephone charges are not allowable. Legible receipts are required.

5. **Other:**

a. Other actual expenses incurred in the performance of this Contract, exclusive of normal operating expenses, and as approved by VRE, shall be reimbursed. Receipts or invoices are required on each individual item under this category.



- b. **Non-reimbursable costs** include expense for entertainment, first-class airfare, contributions, personal telephone and facsimile charges, dues and subscriptions, alcoholic beverages, expenses for transportation and lodging for personal pursuits, gifts, gratuities, and other charges expressly disallowed under the terms of this Contract.

6. **Exclusions:**

VRE will not reimburse or pay for expenses that are personal in nature. The following are some examples of expenses excluded from reimbursement:

- a. Alcoholic beverages
- b. Personal phone calls
- c. Entertainment (e.g. pay TV, movies, night clubs, health clubs, theaters, bowling)
- d. Personal expenses (e.g. laundry, valet, haircuts)
- e. Personal travel insurance (e.g. life, medical, or property insurance) for airfare or rental cars
- f. Fines for parking or traffic violations
- g. Auto repairs, maintenance, cleaning, inspection and insurance costs for personal vehicles

Reimbursable expenses must be included on each monthly invoice and require receipts and other documentation.

**Time limit: VRE will not honor requests for travel reimbursement that are submitted more than sixty (60) calendar days after completion of travel.**

11. **EXTRA CHARGES NOT ALLOWED**

Unless otherwise provided in the Contract, the Contract price shall be for the complete installation ready for VRE use and shall include all applicable freight and installation charges; extra charges will not be allowed.

12. **DESIGN WITH FUNDING LIMITATIONS**

- A. The Contractor shall accomplish the design services required under this Contract to permit the award of a contract, using standard VRE procedures, for the construction of the facilities designed, at a price that does not exceed the estimated construction contract price. When bids for the construction contract are received that exceed the estimated price, the Contractor shall perform such redesign and other services as necessary to permit contract award within the funding limitation. These additional services shall be performed at no increase in the price of the Contract. However, the Contractor shall not be required to perform such additional services at no cost to VRE if the unfavorable bids are the result of conditions beyond the Contractor's reasonable control.
- B. The Contractor shall promptly advise VRE if it finds that the project being designed will exceed or is likely to exceed the funding limitations and it is unable to design a usable facility within these limitations. Upon receipt of such information, VRE will review the Contractor's revised estimate of construction





cost. VRE may, if it determines that the estimated construction contract price is so low that award of a construction contract not in excess of such estimates is improbable, authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction budget. When bids are not solicited or are unreasonably delayed, VRE may prepare an estimate of constructing the design submitted and such estimate shall be used in lieu of bids to determine compliance with the funding limitation.

**13. REQUIREMENTS FOR REGISTRATION OF DESIGNERS**

The design of architectural, structural, mechanical, electrical, civil, or other engineering features of the work shall be accomplished or reviewed and approved by architects or engineers registered to practice in the Commonwealth of Virginia. All Professional Corporations shall also be licensed in the Commonwealth of Virginia as required by the Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects (APELSLA) Board Regulations.

**14. CERTIFICATION OF DRAWINGS AND OTHER DOCUMENTS**

The Contractor or their duly authorized representative shall sign the original tracings of all drawings and the first page of all specifications, estimates, or similar documents under the Contractor's printed name and over the affixed replica of his or her professional seal or his or her registration certificate number, including the State or jurisdiction of issuance.

**15. PREPARATION OF SPECIFICATIONS AND COORDINATION WITH CONTRACT DOCUMENTS**

- A. The Contractor's documents shall be coordinated with VRE's procurement requirements, including change orders (modifications). The Contractor's documents shall not contain statements or requirements which conflict with, or unnecessarily duplicate the provisions of VRE's procurement documents.
- B. The Contractor shall refer to applicable Federal specifications, if available, for items and materials used. If Federal specifications are not available, the Contractor shall reference specifications prepared by recognized professional manufacturers or construction societies or furnish descriptions of the items or materials containing all the salient characteristics of function, performance, design requirements and quality of the item described. When an item or material cannot be described because of its technical construction or composition or because it is a proprietary item, the manufacturer and model number of one, and if available, several suitable commercial products shall be included as part of the required description, followed by the words "or approved equal".
- C. If it is determined that one and only one brand of item or material will meet the requirement, the Contractor shall so state and shall give full justification for that determination. Specifications shall not duplicate, contradict or cover the same subject matter contained in the general and special provisions to be used with the contract. A complete set of contract general and special provisions will be furnished to the Contractor by VRE.



**16. CONSTRUCTION CONTRACTS WITH ARCHITECTURAL AND ENGINEERING FIRMS**

No contract for construction of any project or item for which architectural and engineering services are provided under this Contract shall be awarded to the Contractor, any of its Subcontractors, or any of its subsidiaries or affiliates.

**17. REGULATORY COMPLIANCE WITH LAWS AND PERMITS**

- A. The Contractor agrees it shall be responsible for the professional quality, technical accuracy, and coordination of all designs, drawings, specifications, and other services furnished by the Contractor under this Contract. All design work and administration shall be performed in accordance with all applicable Federal, State and Local Laws, Rules and Regulations. In addition to the requirements described in the preceding Sections and the Scope of Work, any additional regulatory compliance required by the United States Department of Transportation and/or the Environmental Protection Agency be complied with during the term of the Contract.
- B. The Contractor shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services. If any Contractor violation of a code, standard or regulation results in a change order, the Contractor shall be liable for any additional costs to VRE, including costs of re-design, any additional construction or manufacturing costs and costs of delay.
- C. Neither VRE's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to VRE in accordance with applicable law for all damages to VRE caused by the Contractor's negligent performance of any of the services furnished under this Contract.
- D. If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.
- E. The design work product of the Contractor shall be suitable for review by VRE, its Host Railroads and applicable Authorities Having Jurisdiction.
- F. The rights and remedies of VRE provided for under this Contract are in addition to any other rights and remedies provided by law.

**18. RELEASES, LICENSES, PERMITS AND AUTHORIZATIONS**

It is the Contractor's responsibility to obtain all releases, licenses, permits and other usage authorizations for all matters within its ordinary sphere of activity, including photographs, copyrighted materials, artwork or any other property or rights belonging to third parties obtained by the Contractor for use in performing services for VRE. The Contractor shall save the VRE harmless from all claims, demands, expenses (including reasonable attorney's fees), liabilities, suits, and proceedings (including any brought in or before any court, administrative body,



arbitration panel or other tribunal) against or involving VRE on account of or arising out of such use. VRE shall obtain the same for any such items obtained by VRE which are used by the Contractor in performing services for VRE. The Contractor shall save VRE harmless from all claims, demands, expenses (including reasonable attorneys' fees), liabilities, suits, and proceeding (including any brought in or before any court, administrative body, arbitration panel or other tribunal) against or involving VRE on account of or arising out of any assertions, claims, slogans, headlines or the like made by the Contractor for any VRE products, as well as for all claims, demands, expenses, liabilities, suits and proceedings arising out of the nature or use of VRE's products by the Contractor.

**19. OWNERSHIP OF WORK PRODUCTS**

- A. This Contract does not confer on the Contractor any ownership rights or rights to use or disclose VRE's data or inputs. VRE shall have unlimited rights, for the benefit of VRE, in all work products including, but not limited to, drawings, designs, specifications, notes and other work developed in the performance of this Contract. VRE shall have the right to use the work products on any other VRE work without additional cost to VRE.
- B. All work products, in any form, that result from this Contract are the property of VRE and must be provided or returned to VRE upon completion, termination, or cancellation of this Contract. The Contractor shall not use or allow others to use the work products for any purpose other than performance of this Contract without the written consent of VRE.
- C. The work products are confidential, and the Contractor may neither release the work products nor share their contents. The Contractor shall refer all inquiries regarding the status of any work product to the VRE Project Manager or to his or her designee. At VRE 's request, the Contractor shall deliver all work products, including hard copies of electronic files, to the VRE Project Manager.
- D. The Contractor must include the provisions of this Section as part of any contract or agreement related to this Contract into which it enters with Subcontractors or other third parties.
- E. If any invention, improvement, or discovery of the Contractor or any of its Subcontractors or lower-tier subcontractors is conceived or first actually reduced to practice in the course of or under the Contract, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, VRE and the Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until all applicable VRE funding partners are ultimately notified.
- F. The provisions of this Section will survive any termination or cancellation of this Contract.



**20. CONFIDENTIAL INFORMATION**

- A. The Contractor and its employees, agents and Subcontractors shall hold as confidential all VRE information obtained under this Contract. Confidential information includes, but is not limited to, non-public personal information; social security numbers; addresses; dates of birth; other contact information or medical information about a person; and information pertaining to products, operations, systems, customers, prospective customers, techniques, intentions, processes, plans and expertise.
- B. The Contractor must take reasonable measures to ensure that all of its employees, agents and Subcontractors are informed of and abide by this requirement.

**21. DISSEMINATION OF CONTRACT INFORMATION**

- A. The Contractor shall not discuss, publish, permit to be published, or distribute for public consumption, any information, oral or written, or any material concerning this Contract, without the prior written consent of VRE.
- B. When required, the Contractor shall prepare amendments or revisions to the drawings, specifications, and VRE cost estimates.

**22. CHANGES**

- A. By written notice to the Contractor, VRE may from time to time make changes within the general scope of the Contract in the services to be provided by the Contractor, the method or place of delivery, or the place of performance. Changes may also be made by mutual agreement between the parties in writing. The Contractor shall promptly comply with the notice and shall perform all services in conformity to the notice.
- B. If any such changes cause an increase or decrease in the Contractor's cost of performance or the time required for performance, an equitable adjustment in the Contract price and/or the time allowed for performance of the Contract shall be negotiated and the Contract modified accordingly. Any claim by the Contractor for adjustment under this clause must be asserted by written notice to VRE within thirty (30) days from the date of receipt by the Contractor of the change notice. If the parties fail to agree to an adjustment, the question of an increase or decrease in the Contract price or time allowed for performance shall be resolved in accordance with the procedures for resolving disputes provided by the disputes clause of the Contract. Neither the existence of a claim, a dispute, submission of the dispute or the dispute resolution process, litigation or any portion of this provision or changes shall excuse the Contractor from promptly proceeding with performance of the Contract as changed by the notice.

**23. FORCE MAJEURE**

- A. When delay occurs due to reasonable causes beyond the control of the Contractor, including but not limited to, acts of God, acts of national, state or local government or any governmental agency, war or war conditions, riot or civil conditions, sabotage, strikes, lockouts, pandemic, accident, fire, flood, typhoons, hurricanes, explosion, damage to equipment or facilities, the time for performance



and completion of work may be adjusted and extended as required to accommodate those delays and their effect.

- B. VRE shall not be held responsible for failure to perform its duties and responsibilities imposed by the Contract if such failure is due to acts of God, acts of national, state or local government or any governmental agency, war or war conditions, riot or civil conditions, sabotage, strikes, lockouts, pandemic, accident, fire, flood, typhoons, hurricanes, explosion, damage to equipment or facilities beyond the control of VRE that make performance impossible or illegal, unless otherwise specified in the Contract.

**24. DELAYS**

- A. Upon written receipt of a request and justification for an extension from the Contractor, the VRE Contracting Officer may extend the time for performance of the Contract or delivery of work specified herein at the VRE Contracting Officer's sole discretion for good cause shown. Under no circumstances will VRE be responsible for consequential costs associated with delays.
- B. The Contractor shall use reasonable diligence to remove or overcome any such causes as expeditiously as possible.

**25. SUBCONTRACTING**

- A. No portion of the work shall be subcontracted without the prior written consent of VRE. In the event the Contractor desires to subcontract part of the work specified herein, the Contractor shall submit with its Proposal, a list of the Subcontractor(s) and their names, required certifications, qualifications, experience, project assignment and contact information.
- B. The Contractor shall be responsible for completely supervising and directing the work under this Contract and all Subcontractors that it may utilize, using its best skill and attention. Subcontractors who perform work under this Contract shall be responsible to the Prime Contractor. The Contractor agrees that it is as fully responsible for the acts and omissions of its Subcontractors and of persons employed by each Subcontractor as it is for the acts and omissions of its own employees.
- C. Any Subcontractor and outside associates or consultants required by the Contractor in connection with the services covered by the Contract will be limited to individuals or firms that were specifically identified and agreed to during negotiations. The Contractor shall obtain the Contracting Officer's written consent before making any substitution or addition to these Subcontractors, associates, or consultants.
- D. During the period of performance, the Contractor shall not substitute Subcontractor(s) and/or the Subcontractors' key personnel without the prior written approval of VRE. Any new Subcontractor(s) must be identified as per the above paragraph. The Contractor shall provide VRE with information as to the



circumstances necessitating the proposed change and other information as requested.

- E. The Contractor shall notify VRE within five (5) calendar days after the occurrence of any of these events and provide information as to the circumstances necessitating the proposed change, the new Subcontractor information and other information as requested. Proposed substitutions must have comparable qualifications and experience to those being replaced. VRE will notify the Contractor within ten (10) calendar days after the receipt of all required information if this change is approved. VRE and the Contractor shall subsequently amend the required Contract documents.
- F. VRE reserves the right to request from the Contractor during the solicitation process and any time during Contract performance, additional information about a Subcontractor proposed by the Contractor, that VRE deems necessary to evaluate the qualifications of the Subcontractor.
- G. The Contractor shall, however, remain fully liable and responsible for the work to be done by its Subcontractor(s) and their subcontractor(s) and shall assure compliance with all requirements of the Contract.
- H. The Contractor agrees to require its Subcontractors and sub-subcontractors to include adequate provisions to ensure compliance with applicable Federal requirements in each subcontract and sub-subcontract. Furthermore, the Contractor agrees to include appropriate clauses in each subcontract stating the Subcontractor's responsibilities under Federal law, regulation, and directive, including any necessary provisions requiring the Subcontractor to extend applicable requirements to its subcontractors to the lowest tier necessary.

**26. KEY PERSONNEL**

- A. Certain skilled, experienced, professional and/or technical personnel are essential for successful accomplishment of the work to be performed under the Contract. These are defined as “Key Personnel” and are those persons whose resumes were submitted for approval as part of the Technical Proposal for evaluation. No substitutions may be made except in accordance with this clause.
  - 1. Key personnel are defined as follows:
    - a. Personnel identified in the Bid/Proposal as key individuals to be assigned for participation of the Contract;
    - b. Personnel whose resumes were submitted and approved by VRE; or
    - c. Individuals who are designated as key personnel by VRE.
- B. The Contractor understands that no Key Personnel substitutions will be permitted unless these substitutions are unavoidable because of sudden illness, death or termination of employment. In any of these events, the Contractor shall promptly notify the VRE Director of Purchasing and provide the information described in Paragraph D. below.



- C. The Contractor must submit to the VRE Director of Purchasing all proposed substitutions, in writing, at least fifteen (15) calendar days in advance and provide the information required by Paragraph D. below.
- D. Any request for substitution must include a detailed explanation of the circumstances necessitating the proposed substitution, a resume for the proposed substitute, and any other information requested by the VRE Director of Purchasing. Any proposed substitute must have qualifications equal to or superior to the qualifications of the incumbent. VRE will evaluate such requests and promptly notify the Contractor in writing of its approval or disapproval. If disapproved, VRE may, in its sole discretion, permit the Contractor to promptly submit an alternate substitution.
- E. The provisions of this Section shall be applicable to any subcontract which may be entered into.
- F. In the event that any of the identified Key Personnel cease to perform under the Contract and the substitute is disapproved, the Contract may be immediately terminated in accordance with the Termination for Default provision of the Contract.

**27. INDEPENDENT CONTRACTOR**

The Contractor is and shall be in all events, an independent contractor. Nothing herein shall be construed as constituting the Contractor as an agent, partner, employee, or legal representative of VRE for any purpose. Neither the Contractor nor its employees shall be entitled to or be eligible to participate in any benefits, privileges or plans given by or established for the benefit of VRE or its employees.

**28. NOTIFICATION OF OWNERSHIP CHANGES**

The Contractor shall notify VRE in writing when the Contractor becomes aware that a change in its ownership is certain to occur. The Contractor shall also include this provision in all subcontracts under this Contract, requiring each s Subcontractor to notify VRE in writing when the Subcontractor becomes aware that a change in its ownership is certain to occur.

**29. AVAILABILITY OF FUNDS**

It is understood and agreed that VRE shall be bound to the Contract only to the extent of the funds appropriated for the purpose of the Contract. If funds are reduced or eliminated by the Commonwealth of Virginia or any Federal, State or Local funding partners, the Contract can be terminated under the provisions of the Contract.

**30. AUTHORIZED FUNDING**

- A. If at any time the Contractor has reason to believe that the costs to VRE which will accrue in the performance of the Contract in the next succeeding thirty (30) days, when added to all other payments previously accrued, will exceed seventy-



five percent (75%) of the then current total authorized funding, the Contractor shall notify VRE to that effect, advising the estimate of additional funds required for completion of the Contract. The Contractor shall be under no obligation to perform any work hereunder, and VRE shall not be obligated to reimburse the Contractor for any work performed, if in the performance thereof the total funding then allotted to the Contract will be exceeded.

- B. VRE shall not be obligated to pay the Contractor any amount in excess of the ceiling price reflected in the Contract, and the Contractor shall not be obligated to continue performance if to do so would exceed the price set forth in the Contract, unless and until the VRE Contracting Officer shall have notified the Contractor in writing that the price(s) have been increased and shall have specified in the notice a revised price that shall constitute the price for performance under this Contract, and the Contract has been duly modified. When and to the extent that the price set forth in the Task Order or Contract has been increased, any hours expended and material costs incurred by the Contractor in excess of the price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the price.

**31. ASSIGNMENT OF CONTRACT**

The Contract shall not be assignable, sublet or transferable by the Contractor, in whole or part, without the prior written consent of the VRE.

**32. LEGAL SERVICES**

VRE legal services are provided by VRE's general counsel and counsel retained directly by VRE. Absent written direction from VRE, Contractors are not permitted to include on their team, or among their key personnel, as Subcontractor(s) or employees of the Contractor, law firms or attorneys primarily engaged in the practice of law in any state regardless of the qualifications of the firm or the attorneys. This policy does not apply to individuals employed or subcontracted by the Contractor who possess a juris doctorate but are not licensed to practice law in any state or who are no longer engaged in the practice of law.

**33. DISALLOWED COSTS INCLUDING INTEREST**

- A. The Contractor agrees to remit to VRE, which in turn will remit to its funding partners, any excess payments made to the Contractor disallowed by Federal, State and Local funding partners.
- B. VRE will exclude any project costs incurred by the Contractor before the date of the Notice-To-Proceed unless otherwise authorized by VRE in writing. VRE will also exclude any project cost not included in the approved project budget, any ordinary governmental or non-project operating cost deemed ineligible by a funding partner. VRE shall make the final determination as to what costs are eligible.
- C. Payment does not constitute a final decision about whether a cost is eligible for reimbursement and does not constitute a waiver of any violation by the Contractor of the terms and conditions of the Contract.





- D. The Contractor agrees to incur costs in accordance with all provisions of this Contract and any other requirements referenced herein. Payment shall be made for eligible project costs as listed in the Contract and for no other purpose.
- E. The Contractor shall remit to VRE any excess payments made to the Contractor disallowed by VRE, or any of their funding agencies, as well as any interest required.

**34. APPLICABLE LAW AND COURTS**

Any Contract resulting from this solicitation shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the federal and state courts of the Commonwealth. The successful Contractor shall comply with applicable Federal, State, and Local laws and regulations.

**35. LITIGATION AND NOTIFICATION**

The Contractor shall notify the VRE Director of Purchasing if any of the following occur:

1. The Contractor or any of the Subcontractors are served with a notice of violation of any law, regulation, permit or license which relates to this Contract.
2. Proceedings are commenced which could lead to revocation of related permits or licenses.
3. Permits, licenses or other Government authorizations relating to this Contract are revoked.
4. Litigation is commenced in which the Contractor is a named party, and which also involves as a named party, any Subcontractor of the Contractor who is otherwise a provider of indirect services or products under this Contract.
5. The Contractor or any of the Subcontractors become aware their equipment or facilities or actions are not in compliance or may fail to comply in the future with applicable laws or regulations.

**36. CONTRACTUAL DISPUTES**

- A. Disputes by the Contractor with respect to the Contract shall be decided in the first instance by the Contract Administrator or designee who shall reduce his/her decision to writing, and mail or otherwise furnish a copy thereof to the Contractor. The Contract Administrator's decision shall be final and binding unless within thirty (30) days from the date of such decision, the Contractor appeals the Contract Administrator's decision to the Contracting Officer. The Contracting Officer shall reduce his/her decision to writing, and mail or otherwise furnish a copy thereof to the Contractor no later than thirty (30) days after Substantial Completion of the Work.



- B. The Contracting Officer's decision shall be final and binding unless within thirty (30) days from the date of such decision the Contractor institutes legal action in accordance with the Code of Virginia. Pending a final determination of a properly appealed decision of the Contract Administrator and the Contracting Officer, the Contractor shall proceed diligently with the performance of the Contract, including the disputed portions, in accordance with that decision.
- C. The Contractor must notify VRE immediately when any current or prospective legal matter related to this Contract, including but not limited to, default, breach, major dispute or litigation, emerges that may affect the Federal Government. The Contractor must include this language in all subcontracts of \$25,000 or more

**37. TERMINATION FOR THE CONVENIENCE OF VRE**

- A. The parties agree that VRE may terminate the Contract, or any work or delivery required thereunder, from time-to-time either in whole or in part, without cause whenever the VRE Contracting Officer shall determine that such termination is in the best interest of VRE.
- B. Termination, in whole or in part, shall be affected by delivery of a Notice of Termination signed by the VRE Contracting Officer, mailed or delivered to the Contractor, and specifying the extent of termination and the effective date of termination. Upon receipt of such notice, the Contractor shall:
  - 1. Cease any further deliveries or work due under the Contract on the date and to the extent which may be specified in the notice;
  - 2. Place no further orders with any Subcontractor except as may be necessary to perform that portion of the Contract not subject to the notice;
  - 3. Terminate all Subcontractors except those made with respect to Contract performance not subject to the notice;
  - 4. Settle all outstanding liabilities and claims which may arise out of such termination, with the ratification of VRE;
  - 5. Use its best effort to mitigate any damages which may be sustained by the Contractor as a consequence of termination under this Section;
  - 6. As directed by the VRE Contracting Officer, transfer title and deliver to VRE:
    - a. The fabricated or un-fabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and
    - b. The completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to VRE.
  - 7. Complete performance of the work not terminated; and



8. Take any action that may be necessary, or that the VRE Contracting Officer may direct, for the protection and preservation of the property related to the Contract that is in the possession of the Contractor and in which VRE or the Government has or may acquire an interest.
- C. After complying with the foregoing provisions, the Contractor shall submit a termination claim, no later than sixty (60) days after the effective date of its termination, unless an extension is granted by the VRE Contract Administrator. If the Contractor fails to submit the claim within the time allowed, the VRE Contracting Officer may determine, on the basis of information available, the amount, if any, due to the Contractor because of the termination and shall pay the amount determined.
  - D. If the termination is partial, the Contractor may file a claim with the VRE Contracting Officer or his/her designee for an equitable adjustment of the price(s) of the continued portion of the Contract. The VRE Contracting Officer shall make any equitable adjustment agreed upon. Any claim by the Contractor for an equitable adjustment under this Section shall be requested within thirty (30) days from the effective date of termination unless extended in writing by the VRE Contracting Officer.
  - E. The VRE Contract Administrator, with the approval of the VRE Contracting Officer, shall pay reasonable costs of termination, including a reasonable amount for profit on services delivered or completed. In no event shall this amount be greater than the original Contract price, reduced by any payments made prior to the Notice of Termination, and further reduced by the price of the serviced not delivered, or those services not provided. The Contract shall be amended accordingly, and the Contractor shall be paid the agreed upon amount.
  - F. In the event that the parties cannot agree on the whole amount to be paid to the Contractor by reason of termination under this Section, the VRE Contract Administrator shall pay to the Contractor the amounts determined as follows, without duplicating any amount which may have already been paid under Paragraph E. of this Section.
  - G. With respect to all Contract performance prior to the effective date of Notice of Termination, the total of:
    1. Cost of the work performed;
    2. The cost of settling and paying any reasonable claims as provided in Paragraph B. above; and
    3. A sum as profit on Paragraph G. above determined by VRE to be fair and reasonable.



- H. The total sum to be paid shall not exceed the Contract price, as reduced by the amount of payments otherwise made, and as further reduced by the Contract price of services not terminated.
- I. In the event that the Contractor is not satisfied with any payments which the Contract Administrator shall determine to be due under this Section, the Contractor may appeal any claim to VRE in accordance with the Contractual Disputes provision of the Contract.
- J. Unless otherwise provided in the Contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of the Contract for three (3) years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under the Contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the VRE Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.
- K. When termination for the convenience of VRE is a provision of the Contract, the Contractor shall include similar provisions in any subcontract and shall specifically include requirements that Subcontractors make all reasonable efforts to mitigate damages which may be suffered. Failure to include such provisions shall bar the Contractor from any recovery from VRE whatsoever of loss or damage sustained by a Subcontractor as a consequence of termination for convenience.

**38. TERMINATION FOR DEFAULT**

- A. Either party may terminate the Contract, without further obligation, for the default of the other party or its agents or employees with respect to any agreement or provision contained herein.
- B. If through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under the Contract, or if the Contractor shall violate any of the covenants, agreements or stipulations of the Contract, VRE shall thereupon have the right to terminate the Contract by giving written notice to the Contractor of such termination. The written notice shall specify the effective date of termination and shall be delivered to the Contractor prior to the effective date of termination.
- C. The Contractor shall have the right to cure its default, and thereby avoid termination, during the aforesaid notice period by remedying the circumstances which constitute the default or, where completion of such a remedy is not reasonably possible, then by taking all reasonable steps possible designed to remedy the default promptly.
- D. Successive defaults of the same nature, regardless of the Contractor's effort to cure, shall not prevent VRE from terminating the Contract.



**39. INDEMNIFICATION**

- A. The Contractor shall not seek to hold liable VRE, or any of its officers, agents and employees for any claims, suits, actions, judgments, damages, losses, and expenses of any nature whatsoever arising out of the Contract or arising out of the activities funded in whole or in part by the Contract. The Contractor shall defend, indemnify, save, and hold harmless VRE, and its officers, agents, and employees against claims, suits, actions, judgments, damages, losses, and liability, including costs, fees and expenses, to the extent caused by the negligent acts, errors or omissions, recklessness or intentionally wrongful conduct of the Contractor or the negligent acts, errors or omissions, recklessness or intentionally wrongful conduct of the Contractor's Subcontractors, agents or employees in performance of the Contract. The aforesaid duty to defend shall not apply to the extent prohibited by § 11-4.4 VA. Code Ann.
- B. The foregoing shall not apply to liability to the extent caused by or resulting from the negligence, recklessness, or intentionally wrongful conduct of VRE or its officers, agents, or employees, but only with respect to the individual whose negligence, recklessness, or intentionally wrongful conduct caused such liability. Additionally, the foregoing obligations shall survive termination of this Contract with respect to liabilities arising during its term. The Contractor agrees to maintain adequate insurance in an amount and form herein specified and approved by VRE to protect VRE and its officers, agents, and employees from liability arising out of the Contract. Acceptance of the services by VRE shall not waive any of the rights of VRE or its officers, agents, and employees contained in this section nor release or absolve the Contractor from any liability, responsibility or duty contained herein.

**40. ANTITRUST**

By entering into a Contract, the Contractor conveys, sells, assigns, and transfers to VRE all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by VRE under said Contract.

**41. SEVERABILITY**

In the event that any provision shall be adjudged or decreed to be invalid, such ruling shall not invalidate the entire Contract but shall pertain only to the provision in question and the remaining provisions shall continue to be valid, binding and in full force and effect.

**42. FAIR EMPLOYMENT CONTRACTING ACT**

The Contractor, its agents, employees, assigns or successors, and any persons, firm, or agency of whatever nature with whom it may Contract or make a Contract, shall comply with the provisions of the Virginia Fair Employment Contract Act, Section 2.2-4200 et seq., VA Code Ann. the terms of which are incorporated herein by reference.



43. **EMPLOYMENT OF PERSONNEL**

The Contractor shall not employ any persons or persons in the employment of VRE for any work required by the terms of the Contract, without the prior written permission of VRE.

44. **CONVICT LABOR**

In connection with the performance of work under the Contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment except as provided by Public Law 89-176, as amended.

45. **GEOGRAPHIC RESTRICTIONS**

Procurement transactions will be conducted in a manner that prohibits the use of in state or local geographical preferences in the solicitation and evaluation of Bids or Proposals, except in those cases where applicable statutes or regulations expressly mandate or permit geographic preference. This does not preempt State or local licensing laws. However, geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services, provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the Contract.

46. **COVENANT AGAINST CONTINGENT FEES**

The Contractor warrants that it has not employed or retained any company or person, other than bona fide employees working solely for the Contractor, to solicit or secure the Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor, any fee, VRE percentage, brokerage fee, or other considerations, contingent upon or resulting from the award of making of the Contract. For breach or violation of this warranty, VRE shall have the right to annul the Contract without liability, or, at its discretion, to deduct from the Contract price or consideration, or otherwise recover the full amount of such fee, VRE percentage, brokerage fee, gift, or contingent fee.

47. **CONFLICT OF INTEREST**

A. The Contractor and its officers and employees shall comply with the provisions of the Virginia Conflict of Interest Act (Section 2.2-3100 et. seq., of the Code of Virginia), as amended, the State and Local Government Conflict of Interests Act, and Section 2.2-4300 et. seq. of the Code, the Virginia Public Procurement Act, the terms of which are incorporated herein by reference.

B. VRE is intent on avoiding conflicts of interest associated with the award of the Contract. To these ends, prospective Contractors must identify existing and prospective contractual relations they have (or could have) with agencies which could present sources of conflict as part of the Bid or Proposal submission.

C. VRE standards of conflict prohibit VRE employees, officers, board members, or agents from participating in the selection, award, or administration of a third-party contract or sub agreement supported by federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the



following parties has a financial or other interest in the entity selected for award (a) an employee, officer, board member or agent (b) any member of his or her family (c) his or her partner or (d) an organization that employs or intends to employ any of the above.

- D. VRE standards of conflict also prohibit real or apparent organizational conflicts of interest. An organizational conflict of interest exists when the nature of the work to be performed under a third-party contract or sub agreement may, without some restriction on future activities, result in an unfair competitive advantage to the third-party Contractor or subrecipient or impair its objectivity in performing the Contract work.
- E. Firms participating in the planning and design of the work involved in this Contract are excluded from participating in any part of the construction, to include providing construction management services or manufacturing process, either as a prime or subcontractor.

**48. ETHICS IN PUBLIC CONTRACTING**

- A. This Contract incorporates by reference any State or Federal law related to ethics, conflicts of interest, or bribery, including, by way of illustration and not limitation, the State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.), and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.).
- B. The Contractor certifies that its Bid or Proposal is made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other Contractor, supplier, manufacturer or Subcontractor in connection with their Bid or Proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

**49. OFFICIALS NOT TO BENEFIT**

No member of or delegate to the Virginia General Assembly, and no member of VRE, the Northern Virginia Transportation Commission, the Potomac and Rappahannock Transportation Commission or the Virginia Passenger Rail Authority, shall be admitted to any share or part of the Contract, or to any benefit that may arise there from; but this provision shall not be construed to extend to the Contract if made with a corporation for its general benefits. No member, officer, or employee of VRE, during his/her tenure or one (1) year thereafter shall have any interest, direct or indirect, in the Contract or the proceeds thereof.

**50. ANTI-DISCRIMINATION**

- A. By submitting a Bid or Proposal, the prospective Contractor certifies to VRE that it will conform to the provisions of Title VI of the Federal Civil Rights Act of 1964, as amended; DOT regulations, “Nondiscrimination in Federally-Assisted



Programs of the Department of Transportation” -- Effectuation of Title VI of the Civil Rights Act; the Virginia Fair Employment Act of 1975, as amended, where applicable; all requirements of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 20003, and 49 U.S.C. §4332 and any implementing requirements FTA may issue; the provisions of 49 U.S.C, § 5332, “Nondiscrimination in Federal Transit Programs,” which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity; and Section 2.2-4311 of the Virginia Public Procurement Act.

B. During the performance of the Contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, religion, or national origin. The Contractor agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, sex, disability, age, religion, or national origin. Such action shall include, but not be limited to, the following: employment, upgrade, 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 setting forth the provisions of this nondiscrimination clause. The Contractor also agrees to comply with any implementing requirements FTA may issue.
2. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, shall state that such Contractor is an equal opportunity employer.
3. Notices, advertisements, and solicitations placed in accordance with Federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section.
4. The Contractor will comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§1681-1683, 1685-1688, with U.S. DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. Part 25, and with any implementing directives that U.S. DOT or FTA may promulgate, which prohibit discrimination on the basis of sex.
5. The Contractor shall comply with applicable Federal guidance issued in compliance with Executive Order Number 13166, “Improving Access to Services for Persons with Limited English Proficiency,” August 11, 2000, 42 U.S.C. §2000d-1 note, and with the requirements and provisions of U.S. DOT Notice, “DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries,” 66 Fed. Reg. 6733 et seq., January 22, 2001.





6. With respect to activities deemed by the U.S. Department of Labor (U.S. DOL) to qualify as “construction,” the Contractor agrees to comply, and assures the compliance of each Subcontractor at any tier with all applicable EEO requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000(e) note,) and any Federal statutes, executive orders, regulations, and Federal policies affecting construction undertaken as part of the Contract.
7. The Contractor agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 et seq., and implementing regulations, which prohibit employment and other discrimination against individuals on the basis of age.
8. The Contractor agrees to comply with all applicable requirements of any other nondiscrimination statutes(s) that may apply.
9. The Contractor agrees to comply with the policies of Executive Order No. 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” 42.U.S.C. § 4321.
10. The Contractor agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary, to identify the affected parties.

**51. PERSONS WITH DISABILITIES**

- A. The Contractor is solely responsible for its compliance with the Americans with Disabilities Act (ADA) and must design the project to meet all ADA requirements. VRE, nor any VRE staff and/or third-party inspection service, is responsible for verifying that the project’s design complies with all applicable ADA requirements.
- B. The Contractor must also comply with the provisions of the Virginians with Disabilities Act (§ 51.5-40 through § 51.5-46 of the Code of Virginia (1950), as amended), the terms of which are incorporated herein by reference.
- C. The Contractor shall defend and hold VRE harmless from any expense or liability arising from the Contractor’s non-compliance in meeting its obligations herein. The Contractor shall be responsible for all costs related to permitting delays, redesign, corrective work, and litigation relating to such non-compliance.

**52. DRUG OR ALCOHOL ABUSE- CONFIDENTIALITY AND OTHER CIVIL RIGHTS PROTECTIONS**

The Contractor agrees to comply with confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21



U.S.C. §§ 1174 et seq., with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4581 et seq., and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd-3 and 290ee-3, and any subsequent amendments to these acts.

**53. DRUG-FREE WORKPLACE**

- A. During the performance of the Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each Subcontractor or vendor.
- B. "Drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.

**54. AUDIT**

- A. The Contractor hereby agrees to maintain all books, records, accounts, and reports required under the Contract for a period of not less than five (5) years after the date of termination or expiration of the Contract, except in the event of litigation or settlement of claims arising from the performance of the Contract, in which case the Contractor agrees to maintain same until VRE, the FTA Administrator, the Comptroller General, the Virginia Department of Rail and Public Transportation (DRPT), or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto. Reference 49 CFR 18.39(i)(11). The Contractor shall provide any documentation requested by VRE within fifteen (15) calendar days of such request.
- B. VRE, its authorized agents, the Federal Government, authorized representatives of DRPT, and/or state auditors shall also have full access to and the right to examine any of said materials during said period. The Contractor shall conduct audits in accordance with U.S. General Accounting Office, Government Auditing Standards.

**55. PUBLICATIONS**

Articles, papers, bulletins, reports or other material reporting the results and findings of the work conducted under the Contract shall not be presented publicly or published without the prior written approval of VRE, and all materials shall remain the sole property of VRE. Publications and reports officially released after



the date of execution of the Contract describing the results of any investigation or study hereunder participated in by VRE shall give recognition to VRE in the text and title page to the nature of its cooperative character.

**56. COPYRIGHTS**

- A. All copyrightable works created pursuant to the Contract shall be considered work made for hire and shall belong solely and exclusively to VRE. If, despite the foregoing, VRE is not deemed the author and initial owner of any copyrightable works created pursuant to the Contract, the Contractor agrees to irrevocable assign and does hereby irrevocably assign to VRE the sole, exclusive and complete copyright interest in such works, and the Contractor shall execute and deliver such further documents as VRE may reasonably request for the purpose of acknowledging, implementing or recording this assignment.
- B. The Contractor agrees and warrants that no individual, other than regular employees of the Contractor or VRE working within the scope of their employment, shall participate in the creation of any copyrightable works to be delivered under the Contract, unless such individual and his or her employer, if any, have signed an intellectual property agreement satisfactory to VRE before commencing such participation.
- C. The Contractor hereby agrees that, notwithstanding anything else in the Contract, in the event of any breach of the Contract by VRE, the Contractor's remedy shall not include any right to rescind or otherwise revoke or invalidate the provisions of this Section. Similarly, no expiration or termination of the Contract by VRE shall have the effect of rescinding, terminating or otherwise invalidating the provisions of this Section.

**57. RIGHTS IN DATA**

- A. Data and information submitted to VRE may be required to be made available for dissemination under the Freedom of Information Act, or other Federal, State and Local statute(s) in accordance with implementation instructions contained in 49 C.F.R. §19.36, revised March 2000, to the extent applicable, and any subsequent applicable Federal, State and Local requirements that may be promulgated.
- B. All "subject data" first produced in the performance of this Contract shall be the sole property of VRE. The Contractor agrees not to assert any rights at common law or equity and not to establish any claim to statutory copyright in such data. Except for its own internal use, the Contractor shall not publish or reproduce such data, in whole or in part, or in any manner or form, nor authorize others to do so without the prior written consent of VRE, until such time as the Federal Government or VRE may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any Contract with an academic institution.

**58. ROYALTIES**

While VRE recognizes that certain materials or component parts may be produced under the terms of licensing or cross licensing agreements, it must be understood



that the use of such materials and component parts requiring the application of recurring royalty charges, costs or payments is specifically prohibited. The Contractor agrees to and does hereby grant VRE a royalty-free license to all such data which they may cover by copyright and to all designs as to which they may assert any rights or establish any claim under the design patent or copyright laws.

**59. PROTECTION OF SENSITIVE SECURITY INFORMATION**

To the extent applicable, the Contractor shall comply with 49 C.F.R. Part 1520, "Protection of Sensitive Security Information," and with any implementing regulations, requirements, or guidelines that the Federal Government may issue.

**60. EXAMINATION OF RECORDS**

A. The Contractor agrees as follows:

1. Reports. The Contractor agrees to provide to VRE those reports required by the U.S. DOT's and Commonwealth of Virginia's grant management rules and any other reports the Federal Government and State Government may require.
2. Records Retention. The Contractor agrees to provide VRE, the FTA Administrator, the Comptroller General of the United States representatives of DRPT, or any authorized representatives access to any books, documents, paper and records of the Contractor which are directly pertinent to the Contract for the purpose of making audits, examinations, excerpts and transcriptions even after the project has been closed-out. The Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his/her authorized representatives, including any PMO contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309, or 5311. The Contractor agrees that it will maintain intact and readily accessible all data, books, accounts, documents, reports, records, contracts, and supporting materials relating to the Contract as the Federal Government and Commonwealth of Virginia may require during the course of the Contract and for five (5) years thereafter, except in the event of litigation or settlement of claims arising from the performance of the Contract, in which case the Contractor agrees to maintain the same until VRE, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives have disposed of all such litigation, appeals, claims or exceptions related thereto.
3. Access to Records. Upon request, the Contractor shall permit VRE, its authorized agents, state auditors, including authorized representatives of DRPT, the Secretary of Transportation, and the Comptroller General of the United States, or their authorized representatives, to inspect all project work, materials, payrolls, and other data, and to audit the books, records, and accounts pertaining to the project.

- a. The Contractor further agrees to include in all of its subcontracts



hereunder a provision to the effect that the Subcontractor agrees that VRE, its authorized agents, state auditors, the Secretary of Transportation, and the Comptroller of the United States, or their authorized representatives, until the expiration of five (5) years after final payment under the subcontract, be permitted to inspect and audit all data and records of the Subcontractor relating to its performance under the subcontract.

- b. The term “subcontract” as used in this clause excludes (1) purchase orders not exceeding \$100,000 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.
- c. VRE shall continue to have for a period beyond five (5) years after final payment under the Contract, the right to inspect and audit all data and records which relate to:
  - 1. Appeals under the “Disputes” clause of the Contract;
  - 2. Litigation of claims arising out of the performance of the Contract; or
  - 3. Costs and expenses of the Contract as to which exception has been taken by VRE or the Commonwealth of Virginia or any of its duly authorized representatives.
- d. The extended right of inspection shall continue for such period beyond five (5) years after final payment under the Contract until such appeals, litigations, claims or exceptions have been disposed of, and for such period thereafter as required for review by the Virginia Department of Transportation (VDOT) and VRE.
- e. Notification of Federal Participation. In the announcement of any contract award for goods or services (including construction services) having an aggregate value of \$500,000 or more, the Contractor agrees to specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express the amount of that Federal assistance as a percentage of the total cost of that third-party contract.

**61. TAXES**

Sales of items purchased directly by VRE under the Contract shall be exempt from state sales and use tax and federal excise and transportation taxes to the extent permitted by law. State sales and use tax certificates of exemption, and VRE’s federal excise tax exemption registration number will be furnished upon request. The foregoing shall not be construed to imply that the Contractor is exempt from all applicable taxes.



**62. INSURANCE**

Before beginning work under the Contract or any extension, the Contractor must provide to VRE a Certificate of Insurance indicating that the Contractor has in force, at a minimum, the coverage denoted by the insurance requirements included herein this solicitation. The Contractor must maintain this coverage until the completion of the Contract or as otherwise stated in the Contract Documents. All required insurance coverage must be acquired from insurers that are authorized to do business in the Commonwealth of Virginia, with a rating of “A-” or better and a financial size of “Class VII” or better in the latest edition of the A.M. Best Co. Guides.

**63. SAFETY RULES AND SECURITY AT VRE’S RAILROAD FACILITIES**

- A. In the performance of this Contract, the Contractor shall not work around or near railroad operations. In an effort to avoid the risk of potential injury, the Contractor shall become familiar with all the safety rules set forth in the attached **VRE SAFETY AND SECURITY GUIDELINES**. In an emergency, the Contractor shall act at its discretion to prevent threatened damage, injury or loss.
- B. The Contractor and all its employees performing work on this Contract must complete the online Contractor safety training provided by VRE at <https://www.vre.org/careers/contractors/>. Payment of employees for time spent completing the online safety training and any expenses incurred is the sole responsibility of the Contractor and is not eligible for reimbursement from VRE.
- C. Prior to the start of work, the Contractor shall prepare a Site Specific Safety Plan and submit it to VRE for review and approval. The plan must be furnished within ten (10) calendar days of receipt of the “Notice of Intent to Award” and before any work under the resultant Contract will be allowed to commence. The VRE Site Specific Safety Plan template is included as an Attachment to this solicitation.
- D. The Contractor is responsible for initiating, maintaining and supervising all safety precautions and programs in connection with this Contract. This includes the Contractor’s employees and other persons who may be affected thereby, as well as materials and equipment, both in storage and on-site.
- E. It is incumbent upon the Contractor and its employees to work in a safe manner at all times due to the nature of rail service. The Contractor while performing work around VRE's facilities shall be alert for train movement through the facility to ensure safe operations. While train movement is ongoing at the facility the Contractor shall move to a safe distance. VRE reserves the right to require the Contractor and its employees to meet the safety qualifications required by the applicable Host Railroads, Federal Railroad Administration, and VRE's safety rules for operations.



**64. PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES AND IMPROVEMENTS**

- A. The Contractor shall preserve and protect all existing structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed, and which do not unreasonably interfere with the work required under this Contract. The Contractor shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during Contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by VRE or its authorized representative.
- B. The Contractor shall protect from damage all existing improvements and utilities to include, but not limited to, the following:
1. At or near the work site;
  2. Adjacent Host Railroad operating areas; and
  3. On the adjacent property of a third party, the locations of which are made known to or should be known by the Contractor.
- C. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this Contract or failure to exercise reasonable care in performing the work. Repairs are to be performed as needed or on a 24-hour basis as may be required by VRE at no additional cost. If the Contractor fails or refuses to repair the damage promptly, the VRE Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

**65. ENVIRONMENTAL REGULATIONS**

- A. The Contractor and any Subcontractors are required to comply with all applicable Federal environmental standards, orders or requirements issued under Section 508 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1368, and other provisions of the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§1251 *et seq.*; Environmental Protection Agency regulations (40 C.F.R. Part 15); National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§4321 *et seq.*; Executive Order Number 11514, as amended, “Protection and Enhancement of Environmental Quality,” 42 U.S.C. §4321 note; FTA statutory requirements at 49 U.S.C. §5324(b); Council on Environmental Quality regulations pertaining to compliance with the National Environmental Quality Act of 1969, as amended, 40 C.F.R Part 1500 *et seq.*; the joint FHWA/FTA regulations, “Environmental Impact and Related Procedures,” 23 C.F.R. Part 771 and 49 C.F.R. Part 622, and, when promulgated, FHWA/FTA joint regulations, “NEPA and Related Procedures for Transportation Decision Making, Protection of Public Parks, Wildlife and Waterfowl Refuges, and Historic Sites,” 23 C.F.R. Part 1420 and 49 C.F.R Part 623.



- B. As stated in the aforementioned regulations, if the Contract causes or results in adverse environmental effects, all reasonable measures to minimize those adverse effects must be taken. In addition, all environmental mitigation measures identified as commitments in applicable environmental documents, such as environmental assessments and documents required by 49 U.S.C. §303, must be completed. These commitments include any conditions the Federal Government imposes on a finding of no significant impact or record of decision. These mitigations measures are incorporated by reference and made part of the Grant Agreement and may not be modified or withdrawn without written approval of the Federal Government.
- C. The Contractor agrees to include in Subcontracts exceeding \$100,000, adequate provisions to ensure that Contract participants report the use of facilities placed or likely to be placed on EPA's "List of Violating Facilities," refrain from using violating facilities, report violations to FTA and the Regional EPA Office. VRE will report and requires the Contractor and any Subcontractor to report any violation of these requirements resulting from implementation of the Contract by the Contractor, Subcontractor (at any tier), or VRE to FTA and the appropriate U.S. EPA Regional Office. All plans, drawings, and other documents produced as a result of the Contract should comply with these regulations when applicable.
- D. The Contractor also shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**66. USE OF REAL PROPERTY, EQUIPMENT AND SUPPLIES**

- A. The Contractor understands and agrees that the Federal Government retains a Federal interest in any real property, equipment, and supplies financed with Federal assistance until, and to the extent, that the Federal Government relinquishes its Federal interest in that property. Unless otherwise approved by FTA, the Contractor agrees to comply with the following requirements with respect to real property, equipment, and supplies financed by the Contract:
  - 1. Use of Property. The Contractor agrees to use Contract real property, equipment, and supplies for appropriate Contract purposes (which may include joint development purposes that generate program income, both during and after the award period used to support transit activities) for the duration of the useful life of that property, as required by VRE. Should the Contractor unreasonably delay or fail to use Contract property during the useful life of that property, the Contractor agrees that it may be required to return the entire amount of the Federal assistance expended on that property. The Contractor further agrees to notify VRE immediately when any Contract property is withdrawn from Contract use or when Contract property is used in a manner substantially different from the representations the Contractor has made in its Bid/Proposal for the Contract.
  - 2. General Federal Requirements. A Contractor that is an institution of higher education, or a private nonprofit organization, agrees to comply with 49





C.F.R. §§ 19.30 through 19.37, including any amendments thereto, and other applicable guidelines or regulations the Federal Government may issue. Any exception to the requirements of 49 C.F.R. §§ 18.31 through 18.34, and to 49 C.F.R. §§ 19.30 through 19.37, requires the express approval of VRE. A Contractor that is a for-profit organization agrees to comply with property management standards satisfactory to VRE. In addition, the Contractor consents to FTA's established reimbursement requirements for premature dispositions of certain Contract equipment (*i.e.*, when Contract equipment is withdrawn from appropriate use before the expiration of the equipment's useful life established by FTA), as explained in this Section.

3. Maintenance. The Contractor shall maintain Contract real property and equipment in good operating order, in compliance with any guidelines, directives, or regulations FTA may issue.
4. Records. The Contractor shall keep satisfactory records regarding the use of Contract real property, equipment, and supplies, and submit them to VRE upon request for such information as may be required to assure compliance with this Section of the Contract.
5. Encumbrance of Contract Property. The Contractor shall maintain satisfactory continuing control of Contract real property or equipment. Thus, absent written authorization by VRE permitting otherwise:
  - a. Written Transactions: The Contractor shall refrain from executing any transfer of title, lease, lien, pledge, mortgage, encumbrance, third party contract, grant anticipation note, alienation, or any other obligation that in any way would affect the Federal interest in any Contract real property or equipment.
  - b. Oral Transactions: The Contractor shall refrain from obligating itself in any manner to any third party with respect to Contract real property or equipment.
  - c. Other Transactions: The Contractor shall refrain from taking any action that would either adversely affect the Federal interest or impair the Contractor's continuing control of the use of Contract real property or equipment.
6. Transfer of Contract Property. The Contractor understands and agrees as follows:
  - a. Contractor Request: The Contractor may transfer assets financed with Federal assistance authorized for 49 U.S.C. Chapter 53 to a public body to be used for any public purpose with no further obligation to the Federal Government, provided the transfer is approved by VRE and the Federal Transit Administration and conforms with the requirements of 49 U.S.C. §§ 5334(g)(1) and (2).



- b. Federal Government Direction: The Contractor agrees that the Federal Government may direct the disposition of, and even require the Contractor to transfer title to, any real property, equipment, or supplies financed with Federal assistance under the Contract.
  - c. Leasing Contract Property to Another Party: If the Contractor leases any Contract asset to another party with VRE's written permission, the Contractor agrees to retain ownership of the leased asset and assure that the lessee will use the Contract asset appropriately, either through a "Lease and Supervisory Agreement" between the Contractor and lessee, or another similar document, unless VRE determines otherwise in writing. Upon request by VRE, the Contractor agrees to provide a copy of any relevant documents.
7. Disposition of Contract Property. With prior VRE approval, the Contractor may sell, transfer, or lease Contract property and use the proceeds to reduce the gross project cost of other eligible capital transit projects to the extent permitted by 49 U.S.C. § 5334(g)(4). Nevertheless, the Contractor agrees that VRE may establish the useful life of Contract property, and that the Contractor will use Contract property continuously and appropriately throughout that useful life.
- a. Contract Property Whose Useful Life Has Expired: When the useful life of Contract property has expired, the Contractor agrees to comply with VRE's disposition requirements.
  - b. Contract Property Prematurely Withdrawn from Use: For property withdrawn from appropriate use before its useful life has expired, the Contractor agrees as follows:
    - 1. Notification Requirement: The Contractor agrees to notify VRE immediately when any Contract real property, equipment, or supplies are prematurely withdrawn from appropriate use, whether by planned withdrawal, misuse, or casualty loss.
    - 2. Calculating the Fair Market Value of Prematurely Withdrawn Contract Property: The Contractor agrees that the Federal Government retains a Federal interest in the fair market value of Contract property prematurely withdrawn from mass transportation use. The amount of the Federal interest in the property shall be determined on the basis of the ratio of the Federal assistance awarded by the Federal Government for the property to the actual cost of the property. The Contractor agrees that the fair market value of property prematurely withdrawn from use will be calculated as follows:



- a. Equipment: Unless otherwise determined in writing by VRE, the Contractor agrees that fair market value shall be calculated by straight-line depreciation of the equipment or supplies, based on the useful life of the equipment or supplies established or approved by the FTA. In addition, the fair market value of equipment and supplies shall be the value immediately before the occurrence prompting the withdrawal of that property from use. In the case of equipment or supplies lost or damaged by fire, casualty, or natural disaster, the fair market value shall be calculated on the basis of the condition of that property immediately before the fire, casualty, or natural disaster, irrespective of the extent of insurance coverage. The Contractor may use its own disposition procedures, provided that those procedures comply with State laws.
  - b. Real Property: The Contractor agrees that the fair market value of real property shall be determined either by competent appraisal based on an appropriate date approved by the Federal Government, as provided by 49 C.F.R. Part 24, or by straight line depreciation, whichever is greater.
  - c. Exceptional Circumstances: The Contractor agrees that VRE may require the use of another method of determining the fair market value of property. In unusual circumstances, the Contractor may request that another reasonable valuation method be used including, but not limited to, accelerated depreciation, comparable sales, or established market values. In determining whether to approve such a request, VRE may consider any action taken, omission made, or unfortunate occurrence suffered by the Contractor with respect to the preservation or conservation of Contract property withdrawn from appropriate use.
3. Obligations to VRE: Unless otherwise approved in writing by VRE, the Contractor shall remit to VRE the Federal interest in the fair market value of Contract real property, equipment, or supplies prematurely withdrawn from appropriate use. In the case of fire, casualty, or natural disaster, the Contractor may fulfill its responsibilities with respect to the Federal interest remaining in the damaged equipment or supplies by either:
- a. Investing an amount equal to the remaining Federal interest in like-kind equipment or supplies that are eligible for assistance within the scope of the Contract



that provided financial assistance for the damaged equipment or supplies; or

- b. Returning to VRE an amount equal to the remaining Federal interest in the damaged property.

8. Insurance Proceeds. If the Contract receives insurance proceeds as a result of damage or destruction to the Contract property, the Contractor shall:

- a. Apply those insurance proceeds to the cost of replacing the damaged or destroyed Contract property taken out of service, or
- b. Return to VRE an amount equal to the remaining Federal interest in the damaged or destroyed property.

9. Transportation-Hazardous Materials. The requirements of U.S. Research and Special Programs Administration regulations, "Shippers - General Requirements for Shipments and Packaging's," 49 C.F.R. Part 173, apply to the transportation of hazardous materials.

10. Misused or Damaged Project Property. If any damage to Contract real property, equipment, or supplies results from abuse or misuse of that property occurring with the Contractor's knowledge and consent, the Contractor shall restore that real property or equipment to its original condition or refund the value of the Federal interest in the damaged property, as the Federal Government may require.

**67. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

- A. This Contract is subject to certain provisions required by the U.S. Department of Transportation, as set forth in FTA Circular 4220.1.F, which are attached herein. All FTA-mandated terms control in the event of a conflict with any other provisions of this Contract. The Contractor must not perform any act, fail to perform any act or refuse to comply with any VRE requests if doing so would cause VRE to violate the FTA terms and conditions.
- B. The Contractor must include this clause without modification in each subcontract(s) that is financed in whole or in part by the FTA. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor(s) who will be subject to the provisions.

**68. RESERVED**

**69. RESERVED**



## X. INSURANCE REQUIREMENTS

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### 01. GENERAL REQUIREMENTS

- A. The Contractor shall secure, pay the premiums for and keep in force until the expiration of the Contract, and any renewal thereof, adequate insurance as identified in the “VRE Insurance Coverage Requirements” document. Items marked “X” are required to be provided. By signing and submitting a Bid or Proposal under this solicitation, the Contractor certifies if awarded the Contract, the Contractor will have the insurance coverage identified and described below in the VRE Insurance Coverage Requirements at the time of Contract award.
  
- B. All required insurance coverage must be acquired from insurers that are authorized to do business in the Commonwealth of Virginia, with a rating of “A-” or better and a financial size of “Class VII” or better in the latest edition of the A.M. Best Co. Guides.
  
- C. The Contractor agrees to include the provisions of the foregoing clause in every subcontract or purchase order so that the provisions will be binding upon each Subcontractor or vendor. All insurance provided by the Contractor and the Contractor’s Subcontractors shall be primary to any insurance coverage VRE may possess.
  
- D. The Contractor further certifies that it and any Subcontractors shall maintain these insurance coverages and the minimum limits of liability as stated, during the entire term of the Contract, and that all insurance coverages will be provided by insurance companies authorized to sell insurance in the Commonwealth of Virginia.
  
- E. The Contractor shall furnish VRE proof of compliance with these insurance requirements in the form of an original Certificate of Insurance signed by an authorized representative or agent of the insurance company(ies). The Certificate of Insurance must be furnished within ten (10) calendar days of receipt of the “Notice of Intent to Award” and before any work under the resultant Contract will be allowed to commence.
  
- F. Failure to provide the Certificate(s) when required may be cause for VRE to award a Contract to the next responsible and responsive Bidder or Offeror. However, in no event shall work be performed until the required Certificates of Insurance have been furnished and approved by VRE.
  
- G. All insurance must be raised to an amount approved by VRE as modifications are made to the Contract.



- H. Renewal certificates shall be furnished to VRE not less than fourteen (14) calendar days prior to the expiration or termination date of the applicable policy(ies). Otherwise, VRE may halt all work under the Contract upon expiration or other termination of any required coverage and work will not be allowed to resume until a satisfactory renewal certificate is received.
- I. If the Contractor is furnished a written notice of cancellation from the insurance carrier, the Contractor shall provide VRE a copy of the cancellation notice within thirty (30) calendar days of receipt of the notification.
- J. In no event shall the failure by VRE to receive certificates of insurance required hereunder, or to receive them by the date(s) required hereunder, be construed as a waiver of the Contractor's obligation to obtain the required insurance coverages. Failure by VRE to demand any certificate of insurance or other evidence of full compliance with the insurance requirements set forth herein, or failure by VRE to identify a deficiency in the evidence provided, shall not be construed as a waiver of the obligation to procure or maintain the insurance required hereunder. The acceptance of delivery by VRE of any certificate of insurance does not constitute approval or agreement that the insurance requirements have been met or that the insurance policies identified in the certificates of insurance comply with such requirements.

**02. COMMERCIAL GENERAL LIABILITY INSURANCE**

- A. The Contractor shall procure and maintain, at its own expense, for the duration of the performance of the work, Commercial General Liability Insurance ("CGL Insurance") having a combined single limit of not less than \$5,000,000 per occurrence for all loss, damage, cost and expense, including attorneys' fees, arising out of bodily injury liability and property damage liability during the policy period, applying separately to each annual period. Said policy shall include explosion, collapse, and underground hazard (XCU) coverage, and shall be signed and endorsed to name "Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission, together known as Virginia Railway Express" both as the certificate holder and as an additional insured, and shall include a severability of interests provision. The signed endorsement page must be submitted with the Certificate of Insurance.
- B. The Contractor shall obtain a second separate Commercial General Liability Insurance Certificate. The certificate shall be signed and endorsed to name "CSX Transportation, Inc." both as the certificate holder and as an additional insured and shall include a severability of interests provision. The Insurance Certificate shall state that contractual liability is included within 50' of the Railroad. The signed endorsement page must be submitted with the Certificate of Insurance.

**03. AUTOMOBILE LIABILITY INSURANCE**

- A. The Contractor shall procure and maintain, at its own expense, for the duration of the performance of the work, Automobile Liability Insurance with a combined single limit of not less than \$1,000,000 each occurrence for injury to or death of persons and damage to or loss or destruction of property, applying separately to



each annual period. Said policy or policies shall be endorsed to name “Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission, together known as Virginia Railway Express” both as the certificate holder and as an additional insured and shall include a severability of interests provision. The signed endorsement page must be submitted with the Certificate of Insurance.

- B. The Contractor shall obtain a second separate Automobile Liability Insurance Certificate. The certificate shall be signed and endorsed to name “CSX Transportation, Inc.” both as the certificate holder and as an additional insured and shall include a severability of interests provision. The signed endorsement page must be submitted with the Certificate of Insurance.

**04. WORKERS’ COMPENSATION AND EMPLOYERS’ LIABILITY INSURANCE**

The Contractor shall procure and maintain, at its own expense, for the duration of the performance of the work, Workers’ Compensation and Employers’ Liability Insurance for all of its employees engaged in the work in an amount not less than \$1,000,000 or as otherwise required by § 2.2-4332 of the *Code of Virginia* (1950), as amended, and the Virginia Workers’ Compensation Act, § 65.2-100 et seq. of the *Code of Virginia* (1950), as amended.

**05. RAILROAD PROTECTIVE LIABILITY INSURANCE**

- A. The Contractor shall obtain Railroad Protective Liability insurance having a combined single limit of not less than \$5,000,000 each occurrence and \$10,000,000 in the aggregate applying separately to each annual period. Said policy shall provide coverage for all loss, damage or expense arising from bodily injury and property damage liability, and physical damage to property attributed to acts or omissions at the job site. The policy shall be signed and name “Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission, together known as Virginia Railway Express” as insured.
- B. VRE does not accept notation of Railroad Protective insurance on a certificate of liability insurance form or Binders as VRE must have the full original countersigned policy. The standards for VRE’s RPLI requirements shall confirm to the requirements numerated below for the CSX Transportation, Inc. RPLI standards.
- C. The Contractor shall obtain a second separate Railroad Protective Liability insurance policy having a combined single limit of not less than \$5,000,000 each occurrence and \$10,000,000 in the aggregate applying separately to each annual period. Said policy shall provide coverage for all loss, damage or expense arising from bodily injury and property damage liability, and physical damage to property attributed to acts or omissions at the job site. The policy shall be signed and name “CSX Transportation, Inc.” as insured and shall satisfy the following additional CSX requirements:



1. The Railroad Protective Liability insurance policy must be on the ISO/RIMA Form of Railroad Protective Insurance – Insurance Services Office (ISO) Form CG 00 35.
2. The named insured’s address shall be listed as:

CSX Transportation, Inc.  
500 Water Street, C-907  
Jacksonville, FL 32202
3. The name and address of the Contractor and of VRE must be shown on the declarations page.
4. A description of operations and location must appear on the declarations page and must match the CSX project description.
5. Terrorism Risk Insurance Act (TRIA) coverage must be included.
6. Authorized endorsements must include Pollution Exclusion Amendment – CG 28 31, unless using Form CG 00 35 version 96 and later.
7. Authorized endorsements may include the following:
  - i. Broad Form Nuclear Exclusion – IL 00 21
  - ii. Notice of Non-Renewal or Cancellation
  - iii. Required State Cancellation Endorsement
  - iv. Quick Reference or Index – CL/IL 240
8. Authorized endorsements may not include:
  - i. Pollution Exclusion Endorsement except CG 28 31
  - ii. An Endorsement that excludes TRIA coverage
  - iii. An endorsement that limits or excludes Professional Liability coverage
  - iv. A Non-Cumulation of Liability or Pyramiding of Limits Endorsement
  - v. A Known Injury Endorsement
  - vi. A Sole Agent Endorsement
  - vii. A Punitive or Exemplary Damages Exclusion





- viii. A “Common Policy Conditions” Endorsement
  - ix. Policies that contain any type of deductible
  - x. Any additional endorsement that is not specifically named which CSX Transportation, Inc. deems unacceptable.
9. Such additional or different insurance as CSX Transportation, Inc. may require.
10. Please note that CSX Transportation, Inc. does not accept notation of Railroad Protective insurance on a certificate of liability insurance form or Binders as CSX Transportation, Inc. must have the full original countersigned policy.



## 06. VRE INSURANCE COVERAGE REQUIREMENTS

"X" denotes that coverage is required. Applicability	Description	Coverage
X	1. Workers' Compensation and Employer's Liability	<i>Statutory Workers' Compensation and Employer's Liability insurance with limits of not less than \$1,000,000, which insurance must contain a waiver of subrogation against CSX Transportation, Inc.</i>
X	Admitted in Virginia	YES
X	All States Endorsement	Statutory
	USL&H Endorsement	Statutory
	Voluntary Compensation	Statutory
X	2. General Liability shall be Commercial General Liability endorsed as broad form to include minimum limits:	<i>Commercial General Liability (CGL) coverage with limits of not less than \$5,000,000 per occurrence for all loss, damage, cost and expense, including attorneys' fees, arising out of bodily injury liability and property damage liability during the policy period. Signed endorsement page must be submitted with Certificate of Insurance. If applicable, refer to #13 and #14 for a list of additional insured.</i>
	Contractual Liability	
	Personal Injury	
	Independent Contractors	
	XCU Property Damage Exclusion Deleted	
X	3. Commercial Automobile Liability (Coverage sufficient to cover all vehicles owned, used, or hired, by the Bidder/Offeror, its agents, representatives, employees or Subcontractors.)	<i>Commercial Automobile Liability insurance with limits of not less than \$1,000,000 each occurrence for injury to or death of persons and damage to or loss or destruction of property. If applicable, refer to # 13 and #14 for a list of additional insured</i>
	4. Professional Errors and Omissions (Professional Liability)	\$1,000,000 The Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission, together known as Virginia Railway Express, the Commonwealth of Virginia, and the Virginia Passenger Rail Authority shall be named on the policy as indemnified parties.
	5. Builder's Risk	Contract Value
	6. Installation Floater	Contract Value
	7. Garage Liability	
	8. Garage Keeper's Legal Liability	
	9. Fire Legal Liability	
X	10. Railroad Protective Liability Insurance. <b>VRE shall be named as insured. The language shall read as follows:</b> "Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission, together known as Virginia Railway Express" Furnish the policy prior to entry on VRE property or any other railroad property upon which VRE operates	<i>Railroad Protective Liability (RPL) insurance with limits of not less than \$5,000,000 combined single limit for bodily injury and/or property damage per occurrence and an aggregate annual limit of \$10,000,000. .</i>
X	11. Railroad Protective Liability Insurance. An additional policy shall be provided naming VRE's host railroad as insured. The policy shall specifically name <b>CSX Transportation, Inc.</b> as insured. Furnish a copy of the policy, prior to entry on CSX property or any other railroad property upon which CSX operates.	<i>Railroad Protective Liability (RPL) insurance with limits of not less than \$5,000,000 combined single limit for bodily injury and/or property damage per occurrence and an aggregate annual limit of \$10,000,000.</i>
	12. Pollution Liability.	Contract Value
X	13. <b>VRE and other agencies</b> shall be named as <b>additional insured</b> on the Commercial General, Automotive Liability and Umbrella policy. This coverage is primary to all other coverage VRE may possess. <b>The language shall read as follows:</b> "Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission, together known as Virginia Railway Express, the Commonwealth of Virginia, the Virginia Department of Transportation and the Northern Virginia Transportation Authority their respective officers, agents, and employees are named as additional insureds.	
X	14. <b>CSX</b> shall be named as <b>additional insured</b> on the Commercial General and Automotive Liability policy. This coverage is primary to all other coverage CSX may possess. <b>The language shall read as follows:</b> " <b>CSX Transportation, Inc.</b> and their respective officers, agents, and employees are named as additional insureds."	
X	15. Best's Guide Rating – A:VII or better or Equivalent	
X	16. The Certification must state: <b>RFP No. 025-006 Construction Management Services for Construction of VRE Franconia-Springfield Station Improvements.</b>	
X	17. Umbrella Liability	\$5,000,000. If applicable, refer to #13 for a list of additional insureds.



## XI. SMALL BUSINESS AND VETERAN BUSINESS CONCERNS

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### 01. SMALL BUSINESS CONCERN POLICY

- A. It is the policy of VRE that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by VRE, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems.
- B. It is further the policy of VRE that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.
- C. The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the Federal Transit Administration or VRE as may be necessary to determine the extent of the Contractor's compliance with this clause.
- D. Definitions as used in this Contract:
1. "HUBZone small business concern" means a small business concern:

That appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.
  2. "Service-disabled veteran-owned business concern" means a small business concern:
    - a. Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans.
    - b. The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.
    - c. "Service-disabled veteran" means:



A veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

d. “Small business concern” means:

A small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

3. “Small disadvantaged business concern” means a small business concern that represents, as part of its offer that:

- a. It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, Subpart B;
- b. No material change in disadvantaged ownership and control has occurred since its certification;
- c. Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
- d. It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).

4. “Veteran-owned small business concern” means a small business concern:

- a. Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
- b. The management and daily business operations of which are controlled by one or more veterans.

5. “Women-owned small business concern” means a small business concern:

- a. That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
- b. Whose management and daily business operations are controlled by one or more women.

E. The Contractor acting in good faith may rely on written representations by its Subcontractors regarding their status as a small business concern, a veteran-



owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

**02. SMALL, WOMEN-OWNED AND MINORITY-OWNED (SWaM) BUSINESS UTILIZATION**

- A. The Contractor is encouraged to seek and use Small, Women-owned, and Minority-owned (“SWaM”) businesses in relation to this Contract. Information regarding the Commonwealth’s commitment to SWaM businesses can be found in § 2.2-4310 of the *Code of Virginia* (1950), as amended.
  
- B. The Contractor shall submit a report of SWaM utilization and payments made to SWaMs on a quarterly basis as determined by VRE. The report shall include documentation of efforts to achieve SWaM participation. The Contractor is required to maintain records and documents of payments to SWaMs for three (3) years following the performance of the Contract and shall make these records available to VRE upon request.



## XII. ATTACHMENTS

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- A. SCOPE OF WORK
- B. REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF BIDDERS/OFERORS
- C. VRE SAFETY AND SECURITY GUIDELINES
- D. FEDERAL TRANSIT ADMINISTRATION (FTA) THIRD PARTY CONTRACT PROVISIONS
- E. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROVISIONS AND FORMS
- F. SITE SPECIFIC SAFETY PLAN

