

PART III

**GENERAL INFORMATION, INSTRUCTIONS
AND CONDITIONS FOR OFFERORS**

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SECTION I

GENERAL INFORMATION ABOUT THE RFP

I.1 PROPOSAL PREPARATION COSTS

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

I.2 MODIFICATION OF PROPOSAL CLOSING DATE

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

I.3 ADDENDA

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

I.4 CANCELLATION/WITHDRAWAL OF RFP

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

I.5 WAIVER OF INFORMALITIES

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

I.6 DISPOSITION OF PROPOSALS

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



SECTION J

GENERAL INSTRUCTIONS FOR OFFERORS

J.1 AVAILABILITY OF SOLICITATION DOCUMENTS

The electronic versions of our solicitation documents are intended to provide convenience to you. Be advised that it is the responsibility of the prospective Offerors to monitor the VRE website for any addenda, notices or postings. Failure to submit signed addenda may be grounds to declare your offer non-responsive. The RFP can be downloaded from the website and submitted the same as if a hard copy of the solicitation had been requested from VRE.

J.2 WRITTEN COMMUNICATIONS

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

J.3 CLARIFICATION OF TERMS

If an Offeror has questions about the specifications or other solicitation documents, the Offeror should contact the VRE Contract Administration Manager whose name appears on the face of the solicitation. Any revisions to the solicitation will be made only by addendum issued by the VRE.

J.4 WITHDRAWAL OF PROPOSAL PRIOR TO CLOSING DATE

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



J.5 LATE PROPOSALS

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

J.6 WITHDRAWAL OF PROPOSALS AFTER PROPOSAL OPENING

- A. Requests for withdrawal of proposals after opening of such proposal but prior to award shall be transmitted to VRE's Contract Administration Manager. The Offeror shall give notice in writing of his claim of right to withdraw his proposal accompanied by full documentation supporting the request (original work papers, documents, and materials used in the preparation of the proposal). If the request is based on a claim of error, documentation must show the basis of the error. Proposals may be withdrawn within two (2) days of the conclusion of the proposal opening procedure.
- B. Proposals may be withdrawn for good cause after the closing date and prior to award. No Offeror who is permitted to withdraw a proposal shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the Contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn proposal was submitted.
- C. An Offeror may withdraw his proposal from consideration if the price/cost proposal was substantially lower than the other proposals due solely to a mistake therein, provided the proposal 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 proposal, 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 proposal sought to be withdrawn.
- D. If VRE denies the withdrawal of a proposal within ten (10) calendar days after receiving notice from the Offeror under the provisions of this section, VRE shall notify the Offeror in writing stating the reasons for its decision and award the Contract to such Offeror at the proposed price, provided such Offeror is a responsible and responsive Offeror.



J.7 TRADE SECRETS OR PROPRIETARY INFORMATION

- A. Trade secrets or proprietary information submitted by an Offeror in connection with a procurement transaction submitted pursuant to Code of Virginia, subsection B of §2.2-4317 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).
- B. However, the Offeror shall:
 - 1. Invoke the protections of this section prior to or upon submission of the data or other materials;
 - 2. Identify the data or other materials to be protected by clearly marking each individual page with “PROPRIETARY”; and
 - 3. State the reasons why protection is necessary.
- C. Except for the foregoing limitation, VRE may duplicate, use, and disclose in any matter and for any purpose whatsoever and have others do so, all data furnished in response to this RFP. VRE has the right to release trade secret or proprietary information to a third party which may assist VRE in the review and evaluation of the proposals.



SECTION K

GENERAL CONDITIONS FOR OFFERORS

K.1 DEBARMENT STATUS

By submitting its proposal, the Offeror certifies that it is not currently debarred from submitting proposals on contracts by any agency of the Commonwealth of Virginia or the U.S. Government, nor are they an agent of any person or entity that is currently debarred from submitting proposals on contracts by an agency of the Commonwealth of Virginia or the U.S. Government.

K.2 PROPOSAL ACCEPTANCE PERIOD

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

K.3 REJECTION OF PROPOSALS

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



- E. Any or all proposals shall be rejected if there is reason for believing that collusion exists among the Offerors.

K.4 OBLIGATION OF CONTRACTOR

By submitting a proposal, the Contractor agrees that it has satisfied itself from a personal investigation of the conditions to be met, that the obligations herein are fully understood, and no claim may be made nor will there be any right to cancellation or relief from the Contract because of any misunderstanding or lack of information.

K.5 ADDITIONAL INFORMATION

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

K.6 QUALIFICATION OF OFFERORS

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

K.7 SINGLE PROPOSAL

If a single conforming proposal is received, a price and/or cost analysis of the proposal shall be made by the VRE. A price analysis is the process of examining and evaluating a prospective price without evaluation of the separate cost element. 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.



K.8 PRE-AWARD SURVEY

- A. After the due date and prior to Contract award, VRE shall have reviewed and evaluated all data submitted by the Offeror.
- B. VRE reserves the right to perform or have performed a financial review of the successful Offeror's resources, and to require the submission of a statement of work in progress by the Offeror.
- C. VRE may make such reasonable investigations as deemed proper and necessary to determine the Offeror's responsibility and ability to perform the Contract. The Offeror shall furnish VRE such information and data for this purpose as may be requested. VRE reserves the right to inspect the Offeror's physical firm prior to award to satisfy questions regarding the Offeror's capabilities.

K.9 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, the VRE reserves the right to award a Contract covering the period equal to or less than the initial term indicated in the solicitation.

K.10 AWARD FOR ALL OR PART

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

K.11 PROTEST OF AWARD

- A. An Offeror wishing to protest an award or a decision to award a Contract must submit the protest, in writing, to the VRE no later than ten (10) 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) days after receipt of the protest, the Chief Executive Officer of VRE will issue a written decision stating the reasons for the action taken. This decision is final. Further action, by an Offeror, may be taken by instituting action as provided by the Code of Virginia.
- B. The Federal Transit Administration (FTA) will only review protests regarding the alleged failure of the VRE to have written protest procedures or to follow those



procedures. Any party wishing to file a protest with the FTA should do so not later than five (5) days after a final decision is rendered under VRE's protest procedure. Further details regarding this process may be found in the FTA Circular C4220.1F, Chapter 7.

K.12 BRAND NAME OR EQUAL

- A. If items called for by this RFP have been identified in scope of work, project drawings, or technical specifications by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and to indicate the quality and characteristics of products that will be satisfactory. (As used in this clause, the term "brand name" includes identification of products by make or model.)
- B. An offer offering "equal" products 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.
- C. 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 at no additional cost to VRE or unaccepted item, which is installed without the written acceptance of VRE.
- D. If offering on other than the "brand name" manufacturer or specifications, the offer must show manufacturer, brand or trade name, catalog number, etc. of article offered.

K.13 DESCRIPTIVE LITERATURE

- A. The Offeror shall clearly and specifically identify the product being offered even if offering the exact brand name, make or manufacturer specified.
- B. The Offeror 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.
- C. Descriptive literature is not required if offering the exact brand, make or manufacturer specified. Only the information furnished with the offer shall be considered in the evaluation.



- D. Unless the Offeror clearly indicates in its offer that the product offered is an equal product, such offer will be considered to offer the brand name product referenced in the solicitation. By submission of an offer, the Offeror certifies that the items offered meet or exceed the specifications described herein.

K.14 BUY AMERICA PROVISION

- A. This solicitation and the resulting Contract are subject to the Buy America requirements of 49 U.S.C. §5323(j) and the Federal Transit Administration's implementing regulations found at 49 C.F.R. Part 661. These regulations require, as a matter of responsiveness, that the Offeror submit with its offer a completed certification in accordance with Part 661.6 or 661.12, as appropriate.
- B. This certification is set forth in **ATTACHMENT P.4 - REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS/ BIDDERS** of this solicitation.
- C. The prospective Contractor agrees to comply with 49 U.S.C. §5323(j), FTA's Buy America regulations at 49 CFR Part 661, and any amendments thereto, and any implementing guidance issued by FTA, with respect to this Contract and any subcontracts. Buy America requirements apply to contracts valued at greater than \$100,000.

K.15 DISADVANTAGED BUSINESS ENTERPRISES (DBE)

- A. VRE is committed to an active effort to involve Disadvantaged Business Enterprises (DBE) in contracting opportunities and encourages participation in procurement activities. Where it is practicable for any portion of the awarded Contract to be subcontracted to other suppliers, the prospective Contractor is encouraged to bid such business to minority and/or women-owned businesses.
- B. Disadvantaged business enterprise or DBE means a for-profit small business concern that is:
- 1) At least 51 percent owned by one (1) or more individuals who are both socially and economically disadvantaged, or, in the case of a corporation, 51 percent of the stock of which is owned by one or more such individuals; and
 - 2) Whose management and daily business operations are controlled by one (1) or more of the socially and economically disadvantaged individuals who own it.



- C. The prospective Contractor must state any plans to utilize such businesses and the manner in which they may be utilized under the resultant Contract.

K.16 DBE CERTIFICATION

- A. Each prospective Contractor is required to submit to VRE along with the offer, the Disadvantaged Business Enterprise (DBE) form included in **ATTACHMENT P.4 - REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS/BIDDERS** herein this solicitation. The DBE certification must be attached to the DBE statement. This submission does not necessarily require the Contractor to utilize DBE's in the performance of the Contract.
- B. Where it is practicable for any portion of the awarded Contract to be subcontracted, the prospective/Contractor is encouraged to offer such business to minority and/or women-owned businesses. All DBE's proposed must be certified by the U.S. DOT, another federal agency using essentially the same definition and ownership and control criteria as DOT, or another recipient of DOT funds, the Washington Metropolitan Area Transit Authority, Virginia Department of Transportation, or the Metropolitan Washington Airports Authority. If the prospective Contractor is not itself, nor plans to utilize, an authorized DBE, the prospective Contractor shall write on the DBE Form "NO DBE's" and submit the form.
- C. The prospective Contractor and its Subcontractors agree to ensure that disadvantaged business enterprises as defined in 49 C.F.R. Part 26 have a level playing field on which DBE's can compete fairly and participate fully in contracts and subcontracts financed in whole or in part with federal funds provided under Contract. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with 49 C.F.R. Part 26 to ensure that disadvantaged business enterprises have a level playing field to compete for and perform contracts.
- D. The prospective Contractor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts. Failure by the Contractor and his/her Subcontractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as VRE deems appropriate.
- E. The prospective Contractor will be required to submit a schedule of DBE use and payments made to DBE's on a biannual basis as determined by VRE. The Contractor is required to maintain records and documents of payments to DBE's for three (3) years following the performance of the Contract and will make these records available to VRE upon request.



- F. The Contractor, its agents, employees, assigns or successors, any persons, firms, or agency of whatever nature with whom it may contract or make agreement, in connection with the Contract shall cooperate with the VRE in meeting its commitment and goals with regard to the creation of a level playing field of disadvantaged business enterprises. The Contractor shall use best efforts to ensure that disadvantaged business enterprises shall have a level playing field to compete for subcontract work under this Contract.

Reference: Federal Regulations Sec. 49 CFR 26.49.

