



VIRGINIA RAILWAY EXPRESS

INVITATION FOR BIDS

(IFB) No. 021-005

CONSTRUCTION OF ROLLING ROAD STATION IMPROVEMENTS

IFB Issued: August 14, 2020

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I. INTRODUCTION TO IFB

01. **PURPOSE**

- A. The purpose of this Invitation for Bids (IFB) is to establish a Contract with one (1) qualified and experienced Contractor for Construction of Rolling Road Station Improvements located at 9016 Burke Road, Burke, VA 22015.
- B. The VRE Rolling Road Station is located on the Manassas Line. The existing 380-foot platform accommodates five-car train sets for boarding and detraining. Passengers must move to different cars for detraining longer eight-car trains. The work includes, but is not limited to, building a 290-foot platform extension to accommodate eight-car trains to eliminate the passenger movement within cars and decrease loading and unloading time. The project also includes rehabilitation and repair of the existing platform, replacement of the stairs and existing canopy roof, and upgrade of the lighting and communication systems.

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 IFB refers to NVTC and PRTC.
- B. VRE began operations in 1992 and carries an average of approximately 19,000 weekday trips on two (2) lines. 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. **FUNDING**

- A. This project is funded in whole or part by grants from Federal and State agencies and subject to certain provisions required by the United States Federal Transit Administration (FTA) as indicated in this IFB. 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.

- B. At the time of solicitation, partial funding is available for the Rolling Road Station Improvements project. Additional funds are anticipated to be secured for this project in time to permit award of the resultant contract within the stated bid acceptance period.



II. PROCUREMENT SCHEDULE

IFB Issued	August 14, 2020
Confirm Participation in the Pre-Bid Meeting (Video Conference)	August 20, 2020 at 1:00 P.M. EST
Pre-Bid Meeting via Video Conference	August 21, 2020 at 1:00 P.M. EST
Submission of Written Questions	August 28, 2020 at 1:00 P.M. EST
Bids Due (Closing Date and Time)	September 16, 2020 at 2:00 P.M. EST
Bid Opening	September 16, 2020 at 2:00 P.M. EST

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. Bidders must frequently monitor VRE's website at www.vre.org for information concerning this solicitation, including any addenda or notices.



III. INSTRUCTIONS TO BIDDERS

I. INTRODUCTION

01. OBLIGATION OF BIDDER

- A. Before submitting a Bid, the Bidder shall be responsible for reading and examining the solicitation documents including these Instructions to Bidders. Submission of a Bid shall be deemed verification of such reading and examination by the Bidder.
- B. By submitting a Bid, the Bidder 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 knowledge or information.

02. BID AND CONTRACT REQUIREMENTS

- A. Federal and State funds will be used for the subsequent Contract. Federal and State requirements are subject to change. The Bidder is responsible for complying with the most current regulations. The Bidder agrees that the most recent of such Federal requirements will govern the administration of the Contract at any particular time during the Contract's performance, unless VRE issues a written determination otherwise.
- B. Additionally, VRE follows Virginia procurement laws. Accordingly, all applicable Federal and State requirements will apply. Bidders are expected to become familiar with these requirements and shall not submit Bids 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. Bidders shall not use their own standard contracts for this engagement.

II. NOTICE TO BIDDERS

03. WRITTEN COMMUNICATIONS

- A. All communications relating to this solicitation shall be submitted via e-mail to the Contract Administrator and Purchasing Manager, in the Purchasing and Contract Administration Department, whose names and contact information appear on the face of this solicitation. Prior to award of a Contract resulting from this solicitation, Bidders are prohibited from contacting any VRE staff other than those assigned to the Purchasing and Contract Administration Department.



- B. 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 IFB, the specifications, or related documents or addenda thereto.
- C. Oral explanations or instructions given before the award of the Contract will not be binding.

04. COMPETITION INTENDED

It is VRE's intent that this solicitation promotes competition. It shall be the Bidder's responsibility to advise VRE if any language, requirements or specifications, included in this IFB, restrict or limit the purchase to a single source. Such notification must be received by the VRE Manager of Purchasing and Contract Administration, in writing, not later than fifteen (15) calendar days prior to the date and time set for bid opening. A review of such notifications will be made, and the Bidder notified of the results of the review.

05. CLARIFICATION OF TERMS

If a Bidder has questions about the specifications or other solicitation documents, the Bidder should contact the Contract Administrator and Purchasing Manager, whose names and contact information appear on the face of the solicitation. Any revisions to the solicitation will be made only by addendum issued by VRE.

06. AVAILABILITY OF SOLICITATION DOCUMENTS

- A. The electronic versions of the solicitation documents are intended to provide convenience to prospective Bidders. Be advised that it is the responsibility of prospective Bidders to monitor VRE's website for any addenda, notices or postings. Failure to submit signed addenda may be grounds to declare a Bid non-responsive.
 - B. In order to be included on the Plan Holders List, prospective Bidders downloading the IFB from VRE's website, www.vre.org, must contact the Contract Administrator and Purchasing Manager, whose names and contact information appear on the face of this solicitation. The Plan Holders List will be available on VRE's website.
- 07. PRE-BID MEETING**
- A. A non-mandatory **pre-bid meeting** to discuss the requirements of this solicitation will be held for all prospective Bidders via GoToMeeting video conference on the ***date and time specified in PART II - PROCUREMENT SCHEDULE*** of this IFB.
 - B. The video conference will use audio through the microphone and speakers on your computer, tablet or smartphone. However, there is also an ability to participate by phone as an audio-only option.



- C. Individuals interested in participating in the video conference via computer, tablet or smartphone can join at <https://global.gotomeeting.com/join/197261877>. To dial in using your phone, call (571) 317-3122 and enter Access Code: 197-261-877.

08. CONFIRM PARTICIPATION IN THE PRE-BID MEETING

Bidders interested in participating in the video conference shall confirm their desire to participate by contacting the Contract Administrator and Purchasing Manager, whose names and contact information appear on the face of this solicitation, prior to the ***date and time specified in PART II – PROCUREMENT SCHEDULE*** of this IFB. It is recommended that prospective Bidders monitor VRE’s website for an addendum which may change the format of the pre-bid meeting.

09. SITE VISIT

- A. In response to the COVID-19 pandemic, no formal site visit will be conducted. However, Bidders may and are encouraged to visit the Rolling Road Station, located at 9016 Burke Road, Burke, VA 22015, at their option in preparation for submitting a Bid. The station platform at Rolling Road is publicly accessible.
- B. Bidders are asked to practice proper social distancing at the station and onboard the train, if accessing the station via VRE train service, and to wear a cloth face cover per Virginia Executive Order No. 63.
- C. At no time shall Bidders be permitted to access the railroad tracks or any adjacent railroad property.
- D. A Bidder’s failure to inspect the site shall not excuse non-performance arising out of or based on site conditions.

10. RESERVED

11. SUBMISSION OF WRITTEN QUESTIONS

- A. **Deadline:** All questions and requests for clarification regarding the meaning or interpretation of this IFB 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 IFB. Questions and clarifications requested after such time will not be answered unless VRE elects, in 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, or plan sheet number and noted reference section and number*, as appropriate.
- C. **VRE Point of Contact:** Questions must be submitted to the VRE Contract Administrator and Purchasing Manager in writing via electronic mail as appears on the face of this solicitation. For a question to be considered, the subject line of the e-mail must state the following: IFB No. 021-005 Questions. Questions



should be succinct and must include the submitter's name, title, company name, company address and telephone number. 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.
- F. Any interpretation of a question made by VRE will be responded to and distributed in the form of an addendum to the IFB and will be available to all interested Bidders through VRE's website.

III. GENERAL INFORMATION

12. DEBARMENT STATUS

- A. By submitting a Bid and completing the representations and certifications, the Bidder certifies that it is not currently debarred, suspended, declared ineligible or voluntarily excluded from submitting Bids 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 Bids 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 Bid to VRE.
- B. By submitting a Bid, 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.

13. CONFLICT OF INTEREST STATEMENT

- A. A conflict situation can arise when a Bidder takes action or has interests that interfere with the Bidder's ability to perform its work objectively and effectively. The Purchasing Manager 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 Bid in response to this solicitation, each Bidder 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 Bidder 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 Manager 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 Bidder.
- 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 Bid being declared non-responsive.
- E. The Bidder, 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.

14. VIRGINIA CONTRACTOR'S LICENSES

- A. For all work that is classified as being performed by "Contractors" as defined by the Virginia State Board for Contractors, a Class A, B, or C License is required. The Contractor shall provide evidence of the appropriate license issued by the Commonwealth of Virginia to perform work on this Contract.
 - a. Class A
If a contract for performing or managing construction, removal, repair or improvements is more than \$120,000, or if the total value of all such construction, removal, repair, or improvements undertaken by the Bidder within any twelve (12) month period is more than \$750,000, the Bidder is required under Title 54.1, Chapter 11, Code of Virginia, as amended, to be licensed as a "CLASS A CONTRACTOR."
 - b. Class B
If a contract for performing or managing construction, removal, repair or improvements is more than \$10,000, but less than \$120,000, or if the total value of all such construction, removal, repair, or improvements undertaken by the Bidder within any twelve (12) month period is more than \$150,000, but less than \$750,000, the Bidder is required under Title 54.1, Chapter 11, Code of Virginia, as amended, to be licensed as a "CLASS B CONTRACTOR."



c. Class C

If a contract for performing construction, removal, repair or improvements is more than \$1,000 but no more than \$10,000 or if the total value of all such construction, removal, repair, or improvements undertaken by the Bidder within any twelve (12) month period is less than \$150,000, the bidder is required under Title 54.1, Chapter 11, Code of Virginia, as amended, to be licensed as a "CLASS C CONTRACTOR." Class C contractors shall not include electrical, plumbing, and heating, ventilation and air conditioning contractors.

For further information, contact the State Board for Contractors, 2 South Ninth Street, Richmond, VA 23219, (804) 367-8511.

- B. During the term of the Contract, the Contractor shall maintain the required valid licenses to transact business in the Commonwealth of Virginia. Each Subcontractor shall also have the required State and Local licenses.
- C. The Contractor shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth of Virginia to be revoked or cancelled at any time during the term of the Contract.
- D. If the Contractor fails to remain in compliance with the provisions of this Section, the Contract shall become void.

15. AUTHORITY TO TRANSACT BUSINESS

- A. Any Bidder 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 Bidder by the Virginia State Corporation Commission must be included in the Representations, Certifications and Other Statements of Bidders/Offerors Attachment included in this solicitation.
- B. Any Bidder that is not required to be authorized to transact business in the Commonwealth must include in its Bid a statement describing why the Bidder is not required to be so authorized. VRE may require a Bidder 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 a Bidder to provide such documentation will be a ground for rejection of the Bid or cancellation of any award. For further information, refer to the Commonwealth of Virginia State Corporation Commission website at: www.scc.virginia.gov.



16. INTEREST IN MORE THAN ONE BID AND COLLUSION

Multiple Bids received in response to this solicitation from an individual, firm, partnership, corporation, affiliate or association under the same or different names will be rejected. Reasonable grounds for believing that a Bidder is interested in more than one Bid for a solicitation, including both as a Bidder and as a subcontractor for another Bidder, or that collusion exists between two or more Bidders, will result in rejection of all affected Bidders. However, an individual or entity acting only as a subcontractor may be included as a subcontractor on two or more different Bidders' Bids. Any and all Bids may be rejected if reasonable grounds exist for believing that collusion exist among Bidders. Bidders rejected under this provision will also be disqualified if they respond to a re-solicitation for the same work.

17. SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

- A. The Bidder is expected to examine carefully the site of the proposed work, plans, specifications, general provisions, general conditions for construction, special provisions (if applicable) and contract forms before submitting a Bid. The submission of a Bid will be considered conclusive evidence that the Bidder has made such examination and is satisfied as to the conditions to be encountered in performing the work as to the requirements of the Contract.
- B. Bidders are asked to practice proper social distancing at the station and onboard the train, if accessing the station via VRE train service, and to wear a cloth face cover per Virginia Executive Order No. 63.
- C. The Bidder agrees to the fullest practical extent it has satisfied itself by its own investigation and research regarding all conditions affecting the work to be performed, the labor and materials needed, and its decision to execute this Contract is based on such investigation and research in addition to the estimate of the quantities or other information presented herein. In no event shall failure to inspect the site constitute grounds for a claim after Contract award.
- D. VRE assumes no responsibility for any conclusions or interpretations made by the Bidder based on the information made available by VRE. VRE assumes no responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of the Contract, unless that understanding or representation is expressly stated in the Contract.
- E. No pleas of ignorance of such conditions and requirements resulting from failure to make such investigations and examinations will relieve the successful Bidder from its obligation to comply in every detail with all provisions and requirements of the contract documents or will be accepted as a basis for any claim whatsoever for any monetary consideration on the part of the successful Bidder.



IV. BID OPENING AND CONSIDERATION OF BIDS

18. BID DUE (CLOSING DATE)

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

19. INCLEMENT WEATHER

In the event of inclement weather conditions, such as heavy snowfall, icy streets and sidewalks; or flooding, earthquakes, tornadoes, or other natural disasters, which result in the cancellation of VRE service operation, the Bid 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 the website at the earliest opportunity once VRE service resumes operation.

20. MODIFICATION OF BID CLOSING DATE

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

21. BID OPENING

- A. Bids will be publicly opened and read via GoToMeeting video conference at **2:00 P.M. EST on the date specified in PART II – PROCUREMENT SCHEDULE** of this IFB.
- B. The video conference will use audio through the microphone and speakers on your computer, tablet or smartphone. However, there is also an ability to participate by phone as an audio-only option.
- C. Individuals interested in participating in the video conference via computer, tablet or smartphone can join at <https://global.gotomeeting.com/join/584146029>. To dial in using your phone, call (646) 749-3122 and enter Access Code: 584-146-029.

22. LATE BIDS

Bids received after the Bid closing date and time shall not be considered. Late Bids will be returned to the Bidder UNOPENED, if the solicitation number, closing date and Bidder's return address is shown on the package.

23. BID ACCEPTANCE PERIOD

The Bid and any modification thereof shall be binding upon the Bidder for one hundred twenty (120) calendar days following the Bid closing date. Any Bid in which the Bidder shortens the acceptance period shall be rejected, although the acceptance period may be extended by mutual agreement between VRE and the Bidder. At the end of the Bid acceptance period, the Bidder may withdraw its Bid by giving written notice to VRE.



24. WAIVER OF INFORMALITIES

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

25. ERRORS IN EXTENSION

Where the unit price and the extended price are at variance, the unit price will prevail.

26. ADDITIONAL INFORMATION

VRE reserves the right to ask any Contractor to clarify its Bid.

27. BID PREPARATION COSTS

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

28. REJECTION OF BIDS

- A. VRE expressly reserves the right to reject any or all Bids or any part of a Bid, and to resolicit the goods and/or services in question, if such action is deemed to be in the best interest of VRE.
- B. Bids 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) Bid from the same Bidder, whether or not the same or different names appear on the signature page, shall result in none of the Bidder's Bids being considered.
- D. Reasonable proof for believing that any Bidder has an interest in more than one (1) Bid for the work contemplated will cause the rejection of all Bids made by the Bidder directly or indirectly.
- E. Any or all Bids shall be rejected if there is reason to believe that collusion exists among the Bidders.

V. MODIFICATION, WITHDRAWAL AND CANCELLATION OF BIDS

29. ADDENDA

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



30. CANCELLATION/WITHDRAWAL OF IFB

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

31. WITHDRAWAL OF BID PRIOR TO CLOSING DATE

Bids may be withdrawn by written notice from the Bidder to the VRE Manager of Purchasing and Contract Administration, prior to the IFB closing date and time. The withdrawal shall be made by the person signing the Bid or by any individual(s) who is authorized by the Bidder. The Bidder must provide written evidence of the individual's authority to withdraw the Bid if the individual withdrawing the Bid is other than the person signing the Bid. Bids may be withdrawn no later than two (2) business days prior to the closing date.

32. WITHDRAWAL OF BIDS AFTER BID OPENING

- A. Requests for withdrawal of Bids after opening of such Bid but prior to award shall be transmitted to the VRE Manager of Purchasing and Contract Administration. The Bidder shall give notice in writing of its claim of right to withdraw its Bid accompanied by full documentation supporting the request (original work papers, documents, and materials used in the preparation of the Bid). If the request is based on a claim of error, documentation must show the basis of the error. Bids may be withdrawn within two (2) business days of the conclusion of the Bid opening procedure.
- B. Bids may be withdrawn for good cause after the closing date and prior to award. No Bidder who is permitted to withdraw a Bid 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 Bid was submitted.
- C. A Bidder may withdraw its Bid from consideration if the price/cost bid was substantially lower than the other Bids due solely to a mistake therein, provided the Bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a Bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the Bid sought to be withdrawn.
- D. If VRE denies the withdrawal of a Bid within ten (10) calendar days after receiving notice from the Bidder under the provisions of this Section, VRE shall notify the Bidder in writing stating the reasons for its decision and award the Contract to such Bidder at the proposed price, provided such Bidder is a responsible and responsive Bidder.



VI. **BID CONTENT**

33. **GENERAL REQUIREMENTS**

- A. The requirements included in this Section are purposely established to facilitate an objective, timely and efficient evaluation by VRE. The Bidder is advised to ensure their Bid is in compliance with all such requirements.
- B. Bids shall include all of the requirements requested in the IFB. Failure to include all the information requested may adversely affect the evaluation. Noncompliance with the IFB requirements will affect the evaluation of the Bidder's technical and/or past performance and may be grounds to eliminate the Bid from consideration.
- C. Bidders are advised that their Bid represents their company's best efforts and most complete responses to this solicitation. Assurance of experience, capability, and qualifications that clearly demonstrate and support the Bidder's claim are essential. The absence of such evidence will adversely influence evaluation of the Bid.
- D. Bidders are to submit Bids that present the Bidder's qualifications and understanding of the overall work to be performed.
- E. Bids must provide a clear and concise response to the requirements of the solicitation.
- F. The Bidder's submission of a Bid represents that their company will comply and perform all requirements specified in the IFB.
- G. Bidders must submit the required information identified in this Section as a complete Bid package. **Incomplete Bids may cause the Bid to be deemed non-responsive.**
- H. The Bid 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:** The table of contents must delineate all the sections of the Bid package.

TAB 2 **Point of Contact:** Provide a telephone number and an email address for an assigned single point of contact.

TAB 3 **Virginia Contractor's License:** Provide a copy of the applicable Class A, B or C Virginia Contractor's License in accordance with Provision 14 above.



TAB 4 **References (Past and Present Experience):** Identify three (3) clients for whom comparable work has been done by the Prime Contractor or is currently being performed; complete the forms included in the Bid Form (Section C and D) and include in this tab. If applicable, the following information must be provided:

- a. Information on contracts performed by each of the Bidder's Subcontractors that are considered most relevant in demonstrating their ability to support the Bidder in the effort, including rationale supporting the Bidder's assertion of relevance. At VRE's direction, any proposed Subcontractor(s) identified by the Bidder may be contacted for the purposes of determining the responsibility of the Bidder.
- b. A list of contracts 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.

TAB 5 **Subcontractors:** Submit a Subcontractors list indicating the type of work anticipated to be performed on the Contract; complete the – **SUBCONTRACTORS FORM** included in the Bid Form (Section E).

- a. During the Contract performance, ALL Subcontractors are subject to approval in advance by VRE.
- b. The Bidder shall ensure lower-tier Subcontractors in support of this solicitation are in compliance 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- DBE Provisions and Forms shall be included as part of Tab 5.

TAB 6 **Acknowledge Receipt of Addenda Issued:** Include a signed acknowledgement of receipt of all addenda issued to this solicitation.



TAB 7 **Representations and Certifications:** Complete and sign the forms in ATTACHMENT C – REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF BIDDERS/OFFERORS included herein.

TAB 8 **Bid Bond/Bid Guarantee:** Furnish a Bid bond/guarantee of five percent (5%) of the amount of the Bid which shall be a certified check, cashier's check, or a bid bond from a surety company selected by the Bidder.

TAB 9 **Bid Form:** Sign and complete the information in ATTACHMENT I- BID FORM included herein.

34. SUBMISSION OF FINANCIAL STATEMENTS

- A. Bidders shall submit one (1) CD/DVD or USB memory device, containing one (1) continuous electronic copy of the financial statements in **PDF**, separate from the Bid CD/DVD or USB memory devices. The electronic copy shall be labeled appropriately with the IFB number and title, company's name and date. **A hard copy is not required.** Due to the sensitive nature of the financial statements, the CD/DVD or USB memory device may be enclosed in a separate envelope addressed to VRE's Chief Financial Officer and included in the Bid package. The financial information will remain confidential and be discarded upon completion of the financial analysis.
- B. Bidders 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

These statements (a through d) shall be certified indicating disclosure of all facts that could impair or affect the statements presented.

- C. 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 Bidder. 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.
- D. The certified statement provided with the financial statements must read as follows:



The financial information provided is correct to the best of my understanding.

- E. 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.

- F. VRE reserves the right to request additional financial information as may be required to determine the Bidder's financial responsibility. If required, a formal request shall be made by VRE to the Bidder.

VII. PRICING INFORMATION

35. GENERAL PRICING REQUIREMENTS

Bidders are strongly encouraged to read this section carefully. INCOMPLETE BIDS MAY CAUSE THE BID TO BE DEEMED NON-RESPONSIVE.

- A. Bidders shall submit the price information in **ATTACHMENT I - BID FORM** included in this solicitation.
- B. The price shall be quoted in U.S. Dollars.
- C. Unless indicated otherwise, Bidder's TOTAL PRICE shall be *inclusive of all costs* and shall include full compensation for all taxes, fees, shipping/delivery charges, materials, labor, equipment, tools, transportation, insurances, bonds, permits, overhead and profit, etc. necessary to complete the work in conformance with the Contract and to the satisfaction of VRE. Extra charges will not be allowed.
- D. The prices, without exception shall be net, not subject to discount, and shall include all royalties and costs arising from patents, trademarks, and copyrights in any way involved in the work.
- E. Every item of the Bid Form must be completed, or the Bid may be deemed non-responsive.
- F. No erasures or other handwritten changes may appear on the Bid Form.
- G. The Bid must be signed in ink.

VIII. BID BOND/GUARANTEE, PERFORMANCE AND PAYMENT BONDS

36. BID BOND/GUARANTEE REQUIREMENTS

- A. A Bid shall be accompanied by a **Bid Bond/Guarantee** of five percent (5%) of the amount of the Bid as assurance that the Bidder will, upon acceptance of their Bid, execute such contractual documents as may be required within the time specified.



The bid guarantee shall consist of a firm commitment such as a certified check, cashier's check, or a bid bond from a surety company selected by the Bidder, which is legally authorized to do business in the Commonwealth of Virginia or another negotiable instrument. The bid guarantee shall be made payable to the "Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission, together known as Virginia Railway Express."

- B. In submitting its Bid, it is understood and agreed by the Bidder that VRE reserves the right to reject any and all Bids, or part of any Bid and such bid bond or guarantee shall be submitted with the understanding that the Bidder will not withdraw such Bid during the period of one hundred twenty (120) calendar days following the opening of such Bid, without written consent of VRE; and if such Bid is accepted, the Bidder will accept and perform under the terms of the Bid.
- C. It is also understood and agreed that if the undersigned Bidder should withdraw any part or all of its Bid within one hundred twenty (120) days after the bid opening without the written consent of VRE, shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance and Payment Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided below, the Bidder shall forfeit its bid security to the extent of VRE's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.
- D. It is further understood and agreed that to the extent the defaulting Bidder's bid bond/guarantee shall prove inadequate to fully recompense VRE for the damages occasioned by default, then the undersigned Bidder agrees to indemnify VRE and pay over to VRE the difference between the bid security and VRE's total damages, so as to make VRE whole.
- E. The Bidder understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the Bid unresponsive.
- F. The bid bond/guarantee will be returned to any Bidder who is not selected. The Bid Guarantee of the successful Bidder shall not be released until the execution of the Contract between VRE and the successful Bidder.

37. PERFORMANCE BOND REQUIREMENTS

- A. The Contractor who is selected to enter into a written Contract with VRE shall furnish a Performance Bond or Irrevocable Letters of Credit and shall remain in full force for the term of the Contract. The **Performance Bond** shall be in the amount equal to one hundred percent (100%) of the Contract as guarantee to the faithful performance of the Contract.
- B. If the Bidder chooses to provide an Irrevocable Stand-By Letter of Credit as its Performance Guarantee, the Bidder shall furnish with its Bid, certification that an



Irrevocable Stand-By Letter of Credit will be furnished should the Bidder become the successful Contractor. The Bidder shall also provide a statement from the banking institution certifying that an Irrevocable Stand-By Letter of Credit for the action will be provided if the Contract is awarded to the Bidder. The Irrevocable Stand-By Letter of Credit will only be accepted by VRE if:

1. A bank in good standing issues it. VRE will not accept an Irrevocable Stand-By Letter of Credit from an entity other than a bank.
 2. It is in writing and signed by the issuing bank.
 3. It conspicuously states that it is an irrevocable, non-transferable, “standby” Letter of Credit.
 4. VRE is identified as the Beneficiary.
 5. It is in an amount equal to **100%** of the Contract value. This amount must be in U.S. dollars.
 6. The effective date of the Irrevocable Stand-By Letter of Credit is the same as the effective date of this Contract.
 7. The expiration date of the Irrevocable Stand-By Letter of Credit coincides with the term of the Contract.
 8. It indicates that it is being issued in order to support the obligation of the Contractor to perform under the Contract. It must specifically reference the Contract between VRE and the Contractor and the work stipulated herein.
- C. The issuing bank’s obligation to pay will arise upon the presentation of the original Letter of Credit and a certificate and bank draft to the issuing bank’s representative at a location and time to be determined by the parties. This documentation will indicate that the Contractor is in default under the Contract.

38. PAYMENT BOND REQUIREMENTS

The Contractor who is selected to enter into a written Contract with VRE shall furnish a Payment Bond or Irrevocable Stand-by Letters of Credit. The Payment Bond shall be in the amount equal to one hundred percent (100%) of the Contract as guarantee for the payment to all persons who have and fulfill contracts, which are directly with the Contractor.

39. GENERAL BONDING REQUIREMENTS

- A. The Sureties of all bonds shall be of such acceptable surety company or companies as listed in the U.S. Treasury Department Circular 570 published annually and are authorized to transact business in the Commonwealth of Virginia.



- B. The Contractor shall deliver to VRE within ten (10) calendar days of the notification of award a duly executed Performance Bond and Payment Bond payable to the “Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission, together known as Virginia Railway Express.”
- C. No Contract shall be deemed to be in effect until the bonds have been approved by VRE.
- D. The Contractor shall provide to VRE appropriate bond forms prior to or at the time of Contract award for review and approval. The Contractor may use the American Institute of Architects (AIA) bond forms or a format that is substantively similar.
- E. VRE may require additional bond protection when a Contract price is increased, by directing the Contractor to increase the amount of the existing bond or to obtain an additional bond. The increase in protection shall generally equal one hundred percent (100%) of the increase in Contract price. Upon the Contractor’s request, VRE may decrease bond amounts as deliverables are received.
- F. A copy of the revised bonds shall be provided by the Contractor to VRE. The Contractor shall execute change orders with the consent of the surety or sureties on the Payment Bond unless otherwise directed by the sureties.

IX. BID SUBMISSION

40. BID CERTIFICATION

- A. The Bidder agrees to provide the work/services specified herein, in compliance with the Scope of Work and/or Technical Specifications and other terms and conditions in this Invitation for Bids, at the price provided on the Bid Form.
- B. A representative duly authorized to bind the company must complete and sign the Bid Certification in **ATTACHMENT I - BID FORM** and submit it along with the Bid.

41. BID ORGANIZATION

- A. **Binding:** The Bid shall be submitted 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 cover must clearly identify the Bidder’s name, IFB number, IFB 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 numbered and titled tabs* as outlined in **PART VI – BID CONTENT** above.

42. BID FORMAT

- A. **Text**: The Bid 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.
- B. **Page**: A page shall be:
- a. “8-1/2 x 11” sheet of paper (minimum of 1/2” margins);
 - b. Printed one-side only; and
 - c. White or ivory stock background color.

43. HARD COPY

One (1) signed original and **one (1)** copy of the Bid shall be submitted in **one (1) sealed package**.


44. ELECTRONIC COPY

Bidders shall submit two (2) CDs/DVDs or USB memory devices, containing one (1) continuous electronic copy of the Bid package in PDF . Additionally, Bidders shall submit one (1) CD/DVD or USB memory device, containing one (1) continuous electronic copy of the financial statements in PDF, separate from the Bid package CDs/DVDs or USB memory devices. Each electronic copy shall be labeled appropriately with the IFB number and title, Bidder’s name and date.

45. IDENTIFICATION OF BID PACKAGE

- A. The Bid 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.



BID IN RESPONSE TO:	
	IFB No.: 021-005 Title: Construction of Rolling Road Station Improvements
Bid Due Date:	
Name of Bidder:	
Point of Contact:	
E-mail Address for Bidder's Point of Contact:	

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

46. HAND DELIVERY OR MAILING OF BIDS

- A. Bidders shall deliver or mail Bids to:

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

- B. A Bid may be mailed via USPS, delivered by private courier, or delivered via FedEx, UPS or other package delivery service to VRE Headquarters in Alexandria, VA prior to the Bid closing date and time, between **9:00 A.M. and 5:00 P.M. EST**, Monday through Friday, on days that VRE service is operated. To ensure "contactless delivery," packages shall be left outside the front door of the VRE Headquarters Office, specifically the glass door for Suite 202. If possible, Bidders are encouraged to take a photo of the package at the time of delivery.
- C. It is the responsibility of the Bidder to assure that its Bid is delivered to the place designated for receipt of Bids on or before the day and time set for receipt of Bids.
- D. Bids will be time stamped by VRE's official time clock at the receptionist's desk in the foyer. Each Bidder will be provided with an e-mail confirmation of receipt of their Bid to the e-mail address listed in the above **Section 45 Provision-Identification of Bid Package**.
- E. Electronic, facsimile or verbal Bids shall **not** be accepted.



F. Bids shall be kept unopened until after the closing date and time.

47. SINGLE BID

If a single conforming Bid is received, a price and/or cost analysis of the Bid shall be made by VRE. A price analysis is the process of examining and evaluating a prospective price without evaluation of the separate cost elements. It should be recognized that a price analysis through comparison to other similar contracts shall be based on an established or competitive price of the elements used in the comparison. The comparison shall be made to the cost of similar projects and involve similar specifications.

48. DISPOSITION OF BIDS

Bidders' Bids will not be returned. VRE will retain the original Bid for the Contract file and destroy the remaining copies.

X. BID EVALUATION AND PRE-AWARD

49. BID EVALUATION

A. Bids will be evaluated on the following basis:

1. Total Bid price;
2. Responsiveness to the IFB requirements;
3. Overall quality and completeness of the Bid; and
4. Responsibility of the Bidder.

B. Following evaluation of Bids, VRE will make the award to the lowest responsible and responsive Bidder conforming to the solicitation's requirements, on a TOTAL PRICE basis. Past experience performing the work described herein and the Bidder's capacity to perform the work will be taken into consideration in making the award.

50. PRE-AWARD SURVEY

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

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

C. VRE may make such reasonable investigations as deemed proper and necessary to determine the Bidder's responsibility and ability to furnish the item(s) required in the performance of this Contract. The Bidder shall furnish VRE such information and data for this purpose as may be requested. VRE reserves the right to inspect



the Bidder's physical location prior to award to satisfy questions regarding the Bidder's capabilities.

- D. VRE further reserves the right to reject any Bid if the evidence submitted by, or investigations of, such Bidder fails to satisfy VRE that such Bidder is properly qualified to carry out the obligations of the Contract and to provide the services and/or goods contemplated therein.

51. NOTICE OF INTENT TO AWARD

VRE shall notify the apparent successful Bidder that upon satisfactory compliance with all condition's precedent for execution of the Contract, within the time specified, the Bidder will be awarded the Contract. In addition to any verbal notice that VRE may make to Bidders, Bid results will be posted on VRE's website at www.vre.org. VRE will post the "Notice of Intent to Award" on its website for a minimum of ten (10) calendar days. The "Notice of Intent to Award" shall not be construed as a "Notice-To-Proceed (NTP)."

XI. AWARD

52. TYPE OF CONTRACT

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

53. 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.

54. 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 Bid to any Contractor whose Bid is the most responsible and responsive and whose Bid best meets the requirements and criteria set forth in the solicitation.

55. PROTEST OF AWARD

- A. A Bidder wishing to protest an award or a decision to award a Contract must submit the protest, in writing, to the VRE Manager of Purchasing and Contract Administration 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 a Bidder, 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 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 Federal Transit Administration (FTA) Circular 4220.1F addresses protests where Federal funds are involved.

- C. If this 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 not 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 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.

56. NOTICE OF AWARD

A "Notice of Award" will be posted on VRE's website at www.vre.org. The successful Bidder will be notified in writing by VRE.

XII. CONTRACT EXECUTION

57. CONTRACT DOCUMENTS

- A. The successful Bidder shall execute and deliver the following Contract documents to VRE:
 - 1. Signed Contract
 - 2. Performance Bond or Irrevocable Letters of Credit
 - 3. Payment Bond or Irrevocable Letters of Credit
 - 4. Insurance Certificates
 - 5. Form W-9 Request for Taxpayer Identification Number and Certification
- B. The aforementioned documents must be submitted to VRE no 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.



58. AWARD DOCUMENT

The award document will be a Contract incorporating by reference the Invitation for Bids, Special Provisions (if applicable), General Provisions, General Conditions for Construction, Scope of Work and/or Technical Specifications, Drawings/Plans and the Contractor's Bid, governed by the precedence of the terms and provisions in the General Provisions.

59. FAILURE TO EXECUTE CONTRACT

- A. Should the successful Bidder fail to execute the Contract within ten (10) calendar days after receipt and submit the required bonds and Insurance Certificates, VRE may at its option, determine that the Bidder has abandoned the Contract, and thereupon, the Bid and acceptance shall be null and void. VRE may also seek all available remedies at law and equity.
- B. The bid bond/guarantee accompanying the Bid shall be retained and collected by VRE as damages for the delay and expense caused by the abandonment of the Contract.

60. NOTICE-TO-PROCEED

A "Notice-To-Proceed" (NTP) will be issued separately upon 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.

XIII. MISCELLANEOUS

61. BRAND NAME OR EQUAL

- A. Unless otherwise provided in the solicitation, or unless the name is followed by words indicating that no substitution is permitted, the reference to a certain brand name, make, model number, or manufacturer does not restrict the offer to the specific brand, make, model number or manufacturer identified. The specific references to a brand is not intended to be restrictive of other products, rather to be descriptive, and convey the salient characteristics of function, performance, design requirements and quality of the item described. Any item which VRE, at its sole discretion, determines to be the equal to that which is specified, considering quality, workmanship, economy of operation, and suitability for the process intended, will be accepted.
- B. Whenever in the specifications one or more items, trade names, or part numbers of specific manufacturers are mentioned, it is for the intent of establishing a basis of quality and durability, and though the term "or approved equal" may not be inserted, it is implied.
- C. Only substitutions equal to the specified items will be allowed by VRE and only when such substitution is necessary. Before furnishing and/or installing any product that is a substitute for the specified item, proof of equality shall be furnished by the Contractor to VRE, and the written approval of VRE must be



obtained before any such substitution is made. Failure to conform to this requirement shall be cause for rejection by VRE.

- D. A Bidder bidding "equal" product will be considered for award if such products are clearly identified and are determined by VRE to be equal in performance and all material respects to the brand name products referenced.
- E. There shall be no substitution for any accepted material, component, design or fabrication unless and until the proposed substitute has received written acceptance from VRE. VRE may require the removal of this substitute or unaccepted item at no additional cost to VRE.
- F. If bidding other than the "brand name" manufacturer or specifications, the Bidder must show the manufacturer, brand or trade name, catalog number, etc. of the article offered.

62. DESCRIPTIVE LITERATURE

- A. The Bidder shall clearly and specifically identify the product being offered even if bidding the exact brand name, make or manufacturer specified.
- B. The Bidder shall provide sufficient descriptive literature, technical detail, etc. only if the product being offered is other than what is specified herein, to enable VRE to determine if the product offered meets the requirements of the solicitation. At a minimum, any offered product not specified in the IFB should be represented by the manufacturer's specifications.
- C. Descriptive literature is not required if bidding the exact brand, make or manufacturer specified. Only the information furnished with the Bid shall be considered in the evaluation.
- D. By submission of a Bid, the Bidder certifies that the items offered meet or exceed the specifications described herein.

63. INSPECTION OF BIDS

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.

64. EXCEPTION TO TERMS AND CONDITIONS

This solicitation precludes the submission of exceptions, conditions, qualifications, or exclusions as part of the Bid. The Bidder must respond to the solicitation as presented by VRE without alteration or exception, unless otherwise allowed elsewhere in the solicitation.



65. TRADE SECRETS OR PROPRIETARY INFORMATION

- A. Trade secrets or proprietary information submitted by a Bidder in connection with a procurement transaction submitted pursuant to 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 Bidder 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 reasons why protection is necessary.
- C. It is the Bidder’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 IFB. 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 the Bids.

66. 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.

67. IMMIGRATION REFORM AND CONTROL ACT OF 1986

By submitting a Bid 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.



IV. SPECIAL PROVISIONS

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 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 BUILDING PERMIT**

VRE and their Consultant have initiated the Building Permit application process with Fairfax County for the project. VRE has successfully satisfied the County building permit review process and has addressed all County review comments to their satisfaction. As information, the Fairfax County Building Permit Number is 193040241. The Contractor will need to attend a Critical Structures Meeting with the County and shall be responsible for picking-up the approved permit.

03. **FAIRFAX COUNTY SPECIAL INSPECTIONS PROGRAM**

- A. All required special inspections shall be performed in accordance with the most recent Fairfax County Special Inspections Code, which can be found at:

Fairfax County Inspections

<https://www.fairfaxcounty.gov/landdevelopment/special-inspections-program>

- B. While the Contractor is not responsible for performing Special Inspections, they shall be cognizant of the importance of Special Inspections. The Contractor shall provide VRE, its agents and Special Inspectors with timely and safe access to the elements that require inspection or testing. The Contractor shall coordinate construction related activities, including scheduling and timely notification of the need for Special Inspections and shall cooperate with VRE, their project design professionals and construction management contractor including Special Inspectors.
- C. The Contractor shall make the site available for inspections as necessary and shall deliver samples for testing when needed. The Contractor shall respond promptly when informed of nonconforming work and any concerns raised throughout the project.

04. **ACCESS FOR CONTRACTOR PERSONNEL**

- A. **General Requirements:** Enumerated below are requirements and conditions imposed upon the Contractor in order to access the proposed work. These requirements shall be considered in the Contractor's proposed operations, schedule and cost to complete the work. A Notice-To-Proceed for the Contractor is contingent on successfully fulfilling the applicable requirements to the satisfaction of VRE, Norfolk Southern (NS), and stakeholders (e.g. utilities). Access also includes required utility locations whereby the Contractor shall



coordinate all utility locates/dig tickets and related notifications with Miss Utility, NS, and Fairfax County.

- B. **Access onto NS Right-of-Way:** In order to complete the proposed work within NS Right-of-Way the Contractor is required to comply with all NS requirements for access onto their property including, but not limited to, Insurance, Right-of-Entry (Attachment J), Safety Training, and policies regarding safe operations see the NS Public Projects Manual (Attachment K) for NS requirements. VRE has obtained access for the Contractor for the sole purpose of construction. The access provided is conditional and is shown on the Plans. Any other or additional access required is the responsibility of the Contractor. The Contractor shall employ appropriate measures to maintain and restore the access provided.

05. **VDOT LAND USE PERMIT**

VRE has received a VDOT Land Use Permit (LUP) for access to the site from Burke Road. The permit has restricted hours, that apply only if traffic is restricted on Burke Road. VRE thinks that traffic does not need to be restricted for this project. See Attachment L for approved VDOT LUP Permit.



V. GENERAL PROVISIONS

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 the state procurement law, the inconsistency shall be resolved by the following order of precedence:
1. Federal Transit Administration Master Agreement (26) (October 1, 2019) 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;
 6. General Conditions for Construction;
 7. Technical Specifications;
 8. Plans; and
 9. 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.

- D. Construction Manager: The Construction Manager (CM) for this project, if any, will be identified under a separate cover letter to the Contractor. The CM shall be responsible for oversight of quality assurance and to provide assistance in administering the Contract for Construction between VRE and the Contractor.

1. Limitation of CM's Authority:

The CM shall not have any authority to bind VRE for the payment of any costs or expenses or grant time extension to a Contractor without the express, prior, written approval of VRE. CM shall have authority to act on behalf of VRE only to the extent expressly provided herein and in the Construction Contract, which is incorporated herein by reference.

If guidance or directives provided by the CM, result in a change to the Contract, VRE will provide written concurrence with the CM for Contract Changes. VRE concurrence must be provided prior to the Contractor performing any work not in accordance with the Contract Documents.

In the event of an emergency affecting the safety of persons, the project or adjacent property, CM, without special instruction or authorization from the VRE, shall act immediately and reasonably in order to prevent or minimize any such threatened damage, injury or loss. CM's authority to act on behalf of VRE shall be modified only by a written amendment.

03. CONFORMITY WITH SCOPE OF WORK

All deviations from the scope of work, drawings, plans, and/or specifications shall be authorized in writing by VRE. No extra compensation for material or labor shall be allowed for work evidently necessary within the general intent of the specifications and the accompanying plans, if any, for the proper construction and thorough completion of the work.

04. CONTRACT COMPLETION (SUBSTANTIAL COMPLETION)

Within **three hundred sixty-five (365) consecutive calendar days** from the date set forth in the written Notice-To-Proceed, the Contractor shall provide VRE beneficial use of all phases of the project.



05. PAYMENTS

A. 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.

B. Billing Instructions

1. It is preferred that invoices be submitted electronically in one (1) continuous electronic copy in PDF in e-Builder, 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.

C. Progress Payments and Retainage

1. Progress 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 Release of Liens, Contractor's Affidavit of Payments, Subcontractor's Affidavit of Payments, invoices, etc.
4. Five percent (5%) of all progress payments will be held as retainage by VRE.

D. Final Payment

1. Final payment and release of retained 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 in any way be responsible, have been paid or otherwise satisfied.
 - b. Consent of surety, if any, to final payment.
 - c. 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. If any Subcontractor refuses to furnish a release or waiver required by VRE, the Contractor may furnish a bond



satisfactory to VRE to indemnify VRE against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to VRE all monies that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorney's fees.

d. Other closeout submittal requirements detailed in individual Specification Sections and Contract Documents.

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.

06. 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 agrees further to return retainage payments to each Subcontractor within seven (7) days after Subcontractor's work is satisfactorily completed. Work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required.
3. 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.



4. 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. Failure to pay Subcontractors in an expedient manner may result in the use of the payment bond and/or termination of the Contract. 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.

07. DELIVERY FAILURES

Should the Contractor fail to deliver work or products at the specified time, or within a reasonable period of time thereafter, as determined by VRE, or should the Contractor fail to make timely replacement of rejected items when so requested, VRE may purchase items of comparable quality in the open market to replace the rejected or undelivered items. The Contractor shall reimburse VRE for all costs above the Contract price when purchases are made in the open market.

08. 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.

09. REGULATORY COMPLIANCE WITH LAWS AND PERMITS

- A. The Contractor agrees it shall comply with all applicable Federal, State and Local Laws, Rules and Regulations.
- B. 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.
- C. If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.
- D. The rights and remedies of VRE provided for under this Contract are in addition to any other rights and remedies provided by law.

10. LIQUIDATED DAMAGES

- A. It is hereby understood and agreed by the Contractor that time is of the essence for the completion of this Contract. In the event of failure to comply with any of the time period(s) stipulated herein this solicitation, VRE is authorized to assess liquidated damages in the sum of **Three Thousand Six Hundred Eighty Dollars (\$3,680) for each and every calendar day** of delay beyond the time specified. These damages are not intended as a penalty, but rather as a fair and reasonable measure of loss or delay to VRE. Upon receipt of a written request and



justification for an extension from the Contractor, VRE may extend the time for performance of the Contract at VRE's sole discretion.

- B. Payment of liquidated damages shall not release the Contractor from its obligations with respect to the fulfillment of the entire Contract, nor shall the payment of such liquidated damages constitute a waiver of VRE's right to collect any additional damages which may be sustained by failure of the Contractor to carry out the terms of the Contract, it being the intent of the parties that said liquidated damages be full and complete payment only for failure of the Contractor to complete the work on time.

11. 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 causes 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 fourteen (14) 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 dispute's 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.

12. 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 government or any governmental agency, war or war conditions, riot or civil conditions, sabotage, strikes, lockouts, 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 fires, riots, rebellions, natural disasters, wars, acts of terrorism, strikes, or an act of God beyond the control of the VRE that make performance impossible or illegal, unless otherwise specified in the Contract.



13. 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.

14. INDEPENDENT CONTRACTOR

The Contract 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.

15. 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 Subcontractor to notify VRE in writing when the Subcontractor becomes aware that a change in its ownership is certain to occur.

16. 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.

17. 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 work. The Contractor shall be under no obligation to perform any work hereunder, and VRE shall not be obligated to reimburse 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.

18. ASSIGNMENT OF CONTRACT

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

19. 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.

20. 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.

21. LITIGATION AND NOTIFICATION

The Contractor shall notify the VRE Manager of Purchasing and Contract Administration 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.

22. CONTRACTUAL DISPUTES

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. This 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, the Contractor shall proceed diligently with the performance of the Contract, including the disputed portions, in accordance with that decision.

23. TERMINATION FOR THE CONVENIENCE OF VRE

- A. The parties agree that VRE may terminate the Contract of 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 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 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 services 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 Section 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 five (5) 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.

24. 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.

25. INDEMNIFICATION

The Contractor shall not seek to hold liable VRE, or any of its officers, agents and employees for any claims, judgments, 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 all claims and liability, including cost and expenses, arising out of, in whole or part, the acts or omissions of the Contractor or the acts or omissions of the Contractor's Subcontractors, agents or employees. The foregoing obligations shall survive termination of this Agreement 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.

26. ANTITRUST

By entering into a Contract, the Contractor conveys, sells, assigns, and transfers to the 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.

27. 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.

28. 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.

29. EMPLOYMENT OF PERSONNEL

The prospective 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 written permission of VRE.

30. 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.

31. 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.

32. 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.

33. 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 relationships 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 the manufacturing process, either as a prime or subcontractor.

34. 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.

35. 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 Department of Rail and Public Transportation, 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 year thereafter shall have any interest, direct or indirect, in the Contract or the proceeds thereof.



36. 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, sexual orientation, gender identity, disability, religion 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, sexual orientation, gender identity, 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, will 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 will 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.

37. ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES

- A. The Contractor shall ensure that all work performed under this Contract is completed in accordance with the Contract Documents, including work intended to meet the accessibility requirements of the Americans with Disabilities Act (ADA), and any other applicable regulations and standards.
- 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 is not required to ascertain whether the Contract Documents meet ADA design standards and guidelines, or other applicable regulations and standards. However, should the Contractor discover any non-conformity with



such requirements, the Contractor shall immediately inform VRE to allow for corrective action.

- D. 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.

38. 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.

39. 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.

40. 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.

41. 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 prior approval in writing of the VRE and all materials 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 the VRE shall give recognition to the VRE in the text and title page to the nature of its cooperative character.

42. EXAMINATION OF RECORDS

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 governments may require during the course of the Contract and for five (5) years thereafter, except in the event of litigation of settlement or 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 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.



43. 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 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.

44. 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 only remove trees when specifically authorized to do so and 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.

45. 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.

46. PAYMENT AND PERFORMANCE BONDS

The Contractor shall maintain the required payment and performance bonds through completion of the Contract, including all warranty and guarantee periods.

47. SAFETY RULES AND SECURITY AT VRE’S RAILROAD FACILITIES

A. In the performance of this Contract, the Contractor shall comply with the following:

1. VRE Rules to Live By (<https://www.vre.org/safety/safety-initiatives/contractors/>)
2. VRE Safety and Security Guidelines (Attachment H)

In an emergency, the Contractor shall act at its discretion to prevent threatened damage, injury or loss.

- B. Prior to the start of work, the Contractor shall prepare a safety and security plan and submit it to VRE for review and approval within seven (7) calendar days prior to the scheduled date for the Pre-Construction Conference.
- C. 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.
- D. It is incumbent upon the Contractor and its employees to work in a safe manner at all times due to the nature of the rail service. The Contractor while performing work around VRE’s facilities shall be alert for train movement through the facility to ensure a safe operation. While train movement is ongoing at the facility the Contractor shall move to a safe distance. VRE reserves the right to require the Contractor to be qualified and its employees to meet the safety qualifications required by the applicable railroads, Federal Railroad Administration (FRA), and VRE’s safety rules for operations.

48. ROADWAY WORKER PROTECTION TRAINING

The Contractor’s employees and all Subcontractors’ employees performing work on this Contract, who will at any time work on Host Railroad property, must participate in annual Federal Railroad Administration (FRA) mandated Roadway Worker Protection (RWP) training classes, conducted by an approved third-party training company. Payment of employees for time spent completing the RWP training and any expenses incurred is the sole responsibility of the Contractor and is not eligible for reimbursement from VRE.



49. PROVISION FOR FLAGGING PROTECTION SERVICES

If it is determined that a flagging protection service is required at the work site, VRE shall schedule and pay for the flagging protection service. VRE will determine the schedule with the Host Railroad to provide the flagging protection service and advise the Contractor. The length of the flagging protection service shall be based on the Contractor's schedule. If the flagging services extend beyond the project schedule, the additional cost may be borne by the Contractor.

50. USE OF REAL PROPERTY, EQUIPMENT AND SUPPLIES

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.

51. 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 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.

52. RESERVED



VI. GENERAL CONDITIONS FOR CONSTRUCTION

I. VRE, VRE PROJECT MANAGER AND CONTRACTOR RESPONSIBILITIES

01. PROJECT ADMINISTRATION

- A. The VRE Project Manager (PM) will be the point of contact for all aspects of the project. 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. All communications to other agencies shall be through the VRE Project Manager, unless directed otherwise.
- B. When a Construction Manager (CM) has been engaged, VRE will designate a CM to represent VRE and assist in monitoring the work under the Contract. In these instances, any reference to the Project Manager, where it occurs in these General Conditions, shall be understood to mean the Construction Manager.

02. CHARACTER OF WORKERS, WORK METHODS AND EQUIPMENT

- A. Workers: Workers shall have sufficient skill and experience to perform properly the work assigned to them. Workers engaged in special or skilled work shall have sufficient experience in such work and in the operation of equipment required to perform it properly and satisfactorily. The term "workers" means the Contractor's employees, its subcontractors at any tier, or any of their respective employees.
- B. The Contractor shall immediately remove from the project any workers who, in VRE's opinion, do not perform their work in a proper, skillful, safe, and satisfactory manner or are intemperate or disorderly. VRE shall direct the Contractor to do so in writing and such workers shall not be employed again on any portion of the work without VRE's written approval. If the Contractor fails to immediately remove the workers or furnish suitable and sufficient workers for satisfactory prosecution of the work, VRE may withhold all monies that are or may become due the Contractor and may suspend the work until the Contractor has complied with VRE's directive.
- C. Equipment: Equipment shall be of sufficient size and quantity, and in such good mechanical condition as to comply with the Contract requirements and to produce a satisfactory quality of work. Equipment shall be such that no damage to the roadway, railroad, parking lot, passenger facilities or related property, or no danger to the public, will result from its use. VRE may order the removal and require replacement of unsatisfactory equipment.
- D. Work Methods: When methods and equipment to be used by the Contractor are not prescribed in the Contract, the Contractor is free to use whatever methods or equipment they feel will safely accomplish the Work in conformity with the Contract requirements and all COVID-19 restrictions or requirements as mandated by the Commonwealth of Virginia, to include all applicable Executive Orders of the Governor.



- E. When the Contract specifies that construction be performed by the use of particular methods and equipment, they shall be used unless others are authorized by the PM. If the Contractor desires to use a different method or type of equipment, the Contractor may request permission from the PM to do so. The request shall be in writing and shall include a full description of the methods and equipment they propose to use and an explanation of the reasons for desiring to make the change.
- F. If permission is not given, the Contractor shall use the specified methods and equipment. If permission is given, it will be on the condition that the Contractor shall be fully responsible for producing construction work in conformity with Contract requirements.
- G. If, after trial use of the substituted methods or equipment, the PM determines that the work produced does not strictly conform to the Contract requirements, the Contractor shall discontinue the use of the substitute method or equipment and shall complete the remaining construction with the specified methods and equipment. The Contractor shall remove any deficient work and replace it with work of the specified quality or take such other corrective action as the PM may direct. No change will be made in the basis of payment for the construction items involved or the Contract time limit as the result of authorizing or denying a change in methods or equipment under these provisions.

03. SUPERINTENDENCE BY CONTRACTOR

- A. The Contractor shall give its personal superintendence to the work or have a competent foreman or superintendent, and necessary assistants, satisfactory to VRE. The Contractor shall, at all times, enforce strict discipline and order among the workers on the project, and shall not employ on the work any unfit person or anyone not skilled in the work assigned to the worker.
- B. The foreman or superintendent and attendants shall be in attendance at the project site during working hours of operation for the duration of the project to represent the Contractor.
- C. VRE reserves the right to suspend the work until such time as a competent foreman or supervisor satisfactory to VRE is assigned to the project and this Section is being complied with in all respects. The Contract time shall not be extended for such suspension nor shall the Contractor be entitled to any additional payment of any kind whatsoever as a result of such suspended work.
- D. Written communications given by VRE or its authorized designee to the foreman or superintendent shall be binding.

04. PRIME CONTRACTOR RESPONSIBILITIES

- A. The Contractor shall furnish a complete project. The Contractor shall be fully responsible for the satisfactory completion of construction of the work required by the Contract documents whether performed by the Contractor or its Subcontractors.



- B. The Contractor shall be responsible for completely supervising and directing the work under this Contract and all Subcontractors that it may utilize, using the required skill and attention. Subcontractors who perform work under this Contract shall be responsible to the Prime Contractor.
- C. 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.
- D. The Contractor agrees it is as fully responsible for the acts and omissions of its Subcontractors and of persons employed by the Subcontractors as it is for the acts and omissions of its own employees.
- E. 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.

05. SUBCONTRACTS

- A. All Subcontractors are subject to approval by the PM and VRE prior to such subcontractors performing any work on the project. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall submit with their Bid, a list of Subcontractors anticipated to be utilized during the course of the Contract. The list shall include the names, qualifications, experience, project assignment and contact information of the proposed Subcontractors. The Contractor shall, however, remain fully liable and responsible for the work to be done by its Subcontractor(s) and shall assure compliance with all requirements of the Contract. If provided, see Specification Section 01 73 00.
- B. The Contractor shall not subcontract any part of the Contract work to a Subcontractor who has not been approved by VRE, if applicable or unless otherwise indicated in the Contract. This restriction does not apply to Contract specialty items, service providers, engineers, architects, consultants, manufacturers, suppliers, or haulers. Consent to subcontract or otherwise dispose of any portion of the Contract work shall not relieve the Contractor of any responsibility for the satisfactory fulfillment of the entire Contract. All subcontracts shall be evidenced by written binding agreements that shall be available to VRE upon request, before, during, and after their approval.
- C. The Contractor agrees to require its Subcontractors and Sub-Subcontractors to include adequate provisions to ensure compliance with applicable Federal, state and local 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, state and local law, regulation, or directive, including any necessary provisions requiring the Subcontractor to extend applicable requirements to its Subcontractors to the lowest tier necessary.



- D. The Contractor shall be responsible for completely supervising and directing the work under the Contract and all Subcontractors that it may utilize, using its best skill and attention. Subcontractors who perform work under the 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 the Subcontractors as it is for the acts and omissions of its own employees.
- E. The Contractor shall submit to VRE for approval and attachment to the Contract, a list of Subcontractors and their required signed certifications/contracts and contact information.
- F. Nothing contained in the Contract shall be construed to create any contractual relationship between any Subcontractor and VRE, nor shall it establish any obligation on the part of VRE to pay to or see to the payment of any sums to any Subcontractor. VRE will not discuss, negotiate or otherwise engage in any contractual disputes with any Subcontractor.
- G. If requested by VRE, the Contractor shall replace any Subcontractor at no cost to VRE within 30 days of written notice from the Project Manager or as otherwise specified. No additional time or compensation will be provided in the event a Subcontractor is removed due to non-compliance of the requirements outlined within the Contract.

06. STOP WORK OR SUSPENSION OF WORK

- A. The PM has the authority to suspend the work wholly or in part if the Contractor has created conditions that are unsafe or fails to correct conditions that are unsafe for workers or the general public or fails to carry out the provisions of the Contract.
- B. If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance on-site, the Contractor shall stop work in the affected area and immediately report the condition to VRE in writing.
- C. The PM may also suspend the work for such periods as they may deem necessary because of catastrophic or extraordinary weather as defined in Section 01 26 00, "Change Order Procedures," conditions considered unsuitable for prosecution of the work, or any other condition or reason deemed to be in the public interest.
- D. The VRE Contracting Officer may at any time, by written order to the Contractor, stop all, or any part, of the work called for by the Contract for a period of up to ninety (90) calendar days after the order is delivered to the Contractor and for any further period to which the parties may agree.
- E. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this Section. Upon receipt of such an order, the Contractor shall comply with its terms and take all reasonable steps to minimize the incurrence of



costs allocable to the work covered by the order during the period of work stoppage.

- F. Within the period of up to ninety (90) calendar days specified in the Stop Work Order, or within any extension of that period to which the parties shall have agreed, the VRE Contracting Officer shall either:
 - 1. Cancel the Stop Work Order; or
 - 2. Terminate the work covered by such order as provided under the terms of the Contract.
- G. If a Stop Work Order issued under this Section is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. An equitable adjustment will be made in the delivery schedule or Contract price, or both, and the Contract will be modified in writing accordingly, if:
 - 1. The Stop Work Order results in an increase in the time required for completion or in the Contractor's cost properly allocable to the performance of any part of the Contract;
 - 2. The Contractor asserts a claim for such adjustment within thirty (30) calendar days after the end of the period of work stoppage; provided that, if the VRE Contracting Officer decides the facts justify such action, they may receive and act upon such claim asserted at any time prior to final payment under the Contract; and
 - 3. A Stop Work Order is not canceled and the work covered by such order is terminated for the convenience of VRE, the reasonable costs resulting from the Stop Work Order will be allowed in arriving at the termination settlement.

07. PERFORMANCE OF WORK BY THE CONTRACTOR

- A. The Contractor shall perform with their own organization work amounting to not less than twenty-five (25%) of the total direct labor and total work-in-place to be performed under the Contract, excluding any specialty items designated by VRE. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original Contract amount before computing the amount of work required to be performed by the Contractor's own organization.
- B. Prior to award, the Contractor must demonstrate to VRE that satisfaction of this standard will be met during Contract performance. Labor and work to be counted when determining whether the Contractor has met the self-performance requirement shall not include any work that the Contractor performs under the supervision of a Subcontractor.
- C. The term "perform work with its own organization" refers to workers employed or leased by the Contractor, and equipment owned or rented by the Contractor,



with or without operators. Such term does not include employees or equipment of a Subcontractor or lower tier subcontractor, agents of the Contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the Contractor meets all of the following conditions:

1. The Contractor maintains control over the supervision of the day-to-day activities of the leased employees;
 2. The Contractor remains responsible for the quality of the work of the leased employees;
 3. The Contractor retains all power to accept or exclude individual employees from work on the project; and
 4. The Contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal and State regulatory requirements.
- D. This self-performance percentage may be reduced by a supplemental agreement to this Contract if, during performance of the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of VRE.

II. DRAWINGS, SPECIFICATIONS, RELATED DATA AND RECORDS KEEPING

08. INTENT OF DRAWINGS AND SPECIFICATIONS

- A. The design documents (including Specifications, Drawings, Reference Documents and Attachments) set forth the objectives, requirements and criteria established by Virginia Railway Express for the construction of the project. It is the responsibility of the Contractor to provide complete construction services compliant with and/or exceeding the objectives, requirements, and criteria set forth herein.
- B. The intent of the drawings and specifications is to prescribe the details for construction and completion of the work that the Contractor undertakes to perform in accordance with the terms of the Contract. Where the drawings or specifications describe portions of the work in general terms, but not complete detail, it is understood that only the best industry practice is to prevail and that only materials and workmanship of the highest quality are to be used.
- C. Unless otherwise specified in the Contract Documents, the Contractor shall provide and pay for all incidentals, labor, materials, tools, equipment, water, light, power, transportation, superintendence, temporary construction and utilities of all kinds, and other services and facilities of every nature whatsoever that are necessary to perform all the work involved in executing the Contract in a satisfactory and workmanlike manner. The work shall be complete and usable



within the scope of the Contract with all parts in working order, and all connections properly made.

- D. The general character and scope of work are illustrated by the Drawings and listed in the Specifications. Any additional drawings and/or other instructions deemed necessary by the VRE Project Manager or designee will be furnished to the Contractor when required for the work and shall be incorporated into the Contract Documents.
- E. The Drawings and Specifications are essential parts of the Contract, and a requirement indicated in one is binding as though indicated in all. They are intended to be complementary and to describe and provide for the complete work, and what is called for by any one document shall be as binding as if called for by all documents. In case of conflicting variance between the Contract Documents, the Order of Precedence stated in the General Provisions shall govern.
- F. Summaries or introductory descriptions of the work of individual sections do not limit requirements. The Contractor's responsibilities include all requirements for proper execution of the work.
- G. Division 01 of the specifications governs all divisions. The Contractor shall comply with Division 01 requirements whether or not referenced in individual sections in Divisions 02 - 48.
- H. References to the singular include the plural and do not imply that only one unit of a product is required.
- I. Unless an object or activity is specified to be less than the total, the quantity or amount is all of the object or activity.
- J. Unless a requirement is specified to apply for a limited time, it applies for the duration of the work.
- K. "Including," "such as," "as follows," and similar terms do not limit the meaning to only items listed. The phrase "but not limited to" is understood to follow these expressions.
- L. As used herein, "provide" shall be understood to mean "provide complete in place", that is, "furnish and install."
- M. Unless otherwise specifically noted, the word "similar" where it occurs in the Drawings, shall be interpreted in its general sense and not as meaning identical, and all details shall be worked out in relation to their locations and their connection with other parts of the work.
- N. All items in a list apply unless the items are specified as choices.



- O. Materials or work described in words which, so applied, have a well-known technical, construction industry, or trade meaning, shall be held to refer to the recognized technical or trade meaning.

09. DIFFERING SITE CONDITIONS

- A. The Contractor shall immediately, and before the conditions are further disturbed, give notice to the PM of subsurface or latent physical conditions at the site which differ materially from those indicated in this Contract, or previously unknown physical conditions discovered at the site of an unusual nature and which differ materially from those ordinarily expected to be encountered at the site. Such notice shall be followed by a written notice provided within 48 hours of discovery.
- B. The PM will investigate the site conditions promptly after receiving the notice. If the conditions do materially differ to the extent that an increase or decrease would result in the Contractor's cost of the work, or the time required for performing any part of the work under the Contract, an equitable adjustment may be made under this clause and the Contract modified in writing accordingly.
- C. No request by the Contractor for an adjustment to the Contract under this clause shall be allowed, unless the Contractor has given the written notice required. If the Contractor proceeds with any work that may be affected by such differing site conditions before giving notice to the Project Manager as set forth herein, such work shall be at the Contractor's sole risk and expense.
- D. No request by the Contractor for an adjustment to the Contract for differing site conditions shall be allowed if made after Final Payment under the Contract.

10. PLANS AND DOCUMENTS

- A. The Contractor shall keep one (1) complete record copy of plans, standard drawings, specifications, addenda, change orders or other modifications available on the project at all times. For maintenance projects and other projects having no field office or on which the Contractor has no office, the Contractor shall keep one complete set of plans, Contract assemblies, and Specifications with the Contractor while prosecuting the work. These documents shall be current and in good order so that field changes and selections made during construction can be recorded.
- B. Plans consisting of general drawings and showing such details as are necessary to give a comprehensive understanding of the work specified will be furnished by VRE. Except as otherwise shown on the plans, dimensions shown on the plans are measured in the respective horizontal or vertical planes. Dimensions that are affected by gradients or vertical curvatures shall be adjusted as necessary by the Contractor to accommodate actual field conditions and shall be specifically denoted as "field adjusted" on the working drawings. Failure on the part of the Contractor to so denote field adjustments on the working drawings shall not relieve the Contractor of the responsibility to accommodate and incorporate such existing conditions into the finished work.



- C. One (1) record copy of approved shop drawings, product data, samples and similar required submittals must also be available on-site for VRE. These documents shall be delivered to the VRE Project Manager for submittal once the work is complete.

11. CONFORMITY WITH PLANS AND SPECIFICATIONS

- A. Unless noted otherwise, all materials required to be used in the work shall conform to the qualities, technical requirements, and values or range of values specified in the Contract Documents. Said materials shall meet the requirements of the plans, drawings and/or specifications for the kind of applications involving their use. Only quality materials, which are generally accepted in the industry and conform to the requirements of these plans, drawings and/or specifications shall be used in the work. Less than complete conformity may be permitted if obtaining exact or complete conformity would not be feasible and if authorized in writing by VRE.
- B. Permissible tolerances for the elevation of subgrade and finished grade, pavement, platforms, trackwork, and other station facilities are specified in the Contract. If permissive tolerances are exceeded, or if consistent deviations from the plans or abrupt changes in grade occur, even though within the tolerances, the affected areas shall be reconstructed to conform to the specified tolerance.
- C. When the plans require the finished surface to tie into any structural item whose elevation is fixed, the elevation of the finished surface must coincide with the elevation of the structural item.

12. COORDINATION OF PLANS, SPECIFICATIONS AND SPECIAL PROVISIONS

- A. The plans, Standard Drawings, Specifications, Special Provisions, and other Contract Documents are parts of the Contract. A requirement occurring in one Contract Document shall be as binding as though occurring in all. The Contract Documents are intended to describe and provide all items necessary for the Contractor's proper and complete performance of the work.
- B. In case of a discrepancy, the order of priority listed in the General Provisions will apply, with the highest governing item appearing first and the least governing item appearing last.
- C. Calculated dimensions, unless obviously incorrect, will govern over scaled dimensions.
- D. Drawings (with the exception of Standard Drawings), sketches, general notes, and other written information that are not included in Special Provisions used in No Plan and Minimum Plan Concept projects will have the same status as plans.
- E. The Contractor shall not take advantage of any obvious or apparent discrepancy, ambiguity, conflict, error, or omission in the Drawings and Specifications and the site conditions or any errors or omissions in or other Contract Documents. If after



beginning work the Contractor discovers a discrepancy, ambiguity, conflict, error, or omission in the Drawings, Specifications or other Contract Documents, they shall immediately notify the PM, but in no event later than three (3) calendar days after discovery of the discrepancy, ambiguity, conflict, error, or omission and before proceeding further with the affected work.

- F. The PM will then make such corrections and interpretations as may be deemed necessary for fulfilling the intent of the Contract. If the Contractor proceeds with any work that may be affected by such discrepancy, ambiguity, conflict, error, or omission, after their discovery, but before a clarification is provided by VRE, such work shall be at the Contractor's risk and expense. Issues affecting critical path activities shall be made known to the Project Manager or designee within one (1) business day after discovery.

13. OWNERSHIP OF PROJECT DOCUMENTS AND REPORTS

The Contractor agrees that all reports, drawings, studies, specifications, work instructions, estimates, maps, computations, and other data prepared by or for it under the resultant Contract shall be made available to VRE at all reasonable times during the period of the Contract and upon termination or completion of the work. VRE shall have the right to use the same, without restriction or limitation and without compensation to the Contractor other than that provided for in the Contract.

III. MATERIALS, TEST, INSPECTIONS, WORKMANSHIP AND WARRANTY

14. STORAGE OF MATERIALS

All materials intended for use on this project shall be marked and stored by the Contractor so as to be readily identified and shall be protected during handling and storage.

15. SUBSTITUTIONS

- A. The Contract is based on the materials, equipment and methods described in the Contract Documents that allow for compliance to all Federal, State, and Local rules and regulations. No substitutions or cancellations shall be permitted after award without the written approval of VRE. VRE will consider requests for substitutions of materials, equipment and methods only when requests are accompanied by full and complete technical data and all other information required to evaluate the proposed substitution.
- B. Substitutions, if approved, shall be without any additional compensation, or extension of Contract Time from VRE, unless approved otherwise.

16. INSPECTION OF MATERIALS AND SUPPLIES

- A. All supplies (which throughout this Section includes without limitation raw materials, components, intermediate assemblies, and end products) shall be subject to inspection and testing by VRE, to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance.



- B. In case any supplies or lots of supplies are defective in material or workmanship or otherwise not in conformity with the requirements of the Contract, VRE shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction.
- C. Supplies or lots of supplies which have been rejected or required to be corrected shall be removed or, if permitted or required by the VRE Project Manager, corrected in place by and at the expense of the Contractor promptly after notice.
- D. If the Contractor fails promptly to remove such supplies or lots of supplies which are required to be removed or to promptly replace or correct such supplies or lots of supplies, VRE may either:
 - 1. Replace or correct such supplies and back charge the Contractor the cost occasioned VRE thereby; or
 - 2. Terminate the Contract for default as provided in the Contract.
- E. Unless the Contractor corrects or replaces such supplies or lots of supplies within the delivery schedule, the VRE Project Manager may require the delivery of such supplies or lots of supplies at a reduced price, which is equitable under the circumstances. Failure to agree to such price reductions shall be a dispute concerning a question of fact within the meaning of the clause of the Contract entitled "Contractual Disputes".
- F. If any inspection or test is made by VRE on the premises of the Contractor or Subcontractor, the Contractor or Subcontractor shall provide all reasonable facilities and assistance for the safety and convenience of VRE's inspectors in the performance of their duties without additional charge.
- G. If VRE's inspection(s) or test(s) are made at a point other than the premises of the Contractor or Subcontractor, it shall be at the expense of VRE except as otherwise provided in the Contract; provided, that in the case of rejection, VRE shall not be liable for any reduction in value of samples used in connection with such inspection(s) or test(s).
- H. All inspections and tests by VRE shall be performed in such a manner as not to unduly delay the work.
- I. VRE reserves the right to charge to the Contractor any additional cost of VRE's inspection(s) and test(s) when supplies are not ready at the time such inspection and test is requested by the Contractor, or when reinspection or retest is necessitated by prior rejection.
- J. Acceptance or rejection of the supplies shall be made as promptly as practicable after delivery, except as otherwise provided in the Contract; but failure to inspect and accept or reject supplies shall neither relieve the Contractor from



responsibility for such supplies that are not in accordance with the Contract requirements nor impose liability on VRE therefore.

- K. The inspection(s) and test(s) by VRE of any supplies or lots of supplies does not relieve the Contractor from any responsibility regarding defects or other failures to meet the Contract requirements which may be discovered prior to acceptance. Except as otherwise provided in the Contract, acceptance shall be conclusive except with regards to latent defects, fraud, or such gross mistakes or negligence as to amount to fraud.
- L. The Contractor shall provide and maintain a quality assurance and inspection system acceptable to VRE covering the supplies hereunder.
- M. Records of all inspection work by the Contractor shall be kept complete and available to VRE during the performance of the Contract and for such longer period as may be specified elsewhere in the Contract.
- N. Notwithstanding the requirements for any VRE inspections(s) and tests(s) contained in the specifications applicable to the Contract, except where specialized inspections of tests are specified for performance solely by VRE, the Contractor shall perform or have performed the inspections and tests required to substantiate that the supplies and services provided under the Contract conform to the drawings, specifications and Contract requirements.

17. INSPECTION OF WORK

- A. VRE reserves the right to conduct any test/inspection it may deem advisable to assure supplies and services conform to specifications. The Contractor is responsible for performing work according to specifications in a professional, high quality standard.
- B. Inspection will be performed by the PM routinely throughout the project. All stages, materials, and details of the work are subject to inspection. The Contractor shall provide the PM and Inspectors full and safe access to all parts of the work. The Contractor shall furnish the PM and Inspectors such information and assistance as required to make complete, timely, and detailed inspections.
- C. The Contractor shall cooperate with VRE and facilitate the inspection activity by providing necessary equipment for access to aid in the inspection and verification activity. The VRE inspector shall have the authority to reject materials or workmanship that does not meet the Contract requirements. The inspector has no authority to make changes; no orders given by them, either written or verbal, will be considered basis of any claim by the Contractor for extra compensation. It is not the duty of the inspector to layout any work for the Contractor.
- D. The Contractor shall keep the PM informed of planned operations in accordance with the Construction Schedule requirements in Section 01 32 00, "Construction Progress Documentation." The Contractor shall advise the PM at least 24 hours in advance of any changes in the Contractor's planned operations.



- E. If materials are used or work is performed without inspection by the PM, the Contractor may be ordered to remove and replace such work or material at their own expense unless the PM failed to inspect the work or material after having been given reasonable notice in writing that the material was to be used or the work was to be performed.
- F. If an inspection reveals that work has not been properly performed, or materials used are unacceptable, the Contractor will be so advised and shall immediately inform the PM of their schedule for correcting such work and materials, and the time when a reinspection can be made.
- G. Authorized representatives or agents of VRE and their funding partners including but not limited to, the Commonwealth of Virginia and the Federal Transit Administration may, during normal office hours, review and inspect project activities.
- H. Nothing in this Section shall abrogate or otherwise limits or relieves the Contractor's independent duty to inspect the work.

18. WARRANTY

- A. The Contractor shall guarantee that the associated parts/equipment pursuant to the scope of work and/or technical specifications to be free of defective, inferior or faulty workmanship and materials for **one (1) year** from Final Completion or as set forth in the Specifications of the work by VRE in addition to and irrespective of any manufacturer's or supplier's warranty. No date other than Final Completion or as set forth in the Specifications shall govern the effective date of the Warranty, unless that date is agreed upon by VRE and the Contractor in advance and signed in writing.
- B. If any portion of the work performed, replacement parts, or rehabilitated parts furnished by the Contractor proves to be defective within the warranty period described above, the Contractor will be notified by VRE. Upon receipt of such notification, the Contractor shall immediately correct all defects covered by the warranty at no expense to VRE.
- C. The Contractor shall promptly correct any defective work or materials after receipt of a written notice from VRE to do so. If the Contractor fails to proceed promptly or use its best efforts and due diligence to complete such compliance as quickly as possible, VRE may have the materials or work corrected and the Contractor shall be liable for all expenses and costs incurred by VRE.
- D. Any material or labor applied by the Contractor to correct warranted defects to all associated parts/equipment shall be warranted for the remaining portion of the warranty.
- E. The Contractor shall provide all manufacturers' warranties to the Project Manager by the date of Final Completion. Nothing contained in this Section shall be



construed to establish a period of limitations with respect to other obligations the Contractor may have under this Contract.

- F. The Contractor warrants, unless otherwise specified, all materials and equipment incorporated in the work under the Contract shall be new, in first class condition, and in accordance with the Contract Documents.
- G. The Contractor further warrants all workmanship shall be of standard industry practice and quality and in accordance with the Contract Documents and shall be performed by persons qualified at their respective trades.
- H. Work not conforming to these warranties shall be considered defective.
- I. This warranty of materials and workmanship is separate and independent from and in addition to any of the Contractor's other guarantees or obligations in this Contract.

IV. JOB SITE CONDITIONS

19. WORK SITE DAMAGES

Any damage resulting to VRE or Host Railroad property, existing utilities, or finished surfaces from the performance of this Contract shall be repaired to the satisfaction of VRE at the Contractor's expense.

20. CUTTING AND PATCHING

The Contractor is responsible for cutting, fitting, or patching as required. The Contractor shall not unnecessarily damage any portion of the project work by cutting, fitting, or patching. Any damages resulting from cutting, fitting, or patching in the project shall be borne by the Contractor. If provided, see Specification Section 01 73 00.

21. SITE CLEAN-UP AND WASTE DISPOSAL

Unless noted otherwise, the Contractor shall keep the site free from the accumulation of waste materials. When the project is complete, the Contractor must remove from and about the project site, waste materials, tools, construction equipment, machinery and surplus materials. If a dispute arises regarding maintenance or clean-up of the premises, VRE may maintain and clean the site and assess actual damages to the Contractor. The Contract Amount and any unit prices shall include all costs and fees for removal and disposal of all waste and debris.

V. SAFETY AND LEGAL RESPONSIBILITY

22. LABELING OF HAZARDOUS SUBSTANCES

If the items or products requested by this solicitation are "Hazardous Substances" as defined by Title 15 of the United States Code (U.S.C.) §1261 or "Pesticides" as defined in §136 of Title 7 of the U.S.C., then the Contractor certifies and warrants that the items or products to be delivered under this Contract shall be properly



labeled and that by delivering the items or products, the Contractor does not violate any of the prohibitions of Title 15 U.S.C. §1262 or Title 7 U.S.C. §136.

23. RESPONSIBILITY FOR MANAGEMENT OF HAZARDOUS WASTE

- A. The Contractor shall be responsible for hazardous waste generated at the job site from materials brought by the Contractor to the job site such as unused solvents, epoxies, or coatings. The Contractor shall not be responsible for any contaminated materials at the job site not transported to that location by the Contractor.
- B. As the generator of the hazardous waste resulting from materials brought to the job site (See paragraph a above) the Contractor shall be fully responsible for the proper identification, storage, transportation, and disposal of hazardous wastes, as well as for any associated fees and taxes, in compliance with the Resource Conservation and Recovery Act program, and any other applicable laws, codes or regulations.
- C. Temporary Hazardous Waste Storage Prohibited: The Contractor shall not temporarily store hazardous waste unless pre-approved by VRE in writing. If so approved, hazardous waste stored off-site in a temporary facility shall be monitored and records shall be kept on the number of containers, size, and weight. The Contractor shall inform VRE when the hazardous waste is to be transported to the final disposal site. VRE has the right to inspect the temporary site at any time. The Contractor shall submit copies of all relevant manifests, Waste Shipment Record(s), and landfill receipts to the VRE Project Manager prior to the request for Final Payment. All paperwork shall be signed by the Contractor and disposal site operator as required.

VI. PROGRESS AND COMPLETION OF WORK

24. CONTRACTOR HOURS OF OPERATION

- A. The Contractor shall confine work to the areas specified and not unreasonably impact the site with materials or equipment. The Contractor shall perform all work between the hours of **7:00 A.M. and 5:00 P.M. EST, Monday through Friday** (except Federal holidays) and nights and weekends as authorized in advance, in writing, by VRE or stipulated otherwise on the drawings or specifications.
- B. VRE anticipates that the Contractor may be required to work multiple shifts to accomplish the work on this Contract within the established schedule. The Contractor will be allowed and may be required by the nature of the project to work 24 hours a day, seven days a week in the performance of the work. Work is subject to restrictions of VRE operational requirements. The Contractor shall notify the Construction Manager 24-hours in advance of any change to the work schedule.
- C. The Contractor must remain aware that the areas of work are active rail lines. Extreme caution and safety must be exercised at all times.



25. PARTIAL USE OR OCCUPANCY

VRE may occupy or use any completed or partially completed portion of the site upon completion.

26. CONTRACT CLOSEOUT

- A. Substantial Completion - The condition when VRE agrees that the work, or a specific portion thereof, is sufficiently complete, in accordance with the Contract Documents, so that it can be utilized by VRE for the full use and function for which it was intended, including the issuance of a Certificate of Occupancy, if applicable, and/or Host Railroad acceptance, if applicable. The date of Substantial Completion of the work under the Contract is the milestone date on which Substantial Completion condition is accomplished. The only remaining physical work shall be the completion of punch list work prior to Final Acceptance. If provided, see Specification Section 01 77 00.
- B. Final Completion - The condition when VRE agrees that all the work has been fully completed in accordance with the Contract Documents, all punch list items have been addressed and accepted, final cleaning has been accomplished, all closeout submittals have been received in acceptable condition, demonstration and training of systems has taken place, the VRE Closeout Checklist has been completed, and the final Application for Payment from the Contractor has been reviewed and deemed acceptable by VRE. The date of Final Acceptance is the date of execution by the Contracting Officer of a Certificate of Final Acceptance. If provided, see Specification Section 01 77 00.
- C. When the Contractor considers the work to be complete, the Contractor shall submit written certification to VRE indicating the following:
1. Contract Documents have been reviewed and work has been inspected and found to be in compliance;
 2. Deficiencies listed in the Certificate of Substantial Completion have been corrected;
 3. Equipment and systems have been tested, adjusted and balanced and are fully operational;
 4. Operations of systems have been demonstrated to VRE and Host Railroad; and
 5. Work is complete and is ready for final inspection and acceptance by VRE.
- D. Final Cleaning - The Contractor shall execute final cleaning to remove all waste and surplus materials and equipment caused by the work prior to final inspection.
- E. Products - The Contractor shall turn over all salvaged materials to VRE, as necessary.



27. 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 the 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.



VII. INSURANCE REQUIREMENTS

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. The Contractor’s insurance shall be primary to all other coverage VRE may possess.
- 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. 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 change orders 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. The certificates of insurance shall state that the insurance coverage will not be suspended, voided, canceled, or reduced in coverage or limits without thirty (30) calendar days advance written notice to VRE and Norfolk Southern Railway Company.
- 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 are in compliance with such requirements.

02. BUILDER'S RISK INSURANCE

A Builder's Risk Insurance Policy covering all risks of physical loss or damage, including flood and earthquake, must be issued to cover the liability of the Contractor in performance of the work under this Contract. The coverage limits under such policy shall be for not less than one hundred percent (100%) of the completed value of the project for each occurrence. Such coverage shall continue in force and effect until delivery to and acceptance by the VRE Contracting Officer or his/her designated recipient. VRE shall also be named as loss payee on the Builder's Risk Policy. Unless VRE determines that further construction is not economically feasible, VRE shall forward the proceeds of the policy to the Contractor so that the construction of the project can proceed to completion.

03. 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. 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 “Norfolk Southern Railway Company” 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. 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. 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 “Norfolk Southern Railway Company” both as the certificate holder and as an additional insured. The signed endorsement page must be submitted with the Certificate of Insurance.

05. 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 the minimum 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.

06. 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. 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 standards for the RPLI are as follows:

1. The insurer must be rated A- or better by A.M. Best Railroad, Inc.
NOTE: NS does not accept from insurers Chartis (AIG or Affiliated Company including Lexington Insurance Company), Hudson Group or ACE or Affiliated Company.
2. The policy must be written using one of the following combinations of Insurance Services Office (“ISO”) Railroad Protective Liability Insurance Form Numbers:
 - (1) CG 00 35 01 96 and CG 28 31 10 93; or
 - (2) CG 00 35 07 98 and CG 28 31 07 98; or
 - (3) CG 00 35 10 01; or
 - (4) CG 00 35 12 04; or
 - (5) CG 00 35 12 07; or
 - (6) CG 00 35 04 13.
3. The named insured shall read:

Norfolk Southern Railway Company
Three Commercial Place
Norfolk, Virginia 23510-2191
Attn: S. W. Dickerson Risk Management

(NOTE: Norfolk Southern does not share coverage on RRPL with any other entity on this policy).

4. The description of operations must appear on the Declarations, must match the project description in this agreement, and must include the appropriate VRE project and contract identification numbers.
5. The job location must appear on the Declarations and must include the city, state, and appropriate highway name/number. **NOTE: Do not include any references to milepost, valuation station, or mile marker on the insurance policy.**
6. The name and address of the Prime Contractor must appear on the Declarations.
7. The name and address of “Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission, together known as Virginia Railway Express” must be identified on the Declarations as the “Involved Governmental Authority or Other Contracting Party.”



8. Other endorsements/forms that will be accepted are:
 - i. Broad Form Nuclear Exclusion – IL 00 21
 - ii. 30-day Advance Notice of Non-Renewal or Cancellation
 - iii. Required State Cancellation Endorsement
 - iv. Quick Reference or Index – CL/IL 240
9. Endorsements/forms that are NOT acceptable include:
 - i. Any Pollution Exclusion Endorsement except CG 28 31
 - ii. Any Punitive or Exemplary Damages Exclusion
 - iii. Known Injury or Damage Exclusion form CG 00 59
 - iv. Any Common Policy Conditions Form
 - v. Any other endorsement/form not specifically authorized in item no. 8 above.
10. If any part of the work is sublet, similar insurance, and evidence thereof as specified in 3.A above, shall be provided by or on behalf of the Subcontractor to cover its operations on Norfolk Southern Railway Company's right of way.
11. Please note that the Norfolk Southern Railway Company does not accept notation of Railroad Protective insurance on a certificate of liability insurance form or Binders as Norfolk Southern Railway Company must have the full original countersigned policy.



07. 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 Employers' Liability insurance with limits of not less than \$1,000,000.</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. Refer to #13 and #14 for 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/Officer, 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, and such policies shall name Norfolk Southern Railway Company as an additional insured. Refer to #15 for list of additional insured.</i>
	4. Professional Errors and Omissions (Professional Liability)	\$1,000,000
X	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. VRE shall be named as insured. The language shall read as follows: "Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission, together known as Virginia Railway Express."	<i>Railroad Protective Liability (RPL) insurance with limits of not less than a combined single limit of \$5,000,000 each occurrence and \$10,000,000 in the aggregate applying separately to each annual period.</i>
X	11. Railroad Protective Liability Insurance. A second separate policy shall be furnished naming Norfolk Southern Railway Company as insured. 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 a combined single limit of \$5,000,000 each occurrence and \$10,000,000 in the aggregate applying separately to each annual period., which insurance shall satisfy the additional requirements identified in Part VII, Paragraph 06.B. of the IFB.</i>
	12. Pollution Liability.	Contract Value
X	13. VRE shall be named as additional insured on the Commercial General Liability policy. This coverage is primary to all other coverage VRE may possess. The language shall read as follows: "Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission, together known as Virginia Railway Express and their respective officers, agents, and employees are named as additional insureds."	
X	14. Norfolk Southern shall be named as additional insured on the Commercial General Liability policy. This coverage is primary to all other coverage NS may possess. The language shall read as follows: " Norfolk Southern Railway Company and their respective officers, agents, and employees are named as additional insureds."	
X	15. Norfolk Southern shall be named as additional insured on the Commercial Automobile Liability policy. This coverage is primary to all other coverage NS may possess. The language shall read as follows: " Norfolk Southern Railway Company and their respective officers, agents, and employees are named as additional insureds."	
X	16. Best's Guide Rating – A-:VII or better or Equivalent	
X	17. The Certification must state: IFB No. 021-005 Construction of Rolling Road Station Improvements	
X	18. Umbrella Liability	\$5,000,000



VIII. SMALL BUSINESS AND VETERAN BUSINESS CONCERNS

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.



IX. ATTACHMENTS

- A. TECHNICAL SPECIFICATIONS**
- B. DRAWINGS/PLANS**
- C. REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF BIDDERS/OFFERORS**
- D. FEDERAL TRANSIT ADMINISTRATION (FTA) THIRD PARTY CONTRACT PROVISIONS**
- E. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROVISIONS AND FORMS**
- F. DAVIS-BACON WAGE DETERMINATION (HEAVY)**
- F1. DAVIS-BACON WAGE DETERMINATION (BUILDING)**
- G. SITE SAFETY SPECIFIC PLAN**
- H. VRE SAFETY AND SECURITY GUIDELINES**
- I. BID FORM**
- J. NORFOLK SOUTHERN RIGHT OF ENTRY INSTRUCTIONS AND APPLICATION**
- K. NORFOLK SOUTHERN PUBLIC PROJECTS MANUAL**
- L. VDOT LAND USE PERMIT**

