

ATTACHMENT P.2

GENERAL TERMS AND CONDITIONS

Revised June 8, 2006



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GENERAL TERMS & CONDITIONS

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SECTION I
GENERAL TERMS AND CONDITIONS

1. **PROPOSAL AND CONTRACT REQUIREMENTS:** Federal funds will be used for this Contract. The VRE also follows Virginia procurement laws. Accordingly, all applicable federal and state requirements will apply. Prospective contractors are expected to become familiar with these requirements, and should not submit proposals if unable to execute a Contract containing such provisions. The VRE will provide a Contract containing these provisions for execution by the prospective contractor that is selected. Prospective contractors should not expect to use their own standard contracts for this engagement. Federal requirements are subject to change; the prospective contractor is responsible for complying with the most current regulations. The prospective contractor 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.
2. **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 courts of the Commonwealth. The successful Contractor shall comply with applicable federal, state, and local laws and regulations.
3. **PRECEDENCE OF TERMS:** In the event of an inconsistency between the Request for Proposal, 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:
 - a. Federal Transit Administration Master Agreement (9) (October 1, 2004) and FTA Circular 4220.1D, dated April 15, 1996, as amended
 - b. Virginia's Public Procurement Act, as amended
 - c. Invitation for Bids (IFB) /Request For Proposals (RFP)
 - d. Special Contract Terms and Conditions
 - e. General Terms and Conditions
 - f. Technical Specifications
 - g. Plans
 - h. Contractor's Bid/Proposal

Incorporation of Federal Transit Administration terms: these terms include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in the Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1D, dated April 15, 1996, as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The prospective contractor shall not perform any act, fail to perform any act, or refuse to comply with any VRE requests which would cause the VRE to be in violation of the FTA terms and conditions.

4. **OBLIGATION OF PROSPECTIVE CONTRACTOR:** By submitting a proposal, the prospective 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.
5. **NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES:** The federal government shall not be subject to any obligations or liabilities of any contractor, or any other person not a party to a Grant Agreement or Cooperative Agreement in connection with the performance of this Contract. Notwithstanding any concurrence provided by the federal government in or approval of any solicitation, subagreement, or third party contract, the federal government continues to have no obligations or liabilities to any party, including the third party contractor.
6. **CLARIFICATION OF TERMS:** If a prospective contractor/bidder has questions about the specifications or other solicitation documents, the prospective contractor should contact the Contract Administrator whose name appears on the face of the solicitation. Any revisions to the solicitation will be made only by addendum issued by the VRE.
7. **QUALIFICATION OF FIRM:** The VRE may make such reasonable investigations as deemed proper and necessary to determine the ability of the prospective contractor to perform the Contract. The prospective contractor shall furnish to the VRE such information and data for this purpose as may be requested. The VRE reserves the right to inspect the prospective contractor's physical plant prior to award to satisfy questions regarding the prospective contractor's capabilities.

8. **KEY PERSONNEL:** Certain, skilled, experienced, professional and/or technical personnel are essential for successful accomplishment of the work to be performed under this Contract. These are defined as “Key Personnel” and are those persons whose resumes were submitted as part of the technical proposal for evaluation. No substitutions may be made except in accordance with this clause.
- a. The Contractor understands that during the first 30 days of the Contract performance period, no personnel substitutions will be permitted unless these substitutions are unavoidable because of sudden illness, death or termination of employment. In any of these events, the Contractor shall promptly notify the VRE Contract Administration Manager and provide the information described in paragraph b) below.
 - b. After the initial 30 day period, the Contractor must submit to the VRE Contract Administration Manager all proposed substitutions, in writing, at least 15 days in advance and provide the information required by paragraph b. below.
 - c. Any request for substitution must include a detailed explanation of the circumstances necessitating the proposed substitution, a resume for the proposed substitute, and any other information requested by the VRE Contract Administration Manager. Any proposed substitute must have qualifications equal to or superior to the qualifications of the incumbent. VRE will evaluate such requests and promptly notify the Contractor in writing of its approval or disapproval.
 - d. The provisions of this clause shall be applicable to any subcontract which may be entered into.
 - e. In the event that any of the identified key personnel cease to perform under the Contract and the substitute is disapproved, the Contract may be immediately terminated in accordance with the Termination clause of the Contract.
9. **ADDITIONAL INFORMATION:** The VRE reserves the right to ask any prospective contractor to clarify its offer.
10. **QUALIFICATION ACCEPTANCE PERIOD:** The proposal/bid and any modification thereof shall be binding upon the prospective contractor for 120 calendar days following the proposal/bid due date. Any proposal/bid for which the prospective contractor shortens the acceptance period may be rejected. At the end of that time, the prospective contractor may retract its proposal by giving written notice to the VRE.
11. **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.
12. **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/bid to any prospective contractor whose proposal is the most responsible and responsive and whose proposal/bid meets the requirements and criteria set forth in the solicitation with respect to the items in question.
13. **REJECTION OF PROPOSALS/BIDS:** The VRE expressly reserves the right to reject any or all proposals/bids or any part of a proposal/bid, and to resolicit the services in question, if such action is deemed to be in the best interest of the VRE.
14. **SINGLE PROPOSAL/BID:** If a single conforming proposal/bid is received, a price and/or cost analysis of the proposal/bid 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.
15. **INSPECTION OF PROPOSALS/BIDS:** The Virginia Freedom of Information Act, 2.2-3700 et seq. shall govern the release of public records related to the Contract. Trade secrets or proprietary information related to a procurement may not be subject to public disclosure, provided the requirements at 2.2-4342F VA Code Ann. are met.
16. **PROTEST OF AWARD:** A prospective contractor 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 Operating Officer of the VRE will issue a written decision stating the reasons for the action taken. This decision is final. Further action, by a prospective contractor, may be taken by instituting action as provided by the Code of Virginia.

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. Alleged violations on other grounds are under the jurisdiction of the appropriate state or local administrative or judicial authorities. 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 the VRE's protest procedure. Further details regarding this process may be found in the FTA Circular C4220.1D, Section 7.k.

17. **AVAILABILITY OF FUNDS:** It is understood and agreed that the VRE shall be bound to the Contract only to the extent of the funds appropriated or which may hereafter become available for the purpose of this Contract. If funds are reduced or eliminated by the Commonwealth of Virginia or Federal Transit Administration, the Contract can be terminated accordingly under the provisions of this Contract.
18. **PAYMENT TERMS:** 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. However, for production and research services, all payments shall be made upon the achievement of pre-established project milestones identified in the related task order which have been accepted by the VRE. The pro-rata milestone payment shall be directly related to the apportioned cost of the total project. Payment of subcontractors shall occur within seven (7) days of receipt of payment by VRE for work completed and approved expenses. Failure to pay subcontractors in an expedient manner may result in the use of the payment bond and/or termination of the Contract.
19. **PROGRESS PAYMENTS:** Payment will only be made for work that has been delivered and which the VRE has approved and accepted. With advance VRE approval, progress payments may be authorized based on a set of milestones for work not specifically resulting in deliverable products.
20. **DISALLOWED COSTS INCLUDING INTEREST:** The Contractor agrees to remit to the VRE, which in turn will remit to the Federal government, any excess payments made to the Contractor disallowed by the Federal government, as well as any interest required by Subsection 9.2 f(2)(b) of the FTA Master Agreement. 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 cost not included in the approved project budget, any ordinary governmental or non-project operating cost consistent with prohibitions of 49 USC§5323(h)(1) and any cost ineligible for FTA participation as required by Federal law, regulation or guidelines for Federal participation included the cost soliciting response. 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.
21. **INVOICES:** Invoices for services/goods ordered, delivered, and accepted shall be submitted by the resultant Contractor directly to the payment address shown below:

Virginia Railway Express
Attn: Accounts Payable
1500 King Street, Suite 202
Alexandria, VA 22314-2730

Invoices as a minimum, shall contain the following information:

- a. Name, Address and Telephone Number of Contractor
- b. VRE Contract Number
- c. Invoice Number
- d. Date of Invoice
- e. Description of Services Performed/Goods Furnished. For materials, provide quantity, unit of measure, unit price and extended price of the items delivered
- f. Total Invoice Amount
- g. Total Cumulative Amounts Invoiced
- h. Contractor's Signature

If invoices fail to satisfy the above criteria, they will not be processed for payment and will result in the invoice being returned to the Contractor for correction.

22. **CONTRACTUAL DISPUTES:** Disputes by the Contractor with respect to this 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 in accordance with that decision.

23. **TERMINATION FOR THE CONVENIENCE OF THE VRE:**

- a. The parties agree that the VRE may terminate this Contract or any work or delivery required thereunder, from time-to-time either in whole or in part, without cause whenever the VRE Contracting Officer shall determine that such termination is in the best interest of the VRE.
- b. Termination, in whole or in part, shall be effected 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 this Contract on the date and to the extent which may be specified in the Notice;
 - (2) Place no further orders with any subcontractors except as may be necessary to perform that portion of this 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 the VRE; and
 - (5) Use its best effort to mitigate any damages which may be sustained by Contractor as a consequence of termination under this clause.
 - (6) As directed by the VRE Contracting Officer, transfer title and deliver to the VRE:
 - i. The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and
 - ii. 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 the VRE.
 - (7) Complete performance of the work not terminated.
 - (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 this Contract that is in the possession of the Contractor and in which the VRE or Government has or may acquire an interest.
- c. After complying with the foregoing provisions, the Contractor shall submit a termination claim, in no event 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 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 clause shall be requested within 30 days from the effective date of termination unless extended in writing by the VRE Contracting Officer or his/her designee.
- 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 Notice of Termination, and further reduced by the price of the services not delivered, or those services not provided. This 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 clause, 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 clause.

- 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 clause, the Contractor may appeal any claim to the VRE in accordance with the "Disputes" clause of this Contract.
- j. Unless otherwise provided in this Contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this Contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this Contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the VRE Contracting Officer or his/her designee, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.
- k. When termination for the convenience of the VRE is a provision of this 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 the VRE whatsoever of loss or damage sustained by a subcontractor as a consequence of termination for convenience.

24. **TERMINATION FOR DEFAULT:** Either party may terminate this 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.

If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements or stipulations of the Contract, the 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.

The Contractor shall have 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. Successive defaults of the same nature, regardless of the Contractor efforts to cure, shall not prevent the VRE from terminating this Contract. Notwithstanding the foregoing right to cure, any enroute failures of VRE trains caused by the Contractor's failure to meet the fueling schedule shall be a default and VRE shall have the right to immediately terminate this Contract with no opportunity to cure.

25. **TERMINATION FOR NON-APPROPRIATION OF FUNDS:** If funds are not appropriated for the current or any succeeding fiscal year subsequent to the one in which this Contract is entered into, for purposes of this Contract, then the VRE may terminate this Contract upon prior written notice to the Contractor. Should termination be accomplished in accordance with this section, the VRE shall be liable only for payments due through the date of termination.

26. **STOP WORK OR SUSPENSION OF WORK:** 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 this Contract for a period of ninety (90) days after the order is delivered to the Contractor and for any further period to which the parties may agree.

- a. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this section.
- b. Upon receipt of such an order, the Contractor shall forthwith 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.
- c. Within a period of ninety (90) days after a Stop Work Order is delivered to the Contractor, 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 in the section, "Termination for Convenience of the VRE."

d. 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.

(1) 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:

- (a) 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 this Contract; and
- (b) The Contractor asserts a claim for such adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if the VRE Contracting Officer decides the facts justify such action, he may receive and act upon such claim asserted at any time prior to final payment under this Contract.
- (c) If 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.

27. **ASSIGNMENT OF CONTRACT:** A Contract shall not be assignable, sublet or transferable by the Contractor in whole or in part without the written consent of the VRE.

28. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of VRE. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish to VRE the names, qualifications and experience of the proposed subcontractors. The Contractor shall, however, remain fully liable and responsible for the work to be done by his subcontractor(s) and shall assure compliance with all requirements of the Contract.

The Contractor agrees to require its subcontractors and sub-subcontractors to include adequate provisions to ensure compliance with applicable Federal requirements in each subcontract and sub-subcontract. Furthermore, the Contractor agrees to include appropriate clauses in each subcontract stating the subcontractor's responsibilities under Federal law, regulation, or directive, including any necessary provisions requiring the subcontractor to extend applicable requirements to its subcontractors to the lowest tier necessary.

29. **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 the VRE under said Contract.

30. **PRIME CONTRACTOR RESPONSIBILITIES:** The Contractor shall be responsible for completely supervising and directing the work under this Contract and all subcontractors that it may utilize, using its best skill and attention. Subcontractors who perform work under this Contract shall be responsible to the prime contractor. The Contractor agrees that it is as fully responsible for the acts and omissions of its subcontractors and of persons employed by the subcontractors as it is for the acts and omissions of its own employees.

The Contractor shall submit to VRE for approval and attachment to this Contract, a list of subcontractors and their required signed certifications/contracts and contact information. During the period of performance, the Contractor shall not substitute subcontractors and/or key personnel without the written approval of VRE. The Contractor shall notify VRE within five (5) calendar days after the occurrence of any of these events and provide information as to the circumstances necessitating the proposed change, new subcontractor information and other information as requested. Proposed substitutions must have comparable qualifications and experience to those being replaced. VRE will notify the Contractor within ten (10) calendar days after the receipt of all required information if this change is approved and the VRE and the Contractor shall subsequently amend the required Contract documents.

31. **PAYMENT TO SUBCONTRACTOR:**

a. A Contractor awarded a Contract under this solicitation is hereby obligated:

- (1) To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from VRE for the proportionate share of the payment received for work performed by the subcontractor(s) under the Contract; or
- (2) To notify the agency and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.

- b. The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the Contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the VRE, except for amounts withheld as stated in subparagraph a.(2) above. 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. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the VRE.
32. **TESTING/INSPECTION/REVIEW OF WORK:** The 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. Authorized representatives or agents of VRE, the Commonwealth of Virginia and/or the Federal Transit Administration may, during normal office hours, review and inspect the project activities, data, reports/studies, drawings, specifications, estimates, maps computations and financial records of the Contractor or subcontractor at their offices.
33. **RELEASES, LICENSES, PERMITS AND AUTHORIZATIONS:** It is the Contractor's responsibility to obtain all releases, licenses, permits and other usage authorizations for all matters within its ordinary sphere of activity, including photographs, copyrighted materials, artwork or any other property or rights belonging to third parties obtained by the Contractor for use in performing services for the VRE, and shall save the VRE harmless from all claims, demands, expenses (including reasonable attorney's fees), liabilities, suits, and proceedings (including any brought in or before any court, administrative body, arbitration panel or other tribunal) against or involving the VRE on account of or arising out of such use. The VRE shall obtain the same for any such items obtained by the VRE which are used by the Contractor harmless from all claims, demands, expenses (including reasonable attorneys' fees), liabilities, suits, and proceeding (including any brought in or before any court, administrative body, arbitration panel or other tribunal) against or involving the VRE on account of or arising out of any assertions, claims, slogans, headlines or the like made for any VRE products, as well as for all claims, demands, expenses, liabilities, suits and proceedings as able set forth arising out of the nature or use of the VRE's products.
34. **WARRANTY:** All materials and equipment furnished by the Contractor shall be fully guaranteed against defects in material and workmanship in accordance with the most favorable commercial warranties the Contractor gives any customer for such supplies or services. A copy of this warranty must be furnished with the proposal.
35. **BUY AMERICA:** The 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 purchases greater than \$100,000.
36. **CARGO PREFERENCE – USE OF UNITED STATES FLAG VESSELS:** The Contractor agrees to comply with U.S. Maritime Administration regulations, "49 C.F.R. Part 661, and with implementing guidance FTA may issue.
37. **FLY AMERICA:** The Contractor understands and agrees that the VRE or Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for the Project unless that air transportation is provided by U.S. flag air carriers to the extent service by U.S. flag air carriers is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. §40118, and with U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§301-10.131 through 301-10.143.
38. **INSPECTION:**
- 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 this 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 Contracting Officer, 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 promptly to replace or correct such supplies or lots of supplies, VRE may either:
- (1) Replace or correct such supplies and backcharge the Contractor the cost occasioned VRE thereby; or

(2) Terminate this Contract for default as provided in this Contract.

- e. Unless the Contractor corrects or replaces such supplies or lots of supplies within the delivery schedule, the VRE Contracting Officer 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 this Contract entitled "Contractual Disputes."
- f. If any inspection or test is made by VRE on the premises of the Contractor or a subcontractor to the Contractor without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of VRE's inspectors in the performance of their duties.
- g. If VRE's inspection(s) or test(s) are made at a point other than the premises of the Contractor or a subcontractor, it shall be at the expense of VRE except as otherwise provided in this 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 this Contract; but failure to inspect and accept or reject supplies shall neither relieve the Contractor from responsibility for such supplies as 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 this Contract, acceptance shall be conclusive except as 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 this Contract and for such longer period as may be specified elsewhere in this Contract.

39. **RESPONSIBILITY FOR INSPECTION:** Notwithstanding the requirements for any VRE inspection(s) and test(s) contained in the specifications applicable to this Contract, except where specialized inspections or tests are specified for performance solely 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.

40. **CONTRACTOR'S TITLE TO MATERIALS:** No materials or supplies for the work shall be purchased by the Contractor or by any subcontractor subject to any chattel mortgage or under a conditional sales or other agreement by which an interest is retained by the seller. The Contractor warrants that he has clear title to all materials and supplies for which he invoices for payment and such title passes to VRE upon payment of invoice.

41. **OWNERSHIP OF MATERIAL AND INTELLECTUAL PROPERTIES:** All materials and/or intellectual properties, and the rights thereto, which are produced in the course of this Contract or which result from the work executed as the result of this Contract shall be the exclusive property of the VRE unless specific rights are expressly waived by the VRE. Upon completion of the services of the Contract, the Contractor shall deliver all such appropriate materials including, but not limited to, camera ready artwork, computer disks, specifications, samples, photographs, video tapes, audio tapes, original artwork and drawings to the VRE. Should the Contractor fail to deliver the materials, all expenses incurred by the VRE in obtaining these materials shall be chargeable to the Contractor, and may be withheld for any future sums due the Contractor.

If any invention, improvement, or discovery of the Contractor or any of its subcontractors or lower-tier subcontractors is conceived or first actually reduced to practice in the course of or under the Contract has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the VRE or Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

The Contractor also understands and agrees that any technical information developed using federal funds may be subject to export control regulations under the Bureau of Export Administration of the U.S. Department of Commerce or of other Federal agencies. Any technical information regulated by U.S. export control regulations, or the direct product thereof, will not be directly or indirectly exported to any countries or foreign persons without complying with export control regulations.

42. **COPYRIGHTS:** All copyrightable works created pursuant to this agreement shall be considered work made for hire and shall belong solely and exclusively to the VRE. If, despite the foregoing, the VRE is not deemed the author and initial owner of any copyrightable works created pursuant to this agreement, the Contractor agrees to irrevocable assign and does hereby irrevocably assign to the VRE the sole, exclusive and complete copyright interest in such works, and Contractor shall execute and deliver such further documents as the VRE may reasonably request for the purpose of acknowledging, implementing or recording this assignment.

The Contractor agrees and warrants that no individual, other than regular employees of the Contractor or the VRE working within the scope of their employment, shall participate in the creation of any copyrightable works to be delivered under this agreement, unless such individual and his or her employer, if any, have signed an intellectual property agreement satisfactory to the VRE before commencing such participation.

The Contractor hereby agrees that, notwithstanding anything else in this agreement, in the event of any breach of this agreement by the VRE, the Contractor's remedy shall not include any right to rescind or otherwise revoke or invalidate the provisions of this section. Similarly, no expiration or termination of this agreement by the VRE shall have the effect of rescinding, terminating or otherwise invalidating the provisions of this section.

43. **RIGHTS IN DATA:**

- a. The term "subject data," as used herein means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Contract. The term includes graphic or pictorial delineation's in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to, computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to Contract administration.
- b. Data and information submitted to the Federal Government may be required to be made available for dissemination under the Freedom of Information Act, or other federal statute(s) in accordance with implementation instructions contained in 49 C.F.R. §19.36, revised March, 2000, to the extent applicable, and any subsequent applicable federal requirements that maybe promulgated.
- c. All "subject data" first produced in the performance of this Contract shall be the sole property of the VRE. The Contractor agrees not to assert any rights at common law or equity and not to establish any claim to statutory copyright in such data. Except for its own internal use, the Contractor shall not publish or reproduce such data, in whole or in part, or in any manner or form, nor authorize others to do so without the written consent of the Federal Government or the VRE, until such time as the Federal Government or the VRE may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any Contract with an academic institution.
- d. In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (1) and (2) of this clause below. As used in the previous sentence, "for Federal Government purposes," means only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party:
 1. Any subject data developed under the Contract, whether or not a copyright has been obtained; and
 2. Any rights of copyright purchased by the VRE or Offeror using Federal assistance in whole or in part provided by FTA.
- e. Unless prohibited by state law, upon request by the Federal Government, the VRE and the Contractor agree to indemnify, save and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that Contract.

44. **FEDERAL RIGHTS IN DATA AND COPYRIGHTS:**

- a. The Contractor agrees to provide to the Federal Government a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes the "subject data" described in the following subparagraphs 45.a(1) and 45.a(2). As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not provide or otherwise extend to other parties the Federal Government's license to:
- (1) Any subject data developed under the subcontract or lower-tier subcontract financed by the Grant Agreement or Cooperative Agreement, whether or not a copyright has been obtained; and
 - (2) Any rights of copyright to which an Offeror or subcontractor purchases ownership with Federal assistance.
- b. Special Federal Rights in Data for Research, Development, Demonstration, and Special Studies (Planning) Projects. FTA's purpose in providing financial assistance for special studies (planning), research, development, or demonstration Projects, is to increase transportation knowledge, rather than limit the benefits of the Project to participants in the Project. Therefore, unless FTA determines otherwise, the Contractor of FTA financial assistance to support a research, development, demonstration, or a special studies (planning) Project agrees that, in addition to the rights in data and copyrights of this section, FTA may make available to any FTA recipient, subcontractor or lower-tier subcontractor, either FTA's license in the copyright to the subject data or a copy of the subject data. If the Project is not completed for any reason whatsoever, all data developed under that Project shall become subject data as defined in Clause 44, Rights in Data, and shall be delivered as the Federal Government may direct. This subparagraph 45.b.; however, does not apply to adaptations of automatic data processing equipment or programs for the Recipient's use whose costs are financed with Federal funds for capital Projects.
- c. Hold Harmless. Except as prohibited or otherwise limited by State law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Project. The Contractor shall not be required to indemnify the Federal Government for any such liability caused by the wrongful acts of Federal employees or agents.
- d. Restrictions on Access to Patent Rights. Nothing in this Clause on rights in data shall imply a license to the Federal Government under any patent or be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.
- e. Data Developed Without Federal Funding or Support. In connection with the Project, the Offeror may find it necessary to provide data developed without any Federal funding or support to the Federal Government. The requirements of Clauses 44.c., 45.a. and 45.b. of this Contract do not apply to data developed without Federal funding or support, even though that data may have been used in connection with the Project. Nevertheless, the Contractor understands and agrees that the Federal Government will not be able to protect any data from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential."
- f. Statutory Requirements to Release Data. The Contractor understands and agrees that the Federal Government may be required to make available data and information submitted to the Federal Government for dissemination under the Freedom of Information Act, or other Federal statute(s) in accordance with implementation instructions contained in 49 C.F.R. § 19.36, revised March, 2000, to the extent applicable, and any subsequent applicable Federal requirements that may be promulgated.
- g. The Contractor shall include the above paragraph in any subcontracts.

45. **PATENT RIGHTS:**

- a. If any invention, improvement, or discovery of the Contractor or any of its subcontractors is conceived or first actually reduced to practice in the course of this Contract, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Contractor agrees to notify VRE immediately and provide a detailed report.

- b. Unless the federal government makes a contrary determination in writing, the rights and responsibilities of VRE, the Contractor, subcontractors, and the U.S. Government with respect to such invention, improvement, or discovery will be determined in accordance with applicable federal laws, regulations, policies, including any waiver thereof. Absent a determination in writing to the contrary by the Federal Government, the Contractor agrees to transmit to VRE those rights due the Federal Government in any invention, improvement, or discovery resulting from that subcontract or lower-tier subcontract as specified in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401 (implementing the Presidential Memorandum [Statement] on Government Patent Policy to the Heads of Executive Departments and Agencies, dated February 18, 1983, 19 Weekly Comp. Pres. Doc. 252-253, Feb. 28, 1983), irrespective of the status of the Contractor or any subcontractor at any tier (*i.e.*, a large business, small business, State government or State instrumentality, local government, nonprofit organization, institution of higher education, individual, *etc.*).
 - c. The Contractor shall include the above paragraph in any subcontracts.
46. **COVENANT AGAINST CONTINGENT FEES:** The prospective contractor warrants that it has not employed or retained any company or person, other than bona fide employees working solely for the prospective contractor, to solicit or secure this 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 prospective contractor, any fee, VRE, percentage, brokerage fee, or other considerations, contingent upon or resulting from the award of making of this Contract. For breach or violation of this warranty, the VRE shall have the right to annul this 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. The firm shall therefore comply with all relevant federal, state, and local laws.
 47. **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.
 48. **CONVICT LABOR:** In connection with the performance of work under this Contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment except as provided by Public Law 89-176, September 10, 1985.
 49. **SEISMIC SAFETY:** The Contractor agrees to apply the requirements of U.S. DOT regulations applicable to seismic safety requirements for U.S. DOT assisted construction projects at 49 CFR Part 41, (specifically 49 CFR §41.117), and any implementing guidance FTA may issue, to the acquisition of any new building and to additions to any existing building.
 50. **CONFLICT OF INTEREST:** 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., VA Code Ann.), the terms of which are incorporated herein by reference.

The VRE is intent on avoiding conflicts of interest associated with the award of the Contract. To these ends, prospective Contractors must identify existing and prospective contractual relations they have (or could have) with agencies (i.e. Amtrak, CSXT, and Norfolk Southern Railroads) which could present sources of conflict as part of the proposal submission. The Contractor ultimately awarded the Contract must ensure that there is no real or perceived conflict of interest of the VRE at any time during the life of the Contract.

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 subagreement 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.

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 subagreement 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.

51. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By submitting this proposal, the prospective contractor certifies that it does not and will not, during the performance of this Contract, employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986.
52. **INDEMNIFICATION:** The Contractor shall not seek to hold liable the VRE, or any of their officers, agents and employees for any claims of any nature whatsoever arising out of this Contract or arising out of the activities funded in whole or in part of the Contract. The Contractor shall defend, indemnify, save, and hold harmless the VRE, and their officers, agents, and employees against all claims and liability, including cost and expenses, due to the acts or omissions of the Contractor or the acts or omissions

of the Contractor's subcontractors, agents or employees. The Contractor agrees to maintain adequate insurance in an amount and form approved by the VRE to protect the VRE and its officers, agents, and employees from liability arising out of this Contract.

Absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subrecipient, any third party contractor, or any other person not a party to the Grant Agreement or Cooperative Agreement in connection with the performance of the Contract. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, subagreement or third party contract, the Federal Government continues to have no obligations or liabilities to any party, including the subrecipient and third party contractor.

53. **ETHICS IN PUBLIC CONTRACTING:** By submitting its proposal, the prospective contractor certifies that its 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 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.
54. **PROHIBITION AGAINST THE USE OF FEDERAL FUNDS FOR LOBBYING:** The prospective contractor and all subcontractors agree to comply with the provisions of 31 U.S.C. § 1352, which prohibit the use of federal funds for lobbying any official or employee of any federal agency, or member or employee of Congress; and requires the recipient to disclose any lobbying of any official or employee of any federal agency, or member or employee of Congress in connection with federal assistance. In addition, no federal assistance funds shall be used for activities designed to influence Congress or State Legislature on legislation or appropriations, except through proper, official channels. The prospective contractor shall comply and assure the compliance of subcontractors at any tier with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20.

For contracts of \$100,000 or more, the prospective contractor shall submit to the VRE a signed "Certification of Restrictions on Lobbying," (attached) and shall require all subcontractors with contracts of \$100,000 or more to submit to the prospective contractor and the VRE such signed certifications.

55. **OFFICIALS NOT TO BENEFIT:** No member of or delegate to the Virginia General Assembly, and no member of the VRE or the Virginia Department of Transportation, shall be admitted to any share or part of this Contract, or to any benefit that may arise there from; but this provision shall not be construed to extend to this Contract if made with a corporation for its general benefits. No member, officer, or employee of the VRE during his/her tenure or one year thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof.
56. **INDEPENDENT CONTRACTOR:** The Contractor is and shall be in all events, an independent contractor. Nothing herein shall be construed as constituting the Contractor as an agent, partner, employee, or legal representative of the 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.
57. **DEBARMENT STATUS:** The Commonwealth Transportation Board's Policy of Debarment dated January 1, 1987, shall apply with the exception that the debarment period shall be for a period of up to thirty-six (36) months. By submitting a proposal, the prospective contractor certifies that it is not currently debarred from submitting proposals on contracts by any agency of the Commonwealth of Virginia, nor is an agent of any person or entity that is currently debarred from submitting proposals or contracts by any agency of the Commonwealth of Virginia.

By submitting this proposal, the prospective contractor further certifies that it is not debarred, suspended, declared ineligible, or voluntarily excluded from participating in contracts with the federal government, and that it will refrain from awarding any subcontract to a debarred or suspended subcontractor. 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 (Nonprocurement)," within 49 CFR Part 29.

58. **ANTI-DISCRIMINATION:** By submitting a proposal, the prospective contractor certifies to the VRE that it will conform to the provisions of Title VI of the Federal Civil Rights Act of 1964, as amended; DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation" -- Effectuation of Title VI of the Civil Rights Act; the Virginia Fair Employment Act of 1975, as amended, where applicable; all requirements of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 20003, and 49 U.S.C. §4332 and any implementing requirements FTA may issue; the provisions of 49 U.S.C. § 5332, "Nondiscrimination in Federal Transit Programs," which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity; and Section 11-51 of the Virginia Public Procurement Act.

During the performance of this Contract, the prospective contractor agrees as follows:

- a. The prospective contractor will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, religion, or national origin. The prospective 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 prospective contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The prospective contractor also agrees to comply with any implementing requirements FTA may issue.
- b. The prospective contractor, in all solicitations or advertisements for employees placed by or on behalf of the prospective contractor, will state that such prospective contractor is an equal opportunity employer.
- c. 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.
- d. The prospective contractor will comply with all applicable requirements of Title IX of 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.
- e. The prospective 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.
- f. With respect to activities deemed by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the prospective 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 Project.
- g. The prospective 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.
- h. The prospective contractor agrees to comply with all applicable requirements of any other nondiscrimination statutes(s) that may apply.
- i. The Contractor agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environment Justice in Minority Populations and Low-Income Populations," 42.U.S.C. § 4321.
- j. The prospective contractor also 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.

59. **DISADVANTAGED BUSINESS ENTERPRISE (DBE):** Each prospective Contractor is required to submit the Disadvantaged Business Enterprise (DBE) Form to the VRE along with its bid/proposal. This submission does not necessarily require prospective Contractor to utilize DBE's in the performance of the Contract. Where it is practicable for any portion of the awarded contract to be subcontracted, the 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 Amtrak. If the prospective contractor is not itself, nor plans to utilize an authorized DBE, the prospective Contractor should write on the DBE Form "NO DBE's" and submit the form.

The prospective contractor or 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 agreement. In this regard, the VRE and its Contractors 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.

The VRE and its Contractors 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.

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 years following the performance of the contract and will make these records available to VRE upon request.

The prospective 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 parties to the contract shall use their best efforts to ensure that disadvantaged business enterprises shall have a level playing field to compete for subcontract work under this Contract.

Reference: Federal Regulation Sec. 49 CFR 26.49

60. **ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES:** The prospective contractor agrees to comply with the requirements of 49 U.S.C. § 5301(d), which states the Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The prospective contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the prospective contractor agrees to comply with all applicable requirements of the following regulations and any subsequent amendments thereto:

- U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)", 49 C.F.R. Part 37;
- U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance", 49 C.F.R. Part 27;
- U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles", 49 C.F.R. Part 38;
- Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services", 28 C.F.R. Part 35;
- DOT regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities", 28 C.F.R. Part 36;
- General Services Administration regulations, "Construction and Alteration of Public Buildings, "Accommodations for the Physically Handicapped", 41 C.F.R. Part 101-19;
- Equal Employment Opportunity (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans With Disabilities Act", 29 C.F.R. Part 1630;
- Federal Communications regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled", 47 C.F.R. Part 64, Subpart F; and
- FTA regulations, "Transportation for Elderly and Handicapped Persons", C.F.R. Part 609.
- Architectural and Transportation Barriers Compliance Board regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194; and
- Any implementing requirements FTA may issue.

Any and all materials, drawings or plans produced for the VRE shall reflect the requirements of the codes and regulations listed above.

61. **DRUG OR ALCOHOL ABUSE - CONFIDENTIALITY AND OTHER CIVIL RIGHTS PROTECTIONS:** The prospective 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.

62. **DRUG-FREE WORKPLACE:** During the performance of this 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.

"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.

63. **LABOR PROVISIONS:**

- a. The Contractor and any subcontractors shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this clause shall be made available by the Contractor or subcontractor for inspection, copying or transcription by authorized representatives of the FTA, the U.S. DOT, or the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.
- b. The following clauses are applicable to any Contract subject to the overtime provisions of the Contract Work Hours and Safety Standards Act:
- (1) No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such work week. Determinations pertaining to these requirements will be made in accordance with the requirements of section 102 of the Act, 40 U.S.C. §§ 327 - 332; and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5; and with section 107 of the Act, 40 U.S.C. § 333, and U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. Part 1926.
 - (2) In the event of any violation of the requirements of 29 C.F.R. §5.5(b)(1), the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of 29 C.F.R. §5.5(b)(1) in the sum of ten dollars (\$10) for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty (40) hours without payment of the overtime wages required by 29 C.F.R. § 5.5(b)(1).
 - (3) The FTA or the recipient shall upon its own action or upon written request for an authorized representative of the Department of Labor withhold or cause to be withheld from any moneys payable on account of work performed by the Contractor or subcontractor under any such Contract or any other federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth at 29 C.F.R. § 5.5(b)(2).
- c. The Contractor agrees to comply, and assures to comply, and assures the compliance of each subcontractor at any tier, with the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874 and 40 U.S.C. § 276c, and U.S. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 C.F.R. Part 3. The Contractor, in addition to other requirements that may apply, agrees that it will not induce, by any means, any person employed in the construction, completion or repair of public work, to give up any part of the compensation to which that employee is otherwise entitled. In addition, the Contractor agrees to report every suspected or reported violation of the Act or its federal implementing regulations to FTA.

- d. Activities Not Involving Construction. The Contractor agrees to comply, and assures to comply, and assures the compliance of each subcontractor at any tier, with any applicable employee protection requirements for nonconstruction employees of section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 327 - 332, and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.
 - e. References to the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq. is substituted for the reference to specific sections of the Act.
 - f. The Contractor agrees to comply and assures the compliance of these requirements for each subcontract at any tier.
64. **DAVIS BACON ACT** (for all construction contracts over \$2,000): The Contractor shall agree to comply with all Davis Bacon requirements by reference:
- a. **Minimum Wages:** All laborers and mechanics employed or working onsite will be unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such deductions that are permitted by regulation), issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment, computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part thereof, regardless of any contractual relationship which may be alleged to exist between the contractors and such laborers and mechanics.
- Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to provisions of paragraph (1) of this section. Also, regular contributions made or costs incurred for more than a weekly period (but not less than quarterly) under plans, funds, or programs that cover the particular weekly period are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided that the employer's payroll records accurately set forth time spent in each classification.
- The wage determination and the Davis Bacon Poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of work in a prominent and accessible place where it can be easily seen by workers.
- b. **Subcontracts:** The Contractor or subcontractor shall inset in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may require. A clause requiring the subcontractors to include these clauses in any lower tier subcontracts should also be included in those lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
 - c. **Disputes Concerning Labor Standards:** Disputes arising out of the labor standard provisions of this Contract shall not be subject to the general dispute language of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include those between the Contractor (or any of its subcontractors) and VRE, the US Department of Labor, or their employees or representatives.
 - d. **Certification of Eligibility:** By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis Bacon Act of 29 CFR 5.12.
65. **ROYALTIES:** While VRE recognizes that certain materials or component parts may be produced under the terms of licensing or cross licensing agreements, it must be understood that the use of such materials and component parts requiring the application of recurring royalty charges, costs or payments is specifically prohibited.
66. **METRIC SYSTEM:** In accordance with Section 30 of the FTA Master Agreement, the FTA reserves the right to impose specific metric requirements for this Contract.
67. **ENERGY CONSERVATION:** The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

68. **ENVIRONMENTAL REGULATIONS:** The Contractor and any subcontractors are required to comply with all applicable federal environmental standards, orders or requirements issued under Section 306 of the Clean Air Act, as amended, 42 U.S.C. §7414, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §§7401 *et seq.*, and 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 Decisionmaking, Protection of Public Parks, Wildlife and waterfowl Refuges, and Historic Sites," 23 C.F.R. Part 1420 and 49 C.F.R. Part 623.

As stated in the aforementioned regulations, if projects cause or result in adverse environmental effects, all reasonable measures to minimize those adverse effects must be taken. In addition, all environmental mitigation measures identified as commitments in applicable environmental documents, such as environmental assessments and documents required by 49 U.S.C. §303, must be completed. These commitments include any conditions the Federal Government imposes on a finding of no significant impact or record of decision. These mitigations measures are incorporated by reference and made part of the Grant Agreement and may not be modified or withdrawn without written approval of the Federal Government.

The Contractor agrees to include in subcontracts exceeding \$100,000, adequate provisions to ensure that Project 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. The VRE will report and requires the Contractor and any subcontractor to report any violation of these requirements resulting from implementation of this Contract by the contractor, subcontractor (at any tier), or the VRE to FTA and the appropriate U.S. EPA Regional Office. All plans, drawings, and other documents produced as a result of this Contract should comply with these regulations when applicable.

The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

69. **PLANNING:** Projects financed with Federal assistance must be implemented in a manner consistent with the plans developed in compliance with the applicable planning and private enterprise provisions of 49 U.S.C. §5303 through 5306 and 5323(1) and with the joint Federal Highway Administration (FHWA)/FTA regulations, "Planning Assistance and Standards," at 23 C.F.R. Part 450 and 49 C.F.R. Part 613 and, when promulgated, with FHWA/FTA regulations, "Metropolitan and Statewide Planning," 23 C.F.R. Part 1410 and 49 C.F.R. Part 621; and to the extent applicable, with FTA regulations, "Major Capital Investment Projects," 49 C.F.R. Part 611.
70. **AUDIT:** The Contractor hereby agrees to maintain all books, records, accounts, and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case the Contractor agrees to maintain same until the VRE, the FTA Administrator, the Comptroller General, or any their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto. Reference 49 CFR 18.39(i)(11). The agency, its authorized agents, Federal Government, and/or state auditors shall also have full access to and the right to examine any of said materials during said period. The Contractor agrees that audits will be conducted in accordance with U.S. General Accounting Office, Government Auditing Standards.
71. **FALSE OR FRAUDULENT STATEMENTS AND CLAIMS:** The Contractor recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et. seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31 apply to its actions pertaining to the Project. Upon execution of the underlying contract, the prospective contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, the prospective offeror also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the prospective contractor to the extent the Federal Government deems appropriate. The prospective contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contact connected with a project which is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307(n)(1) on the prospective contractor, to the extent the Federal Government deems appropriate. The prospective contractor agrees to include the above two clauses on each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

72. **SUPPORT OF EXCLUSIONARY OF DISCRIMINATORY SPECIFICATIONS:** Apart from inconsistent requirements by Federal statute or regulations, the VRE complies with the requirements of 49 U.S.C. § 5323(h)(2) by refraining from using any Federal assistance awarded by FTA to procurements with exclusionary or discriminatory specifications.
73. **INSURANCE:** The Contractor shall secure, pay the premiums for and keep in force until the expiration of this Contract, and any renewal thereof, adequate insurance as identified on the “VRE Insurance Requirements” document. Items marked “X” are required to be provided. By signing and submitting a proposal under this solicitation, the Offeror/Bidder certifies that if awarded the Contract, it will have the insurance coverages identified and described herein at the time the Contract is awarded. The Offeror/Bidder further certifies that it and any subcontractors will 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 Virginia.

Proof of compliance with these insurance requirements shall be furnished to VRE in the form of an original certificate of insurance signed by an authorized representative or agent of the insurance company(ies) within 10 calendar days of notice of award of Contract and before any work under the resultant Contract will be allowed to commence. All insurance must be raised as change orders are made to the Contract.

Renewal certificates shall be furnished to VRE not less than 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.

To the extent applicable, the prospective contractor agrees to comply with the flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4012a(a), with respect to any Project activity involving construction or acquisition having an insurable cost of \$10,000 or more.

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.

74. **PROVISION FOR FLAGMAN:** If it is determined that a flagman service is required at the work site, VRE shall schedule and pay for the flagman service. The VRE will determine the schedule with the Railroad to provide the flagman service and advise the Contractor. The length of flagman service shall be based on the Contractor’s schedule. If the flagman services extend beyond the project schedule, the additional cost shall be borne by the Contractor.
75. **RAILROAD SAFETY:** 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. The VRE reserves the right to require the Contractor to be qualified and its employees on the operating railroad’s, Federal Rail Administration, and VRE’s safety rules for operations.
76. **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 Task Order 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 Task Order funding, the Contractor shall notify the VRE to that effect, advising the estimate of additional funds required for completion of the Task Order. 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 Task Order will be exceeded.
 - b. VRE shall not be obligated to pay the Contractor any amount in excess of the ceiling price reflected in the Task Order or Contract, and the Contractor shall not be obligated to continue performance if to do so would exceed the price set forth in the Task Order or 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 Task Order or Contract, and the Task Order or 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.

77. **VRE CONTRACT MANAGEMENT:**
- a. **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 this 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 clarifications

and guidance of Contractor's personnel as may be required under the Contract. Only the PM consulting with the Contract Administrator and/or the Contracting Officer, as necessary is authorized to provide direction to the Contractor.

- b. **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.
 - c. **Contracting Officer:** The Contracting Officer is the only individual who can legally commit or obligate the VRE for the expenditure of federal/public funds. The technical administration of this Contract shall not be construed to authorize the revision of the terms and conditions of this Contract. Any such revision shall be authorized in writing only by the Contracting Officer.
 - 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 scheduling of all Contract work specified herein.
78. **TAXES:** Sales of items purchased directly by the VRE under this 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 the 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.
79. **EXTRA CHARGES NOT ALLOWED:** The bid 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.
80. **CHANGES:** 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.

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 thirty (30) days from the date of receipt by the Contractor of the change notice. If the parties fail to agree to an adjustment, the question of an increase or decrease in the Contract price or time allowed for performance shall be resolved in accordance with the procedures for resolving disputes provided by the disputes clause of the Contract. Neither the existence of a claim, a dispute, submission of the dispute or the dispute resolution process, litigation or any portion of this provision or changes shall excuse the Contractor from promptly proceeding with performance of the Contract as changed by the notice.

81. **EXAMINATION OF RECORDS:** The Contractor agrees as follows:
- a. **Reports.** The Contractor agrees to provide to VRE those reports required by the U.S. DOT's grant management rules and any other reports the federal government may require.
 - b. **Record Retention.** The Contractor agrees to provide the VRE, the FTA Administrator, the Comptroller General of the United States or any authorized representatives access to any books, documents, paper and records of the Contractor which are directly pertinent to this 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 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 three (3) years thereafter, except in the event of litigation or settlement of claims arising from the performance of the Contract, in which case the Contractor agrees to maintain the same until the Purchaser, 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.
 - c. **Access to Records.** Upon request, the Contractor agrees to permit VRE, its authorized agents, state auditors, 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.

The Contractor further agrees to include in all his 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 his performance under the subcontract.

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.

VRE shall continue to have a period beyond five (5) years after final payment under this Contract to inspect and audit all data and records which relate to:

- Appeals under the "Disputes" clause of this Contract;
- Litigation of claims arising out of the performance of this Contract; or
- Costs and expenses of this Contract as to which exception has been taken by VRE or the Commonwealth of Virginia or any of its duly authorized representatives.

The extended right of inspection shall continue for such period beyond five (5) years after final payment under this 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 and VRE.

- d. **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.

82. **GEOGRAPHIC RESTRICTIONS:** The prospective contractor agrees to refrain from using state or local geographic preferences, except those expressly mandated or encouraged by federal statute, and as permitted by FTA, such as for professional services in areas where such a restriction does not unduly limit competition.
83. **ACQUISITION OF MANAGEMENT, ARCHITECTURAL, AND ENGINEERING SERVICES:** In acquiring management, architectural, and engineering services, the Contractor agrees to comply with the requirements of 49 U.S.C. Section 5325(b), either by negotiating for those services in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. §§ 541 *et seq.*, or by using an equivalent qualifications-based requirement of the State. Provided that a sufficient number of qualified firms are eligible to compete for the subcontract, the Contractor's geographic location may be a selection criterion. In addition, when awarding contracts for architectural, engineering, or related services, the Contractor agrees to accept undisputed audits conducted by other governmental agencies, in accordance with 23 U.S.C. § 112(b)(2) (C) through (F). To the extent the Contractor qualifies for an exception in accordance with 49 U.S.C. § 5325(b), however, this Subsection 15.i of this clause does not apply.
84. **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 written permission of the VRE.
85. **PUBLICATIONS:** Articles, papers, bulletins, reports or other material reporting the results and findings of the work conducted under this 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 this 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.

86. **ELECTRONIC AND INFORMATION TECHNOLOGY:** To the extent required by law, the Contractor agrees that any electronic and information technology financed with Federal assistance awarded for this Contract will meet the applicable accessibility standards of Section 508 of the Rehabilitation Act of 1973, as amended, by 29 U.S.C. § 794d, and U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194.
87. **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 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:
- a. **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.

b. 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 the 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.

c. Maintenance. The Contractor agrees to maintain Contract real property and equipment in good operating order, in compliance with any guidelines, directives, or regulations FTA may issue.

d. Records. The Contractor agrees to keep satisfactory records regarding the use of Contract real property, equipment, and supplies, and submit to the VRE upon request such information as may be required to assure compliance with this section of this Contract.

e. Encumbrance of Contract Property. The Contractor agrees to maintain satisfactory continuing control of Contract real property or equipment. Thus, absent written authorization by VRE permitting otherwise:

(1) Written Transactions. The Contractor agrees to 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.

(2) Oral Transactions. The Contractor agrees to refrain from obligating itself in any manner to any third party with respect to Contract real property or equipment.

(3) Other Actions. The Contractor agrees to 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.

f. Transfer of Contract Property. The Contractor understands and agrees as follows:

(1) 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 the VRE and Federal Transit Administrator and conforms with the requirements of 49 U.S.C. §§ 5334(g)(1) and (2).

(2) 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 this Contract.

(3) 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 the VRE determines otherwise in writing. Upon request by VRE, the Contractor agrees to provide a copy of any relevant documents.

g. 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.

(1) 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.

(2) Contract Property Prematurely Withdrawn from Use. For property withdrawn from appropriate use before its useful life has expired, the Contractor agrees as follows:

- (a) 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.
- (b) 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:

- 1. Equipment and Supplies. 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 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 the State's laws.

- 2. 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.

- 3. Exceptional Circumstances. The Contractor agrees that the 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, the 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.

- (c) Obligations to the VRE. Unless otherwise approved in writing by the VRE, the Contractor agrees to remit to the 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:

- 1. 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

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

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

- (1) Apply those insurance proceeds to the cost of replacing the damaged or destroyed Contract property taken out of service, or

- (2) Return to the VRE an amount equal to the remaining Federal interest in the damaged or destroyed property.

- i. Transportation - Hazardous Materials. The requirements of U.S. Research and Special Programs Administration regulations, "Shippers - General Requirements for Shipments and Packagings," 49 C.F.R. Part 173, apply to the transportation of hazardous materials.
 - j. 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 agrees to 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.
88. **PROTECTION OF SENSITIVE SECURITY INFORMATION:** To the extent applicable, the Contractor to comply with Section 101(e) of the Aviation and Transportation Security Act, 49 U.S.C. §4019(b), with U.S. Transportation Security Administration regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 1520, and with any implementing regulations, requirements, or guidelines that the Federal Government may issue.
89. **SPECIAL REQUIREMENTS FOR CLEAN FUELS FORMULA PROJECTS:** The Contractor agrees to comply with following requirements in administering Contracts financed with Federal assistance authorized for 49 U.S.C. § 5308:
 - a. General Requirements. The Contractor agrees to comply with FTA regulations, "Clean Fuels Formula Grant Program," 49 C.F.R. Part 624, and other implementing Federal requirements or guidance that may be issued.
 - b. Requirements to Use Clean Fuels. The Contractor agrees to use only clean fuels in any vehicle acquired with Federal transit assistance funds authorized by 49 U.S.C. § 5308.
 - c. Limitations on the Use of Funds. The Contractor agrees to use funds authorized by 49 U.S.C. § 5308 only for Contracts approved by VRE, and obtain VRE concurrence before using those funds for other purposes.
90. **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.