



REQUEST FOR PROPOSALS #09-013

OPERATING AND MAINTENANCE SERVICES FOR COMMUTER RAIL OPERATIONS

QUESTIONS & ANSWERS

Below are questions with responses that VRE has received as of June 19, 2009 at 10:00 A.M. EST. Whenever possible, questions are presented as originally asked. Otherwise, the question is presented to capture the main thrust or idea of the question or inquiry.

Any modifications identified herein by VRE will be in the form of an addendum to the RFP and will be available to all interested Offerors. The addendum will be forthcoming through the VRE website.

1. Since VRE has extended the proposal due date by one (1) month, will VRE reconsider the decision to extend the deadline for questions for one (1) week?

VRE gave careful consideration to extending the deadline for questions but opted to hold the current schedule as the RFP has been available for six (6) weeks. Extending both the proposal due date and the question deadline would have had a negative impact on the overall schedule. As such, VRE opted to provide more time for proposal preparation rather than additional questions. If an error in the proposal is identified or requirement for clarification needed, VRE will issue an addendum.

2. Section 11.2 Environmental Permitting/Reporting. Will there be provided at the time of Contract commencement, certification of current compliance to all environmental requirements in all pertinent areas?

No, but VRE will make available records of violation, if any.

3. Section 5.6 Facility Use and Maintenance. Only Broad Run and Crossroads yards are listed as facilities to be used and maintained. Will the Contractor have any responsibility for stations along the route?

No.

4. Will VRE make all existing maintenance, operating, warehouse and security plans, etc... available to Offerers?

Maintenance and warehouse are already contained in the RFP and Appendices. There are currently not any specific train operating plans available.

5. In order for the successful Offeror to make a smooth transition in taking over the VRE operation, training will be absolutely mandatory for new train crew members. Has VRE made any arrangements with NS, CSX and Amtrak to assure access for the proper training/qualifying of new personnel? If so, what are these arrangements? If not, would it be left to the Contractor to pursue such accommodations with the aforementioned railroads?

VRE will broker the necessary arrangements with Amtrak, CSX and NS so that the successful offeror has the ability to train and qualify the required personnel prior to the commencement of VRE service. Details concerning these relationships will be negotiated following the selection of a successful Offeror.

6. Section 26.4, Indemnification of Contractor by VRE, Sections 39 and 59, General Terms and Conditions Attachment H.1- There is a body of risk associated with the provision of passenger rail service. That risk is insurable for the most part. The part that is not insurable is some amount of self insured retention (SIR) required by the insurers and liabilities that are caused by intentional, wrongful, and/or willful misconduct. With respect to the SIR, the VRE has an insurance program that provides \$250 Million in total limits of which \$5 million is SIR. The Contractor is not covered for occurrences within the SIR. The fact that these liabilities are excluded by VRE causes significant difficulties for Contractors. Most importantly, it will require Contractors to buy insurance for the \$5 million SIR layer. The Offeror's insurance brokers have contacted all domestic markets for this insurance. Railroad Liability Insurance to cover the Contractors' exposure in the \$5 million layer is not available domestically. There is a possibility that some coverage may be available in London. It will be very expensive and there will still be a \$1 million or \$2 million SIR. This Offeror proposes that the Contractor be responsible only for occurrences within the SIR that are caused by the Contractor's willful misconduct. Willful misconduct is generally not insurable and Contractors are accustomed to assuming this liability. If VRE does not agree with the proposed change, we will need from VRE, 5 years of loss information with complete descriptions of each the losses as soon as possible. The Contractors will have to supply this information for their other operations as well. London will not provide any insurance for the \$5 Million SIR without a full underwriting effort. As mentioned above there still will be a \$1 or \$2 million SIR, requiring Contractors to provide incalculable risk money in their bid. Paying the actual costs of a safe Contractor would be far more cost efficient?

VRE expects Contractors to provide the insurance coverage and indemnification required in the RFP. VRE will not modify its RFP to require Contractors to be responsible only for occurrences within the self insured retention that are caused by the Contractor's willful misconduct. VRE will provide loss information.

7. Section 26.5, Claims Services - The Offeror suggests that VRE establish a fund to cover all claims except for those that arise out of the willful misconduct of the Contractor. This will allow for timely reimbursement of claims expenses to the Contractor or its subcontracted claims administrator. See proposed language changes.

VRE expects Contractors to provide the insurance coverage and indemnification required in the RFP, as well as the claims service described in the RFP. VRE will not modify its RFP as requested.

8. Section 26.4.D, Indemnification of Contractor by VRE – This section requires the Contractor to carry FELA insurance. FELA insurance is provided with Railroad Liability Insurance and is not available in the industry on a stand-alone basis. The VRE provided Railroad Liability Insurance will cover FELA. The only way the Contractor will be able to provide this insurance is to purchase a duplicative Railroad Liability Insurance Policy which, as stated above, is not reasonably available for the SIR. The Offeror suggests that VRE's insurance cover this liability and that it be removed from the Contractor's requirements?

VRE does not intend to modify the RFP to provide the requested coverage. Contractors shall be responsible for claims of those individuals identified in section 26.4.D.

9. Section 26.4.A, Indemnification of Contractor by VRE - This Section refers to "Commuter Rail Operations Liability Insurance Plan" in which the Contractor will be named as an additional insured. Clarify that the Contractor's subcontractors will also be additional insureds?

VRE will add specifically identified subcontractors to its Liability Insurance Plan depending on the subcontractor's role in providing the contract services. Those providing portions of the Contract services on an ongoing basis for which VRE's approval is required under section 2.13 will be added. Only those subcontractors expressly named as an insured will be covered by VRE's Liability Insurance Plan.

10. Section 2.4.4 A, Other Penalties - What constitutes incomplete mobilization? If on day one (1), the Contractor delivers all the scheduled service with

properly trained, certified and qualified employees, would the Mobilization be considered complete?

If the Contractor does not provide all of the required services and personnel outlined in the RFP on the Commencement Date (July 1, 2010), then the mobilization would be considered incomplete until such a time as the Contractor provides all of the required services and personnel.

11. Section 2.4.4 E, Other Penalties - How is the fine determined for non-compliance with VRE standard? Is the amount \$250 or \$1,000? This provision is subjective and without boundaries. Are all VRE employees qualified to determine a violation in all areas? Who determines the amount? There appears to be no recourse for the Contractor or procedure to dispute.

VRE agrees that not all VRE employees are able to make judgments in all categories, which is why the final decision to impose a penalty rests with VRE's CEO. The Contractor will be notified in writing of the infraction and the amount of the penalty, which can range between \$250 and \$1000 depending on the severity of the infraction. The Contractor will have an opportunity to present its findings prior to the assessment of the fine.

12. Section 2.8, Criminal Background Check - Clarify felony conviction means the Contractor cannot hire if a candidate has ever been convicted of a felony or only if one is identified in the candidate's five (5) year background check?

VRE is only concerned with the record over the previous five years. If that record does not contain a felony record, the candidate is not disqualified due to this section.

13. Provide copies of all invoices for the last twelve (12) months from major Contractors involved in the provision of the VRE train services.

VRE cannot provide copies of all invoices. However, a breakdown of all contractor expenses by function for Fiscal Year 2008 is provided below.

Train and Engine Crews	\$6,355,082
Maintenance Labor	\$7,278,237
Materials	\$1,456,579
Management Fee	\$2,144,974
Total	\$17,234,872

14. Section 2.20.5, Contractor Financial Records – The Offeror assumes that VRE’s right to examine all financial records only applies to records pertaining to this Contract/job. Periodic Financial Statements for this Contractor are prepared by Independent Certified Public Accountants in accordance with generally accepted accounting principles and will be submitted by the Contractor annually as required which should be sufficient to determine the financial condition of the Contractor. Is this correct?

“All financial records” refers to records that support the charges to VRE under this contract. Although VRE will generally rely on annual audited financial statements to assess the financial condition of the contractor, we reserve the right to request unaudited quarterly information as well.

15. Sections 5.5.7 Repairs, General, 5.5.8 Running Repairs, 5.5.9, Medium Repairs and 5.5.10 Heavy Repairs - The Offeror understands the maintenance requirements. For the purposes of the cost proposal, in the enumerated paragraphs, what costs are to be included and what costs are extra work?

Repairs to be included in costs are functional applications that would normally be discovered in periodic inspections such as changing brake shoes, lining center plates, adjusting piston travel, resetting injectors, changing brake components, etc. Fixing things that are not routine are impossible to predict beyond historic averages, so those would be considered extra work.

16. Section 6.3.7.E, Other Transportation Related Duties - Clarify which activities will the Contractor be providing Flagging? For staffing purposes, provide an order of magnitude of the annual flagging hours.

This is no longer required and the RFP will be amended to reflect this.

17. Sections 6.4.2.H, On-Time Performance and Section 6.9, Reports - The reporting requirements listed in these sections are usually part of an integrated Train Reporting Management System (TRMS). The software for such a system is not included in the VRE supplied software. Should the Contractor include the costs of a TRMS system in its proposal?

VRE’s version of Micromain does not include a module for these reports. If a company feels that it is necessary to provide this system, the cost should be included in the management portion of the pricing.

18. Cost Proposal and Schedule of Prices, Attachment H.2 - The unit of measure for items 4-9 is listed as “three person crew” or position and the quantity twelve (12). Clarify that the Unit of Measure should be “three person crew” per month and position per month.

Items 4-9 indicate the various ways that VRE may choose to increase or decrease T&E crews. Each item is a separate price consideration. The Unit of Measure is 12 since that position will be billed monthly.

Example 1: If VRE decided to add one round-trip consisting of 6 cars, then VRE would expect to have a monthly increase in cost equal to the unit price of Item 4 and an annual increase in costs based on the annual price of Item 4 (Unit Price x Quantity).

Example 2: If VRE increases a train set from 6 to 8 cars, requiring the addition of an Assistant Conductor, the monthly increase (or unit price) would be the amount for Item 6.

19. Section 18.3, Tab 6 - Will VRE make space available for the Contractor at either the Manassas or Fredericksburg facilities to place an office trailer to house the management staff of the Contractor for the term of the Contract?

VRE has a spare trailer at each yard that could be made available. Both have water, sewer and power but would likely need reconfiguration internally for such a use. An option exists for office space in both yard offices and the Warehouse as well.

20. 2.4.4.C, Other Penalties - Will a penalty be assessed for a mechanical failure that occurs on a unit of equipment where it can be documented that all required maintenance procedures have been performed in accordance with VRE procedures?(i.e., the failure occurs as a result premature failure of a component)

Yes.

21. 2.6.1, Contractor's Responsibilities - Clarify VRE's intent. Does the Contractor's responsibility occur only as a result of the termination or expiration without renewal of the contract? Confirm that VRE does not expect a new Contractor to be responsible for 13(c) obligations that occur as a result of the existing Contract.

VRE does not expect a new contractor to be responsible for 13(c) obligations that occur as a result of the existing contract.

22. As stated in the RFP, the contracting company has to provide for or have a contingency plan for replacement of T&E personnel (especially conductors) when they are required to attend court hearings related to the issuing of "summons" to passengers without tickets/vouchers. In order to properly plan for and include in the price structure an adequately staffed "extra-board" it would be of significant value to have a history of the frequency of this event/requirement.

Ticket checking is a major component to the conductor and assistant conductor's duties. In a recent review, 211 summonses were issued in a 6-7 month time period. Of these, 60% were issued by 4 specific crew members.

With that said, the current arrangement gives each crew member one specific date every other month to appear in court.

23. What cooperation can be expected or demanded (with perhaps some prodding by VRE) in the area of providing/allowing OJT and territory familiarization for the T&E personnel (especially for student engineers) from the current contracting company should they lose the Contract to a different company during the NTP/Mobilization phase?

See question #5.

24. Will the Offeror be able to access the Materials storage facility at Ivy City or do we need to go through AMTRAK if delivering Materials there?

That facility will close completely on July 1, 2010. All materials therein will be transferred to the VRE warehouse in Manassas between January 1, 2010 and July 1, 2010, regardless of who is awarded the contract.

25. Section 6.10.2, Layover Facilities - Does VRE own the Materials storage facility at Ivy City and if so would it be possible to reconfigure this building into a rest area for the crews or must they be housed off the Ivy City site? Could it be reconfigured to be used as the crew center to house the computers and printers at Ivy City?

Please assume that this site cannot be used as a layover facility or crew center.

26. How many storage tracks are at Ivy City and how long are they?

- VRE #1 can store one (1) 6-car consist with locomotive (approximately 575 feet)
- VRE #2 can store one (1) 6-car consist with locomotive (approximately 575 feet)
- Mail #1 can store one (1) 6-car consist with locomotive (approximately 600 feet)
- Mail #2 can store two (2) 6-car consists, each with one (1) locomotive (approximately 1235 feet)

- Track #3 can store a combination of two (2) consists, with the maximum being one (1) 8-car consist with locomotive and one (1) 6-car consist with a locomotive (approximately 1460 feet)
- Track #4 can store a combination of two (2) consists, with the maximum being one (1) 6-car consist with locomotive and one (1) 5-car consist with a locomotive (approximately 1125 feet)
- Track #5 can store a combination of two (2) consists, with the maximum being one (1) 6-car consist with locomotive and one 5-car consist with a locomotive (approximately 1125 feet)
- #1 Repair is usually used for storing a protect locomotive or other vehicles waiting on repairs, but could store one (1) 4-car consist with locomotive (approximately 410 feet)
- #2 Repair can store one (1) 4-car consist with locomotive (approximately 420 feet)

27. The Materials warehouse that is off site at Broad Run becomes the responsibility of the Contractor. Who mans this facility the Contractor's staff or VRE staff?

The Contractor's staff.

28. At the Crossroads facility, there does not seem to be enough track length to back out of the wash building and switch over to the storage yard tracks one (1) to eight (8) without interfering with the entrance gate or main line switch. Is there enough room and what length of train can be accommodated for this type of move?

There is actually enough room on the Crossroads lead for nearly two train sets. At the top of the hill (the south end of the lead, where the yard switches begin), there is an approach signal for northbound movements. At the bottom of the lead (the north end), there is the final signal prior to entering the main line. It is protected by a split rail derail. Normal movements out of the wash track were not anticipated except when a car needs to be kicked out of the set on zero track for maintenance. The yard design anticipates that a different train set will be washed each night and will remain parked on that track for the remainder of the night.

29. At Crossroads, the Whiting jacks have a label for thirty-five (35) tons, but are marked on the lift tongue as twenty (20) ton, which is the true lift capacity?

With an adaptor applied they can only lift twenty (20) tons each. Without the adaptor, they can lift thirty-five (35) tons each.

30. How deep are the pits at the two (2) facilities?

Approximately five (5) feet deep to the lowest part of the pit.

31. Why are there no grates in the pits at the two (2) facilities, it seems that the maintenance staff would be standing in water every time it rains on the outdoor pits?

The pits have drains at the bottom.

32. What size are the eight (8) Whiting jacks at the Broad Run facility?

See question #29.

33. Section 5.5.1.C, Rolling Stock Overview – This section covers the possible storage of two (2) VRE trains at L’Enfant Station. Is this to be included in the base price or will this be added as extra work when it happens? If it is to be included, advise as to the train composition?

The storage of trains at L’Enfant should not be included in the base price and will be added as extra work in the future.

34. Will the Contractor have access to Micromain existing data, as a user for configuration, report generation or performing analysis?

The Contractor will have access to Micromain’s client software and existing database as a user configured for data entry and report generation only. User permissions and restrictions will be set by VRE. The necessary configurations to the program recommended by the Contractor will be reviewed for consideration by VRE.

35. Section 5.5.3, Record Keeping and Reports - Is MicroMain capable of all required record keeping or report generation for Rolling Stock Management, including scheduling PM jobs? If not, does VRE expect the Contractor to develop these functionalities and reports?

Micromain is capable of keeping parts and asset inventory and work orders for work management. However, this was an out of shelf (OOS) product and is currently being updated and customized to better accommodate for VRE’s needs and requirements. VRE is currently polishing it as a purchasing and inventory management software in preparation towards the implementation of the work management module. VRE anticipates a 2.5 year phase-in of the work management functions and will continue to work closely with the Contractor to achieve a final product suitable to VREs needs.

36. Section 5.6.4, Record Keeping - Is MicroMain capable of handling all Facility Management record keeping or report generation? If not, does VRE expect the Contractor to develop these functionalities and reports?

See answer to question #35. In addition, VRE anticipates that the Contractor may have to design and generate forms until Micromain is fully implemented. These forms may be considered as templates towards the customization of Micromain reports which will be subject to approval by VRE.

37. Section 5.7, Warehouse, Materials, and Tool Management - Is MicroMain capable of handling all Warehouse & Materials Management, including re-ordering material? If not, does VRE expect the Contractor to develop these functionalities and reports?

Micromain is capable of handling warehouse inventory control through part, asset, purchase order and work order modules. Purchase order requests are generated within Micromain, as are approvals. Inventory management is also performed within Micromain.

38. Section 11.3.B, Air Emissions Testing, Permitting and Reporting - Is MicroMain capable of recording fuel usage per combustion unit? Is there an existing electronic fueling system?

Fueling is currently performed by fuel vendors who make truck deliveries directly into each locomotive nightly, five nights per week or upon additional request. A ticket is generated for each locomotive. The fuel vendors are under contract with VRE and no changes to the process are anticipated.

39. Do all the reports being requested currently exist or is the Contractor expected to develop any of them?

For mechanical, see question #36, above.

For train operations: Many of these reports do currently exist. Sample formats of the most frequently used reports are located in the Appendix. The Contractor is expected to develop all reports, with feedback from VRE.

40. What year, make and model are the HEP engines? Have they been rebuilt in their lifetime? Will VRE provide the Offeror the data on failure rates of the HEP gen sets?

See the HEP maintenance manuals in the Appendix for the specifics on the HEPs. These units were all rebuilt in 2004 and all exhausts were replaced in 2005. Recent failure histories are forthcoming.

41. Do the LD's compound ie: if a train is cancelled is there also a penalty for no HVAC, toilet out of service, etc?

In the instance of a multi-penalty event, only the highest penalty will prevail, per train. As a point of reference, historical delay information back to 2006 can be found at www.vre.org/service/daily-download.html.

42. Section 5.7.A, Warehouse, Materials, and Tool Management - Clarify the following: VRE shall continue the leases on all copiers until such leases expire at that time the Contractor shall become responsible for the provision and maintenance of all copiers in the yard. Is the Contractor to include this in the yearly price or will this be added as it occurs? If it needs to be added in the base will VRE provide a list of the machines and the Contract expiration?

Downtown facility – VRE leases a Ricoh MP3500 copier for use at the Ivy City Coach Yard. The lease expires July 31, 2010. Offerors should assume provision and maintenance of a copier at the downtown layover facility at their expense beginning July 31, 2010.

Crossroads and Broad Run Facilities – VRE currently leases two (2) Kyocera copiers on a month to month basis, one (1) for each yard. Offerors should assume provision and maintenance of these copiers at their expense beginning July 1, 2010.

43. Section 2.6.1, Contractor's Responsibilities – Will VRE provide a list of all current employees that will be covered under the VRE 13 (C) obligations to include current pay rates and benefit schedules?

VRE will provide, to the successful Offeror, information regarding Amtrak employees currently working under the VRE/Amtrak contract. Currently, it is approximately 79 positions. VRE can not provide assurances that the list identifies every possible individual who may claim 13(c) protection.

44. Section 5.9.5, Technical Training - Based on the 13 (C) Requirements for the RFP, provide a roster of personnel whom the Contractor may hire and the current qualifications (QMP, Engineer, Etc) and when they need to be recertified.

See answer to question #43..

45. Section 9.3, Information Systems Software - Does the "Micromain" Software being provided by VRE have a time and attendance module that the Contractor will be able to utilize?

No. However, Micromain can keep track and generate reports on the number of hours worked and rate of pay through its Work Order module.

46. Section 6.10.5, Communications Devices - In order to properly cost the cell phone requirements, will VRE provide the recommended cell phone carriers due to service coverage issues in their territory they mention.

VRE prefers that AT&T and/or Verizon be used. Currently, conductors carry phones with Verizon service and the engineers carry phones with AT&T service.

47. Appendix No. 16, VRE Tool Inventory - There is no mention of the tradesmen's hand tools or tool boxes. Do the Tradesmen at Broad Run and Crossroads have their own tools or do the hand tools belong to VRE or some other entity?

As stated, VRE is turning over to the Contractor all of the tools on the list. If additional tools are required, it is up to the Contractor to determine how this should be accomplished.

48. Appendix No. 16, VRE Tool Inventory - If the tradesmen hand tools belong to VRE, how many tool box sets exist and what is the content of each trade type of tool set?

See answer to #47, above.

49. Appendix No. 16, VRE Tool Inventory - The tool inventory listings for Crossroads have a number of computer related items, yet there are none in the Broad Run list. Can the Contractor assume that everything listed at Crossroads is duplicated at Broad Run and visa versa?

The Tool Inventory is not an official inventory and was provided to assist offerors with operational planning. The list was designed to give offerors an order of magnitude of the type of tools that will be transferred to the Contractor. Offerors can generally assume that Broad Run has materials similar to what is listed for Crossroads, but the list will be reviewed carefully prior to turnover. All of the items on the Tool Inventory lists are also included in the official Inventory On Hand list.

50. Appendix No. 16, VRE Tool Inventory - In the warehouse tool inventory, are the tools listed part of the new inventory or are they already issued out to one of the shops, a project, a job or tradesmen?

See the answer to question #49. In addition, tool inventories listed as being in the yards, are, in fact, issued and in the yards and owned by VRE. Tool inventory listed in the Warehouse are either being used at that facility or available for issue, both signifying VRE ownership.

51. Appendix No. 16, VRE Tool Inventory - In the Broad Run tool inventory there are six (6) Whiting thirty-five (35) ton jacks listed, yet there are eight (8) at the facility. Where do the other two (2) belong?

See the answer to question #49. Additionally, there are currently six (6) jacks at Broad Run and 4 at Crossroads.

52. Appendix No. 16, VRE Tool Inventory - At Crossroads there is no listing of tools such as the Whiting Jacks. Is there a tool list missing for the Crossroads facility?

See answers to #49 and 51.

53. Appendix No. 16, VRE Tool Inventory - In the Broad Run tool inventory there are many references to a location "in Connex 841904". Is this the grey trailer on site?

Without being on-site, VRE cannot confirm which grey trailer the question is referring to. Please assume that the tools are available on-site.

54. Appendix No. 16, VRE Tool Inventory - If Connex 841904 is a trailer, will it be staying on site at Broad Run and will the Contractor have access and use of this trailer?

The trailer may remain on-site or be moved to the new engine house. Despite their location, they will be available to the Contractor.

55. Appendix No. 16, VRE Tool Inventory - If Connex 841904 is a trailer, is it leased? By whom and will the successful offeror have to assume the lease or is it owned by VRE?

Assume that all Connex boxes/containers are owned by VRE.

56. Appendix No. 16, VRE Tool Inventory - In the Broad Run tool inventory there are three (3) Golf carts listed. Is it to be taken that these are considered tools and not vehicles?

VRE considers them as tools for the purpose of record keeping.

57. Appendix No. 16, VRE Tool Inventory - Why are coach wheel sets listed with the tool inventories and not with material inventory?

See answer to question #49. The wheels are listed on the master inventory as an asset. VRE generally has a pool of 54 wheel sets, either on site or at the wheel vendor's shop.

58. Appendix No. 16, VRE Tool Inventory – During the site visit, blue lights, derails and wheel chocks were visible. The Offeror did not see these items included on the asset list. Do these items belong to VRE or the current Contractor?

See answer to question #49. Virtually everything seen on the site visit belongs to VRE, with the possible exception of the switch locks. These locks will be replaced by VRE on July 1, 2010, if necessary.

59. Section 2.4, Liquidated Damages - the current liquidated damages regime of the Contractor in section 2.4 is unlimited and presents an inordinate risk to the Contractor. In fleet operation and maintenance projects, it is the industry standard to have a monthly or an annual cap on the performance standards cap or to have a monthly or an annual cap on liquidated damages cap. The Offeror requests the following language to be added: "Performance standards' financial consequences assessed under this Contract will be limited to five percent (5%) of the annual Contract value. The above-mentioned financial consequences will be the Council's sole and exclusive remedy for the failures in reaching the performance standards stated in this contract."

No cap will be instituted. However, in the instance of a multi-penalty event, only the highest penalty will prevail, per train. As a point of reference, historical delay information back to 2006 can be found at www.vre.org/service/daily-download.html.

60. The Contractor's current liability under the General Terms and Conditions is not limited, presenting an inordinate risk to the Contractor and which may have an adverse impact on price. As it is common practice in the industry, the Offeror suggests capping the aggregate liability of the Contractor under the Contract to 100% of the total annual Contract price.

VRE does not intend to modify the RFP to provide the requested coverage by capping the aggregate liability.

Moreover, in no event shall the Contractor be liable for special, indirect, incidental or consequential damages, resulting from the Authority's performance, nonperformance, or delay in performance of its obligations under the Contract or the Authority's termination of the Contract with or without cause, or the Authority's suspension of the Services.

Section 39 of the General Terms and Conditions and Section 26.4.B of the RFP address this issue.

Furthermore, nothing in this section states the liability of VRE in regards to its act, omission or negligence. It is usual to have this type of clause mutual in the Agreement.

Section 39 of the General Terms and Conditions and Section 26.4.B of the RFP address this issue.

The Offeror suggests that VRE modify Section 39 of the General Terms and Conditions, as stated as follows:

~~“The Contractor shall not seek to hold liable the VRE, or any of its officers, agents and employees for any claims, judgments, losses, and expenses of any nature whatsoever arising out of the Contract or arising out of the activities funded in whole or in part by the Contract.~~

The Contractor shall defend, indemnify, save, and hold harmless the VRE, and its officers, agents and employees against all claims and liability, including costs and expenses, arising out of, in whole or in part, the acts or omissions of the Contractor or, the acts or omissions of the Contractor’s subcontractors, agents or employees. VRE shall defend, indemnify save and hold harmless the Contractor, and its agents, officers and employees against all claims and liability including all cost and expenses, arising out of, in all or in part, the acts or omission of VRE, its agents or employees. The foregoing obligation shall survive termination of this Agreement with respect to liabilities arising during its term.

In no event shall the parties be liable for special, indirect, incidental or consequential damages, including loss of profits or revenue.

Notwithstanding anything to the contrary contained herein or in any other contractual document, the Contractor’s liability under the Agreement shall be limited to 100% of the annual Contract Price

The Contractor agrees to maintain adequate insurance in an amount and form herein specified and approved by VRE to protect VRE and its officer, agents and employees for liabilities arising out of the Contract.”

See above responses.

61. Section 25, Payment Bonds - The current RFP request a Payment Bond equal to the value of the subcontractor work, which will need to be obtained by the Contractor and included in its price for the proposal. Thus, such instrument will increase the cost of this project for VRE.

It is unusual to an Operation and Maintenance project to have an instrument of guarantee specifically to reassure the Customer that the Contractor will pay its subcontractor timely, since such subcontractors have no direct contractual relationship with the Customer and are not permitted to impose any liens on Customer’s assets.

Considering the nature of the project and risks associated thereto, and considering the historical and financial strength of the ultimate parent company that may control a given Contractor, the Offeror respectfully submits that such security requirements be modified to allow the Proponents to furnish, instead of Payment Bond, a Parent Company Guarantees from its ultimate parent company. Such Parent Company Guarantees would provide to VRE an equivalent protection and equivalent rights as Payment Bond, but would be less expensive to obtain for the Contractor and would consequently have a significant impact on the Contract price that would be beneficial to VRE.

VRE will modify the RFP to permit such alternative security in a form acceptable to VRE.

62. It is stated that the Contract shall not be assignable, sublet or transferable by the Contractor, in whole or in part, without prior consent of Authority. In regards to the Contractor business structure, we suggest that for an assignment to an affiliate a written notice from the Contractor should be sufficient.

The Offeror therefore respectfully suggests that VRE adds the following language:

“However, the Contract is assignable, sublet or transferable by the Contractor, in whole or in part, to an affiliate of the Contractor, with a prior written notice to VRE.”

VRE will not accept this language as VRE will want to review the specific affiliate to which the Contract might be assigned. In addition, VRE may require additional information as part of the review as well as provide conditions associated with any approval.

63. Is the current Quality Program at VRE certified ISO 9001?

No.

64. Is the current VRE Environmental Program certified under ISO 14001?

No.

65. Section 9.5.1, Backup and Disaster Recovery - Will VRE provide shared & secured (back up) solution for files (ex: network drive)?

VRE will not provide a backup solution for files that reside on the local hard drives to either the VRE owned equipment or Contractor owned equipment. VRE may provide limited networked data storage space on VRE's servers which are already configured with a backup solution. However, VRE will not be

responsible for any data loss due to any unforeseen problems. Limited space may be equivalent to 10 GB or less.

66. Section 9.4.4, Data Access - Will VRE allow the Contractor to download/transfer (interface) the information defined by both parties that will be required by the Contractor from VRE's systems for its own administration use?

The question is unclear. Data entry will be performed through the VRE management software called Micromain. Data reports will also be accessed or downloaded through Micromain. If VRE opts to provide network storage to the Contractor, the Contractor will be able to download and upload data to the network storage provided by VRE. No other data or application software will be accessed through any other means except for the Micromain interface.

67. Section 9.2.2.1, Network Protocol – Will VRE allow the Contractor to use its' own computers in the VRE working environment?

No other computers will be allowed to connect to the VRE servers through the frame relay circuit connection provided by VRE. VRE will provide desktops pre-installed with Micromain, Office Suite and Internet Explorer. VRE may provide temporary Internet access to Contractor laptops subject to the firewall settings and time limitations set and configured by VRE. The Contractor must be able to retrieve company email through the Internet using webmail (i.e. Outlook Web Access).

68. Section 9.2.2.4, Availability of Service – Will VRE allow the Contractor to get its' own internet connection installed if needed?

The Contractor may order and pay for their own Internet service at their own expense. However, Contractor is responsible for anything that the Internet service provider may need to provide the service at the location. The Contractor may not use existing infrastructure (i.e. phone lines, conduits, buried cables, etc.) for this purpose.

69. Section 9.3.1, Software Provided by the VRE - Will VRE allow the Contractor to conduct an audit of VRE systems/installations? (Micromain etc...)

The Contractor may perform an audit of the software and the hardware specifications of equipment provided by VRE for inventory and evaluation purposes only. Licensing codes and service tags or any unique identification code for both the software and hardware may not be revealed or taken during this audit. VRE reserves the right to be notified five (5) days prior to the actual audit so that we may schedule a VRE staff member to supervise the audit. A member of the VRE IT staff must be present during the audit.

70. Section 3.2.1, Annual Budget - Is the CPI-U for all items or is it restricted to a particular "Expenditure Category" or particular Area?

The CPI-U for the U.S. for all items will be used.

71. VRE recently awarded a Contract to Touchton Industries for air brake component rebuild. Will VRE continue this Contract beyond its present expiry date or will the Contractor need to determine the relevance of this Contract upon its expiry and either continue or procure a new Contractor for this work?

This function is one that VRE intends to retain. It was inadvertently left off of the list in Appendix #3, as was Cardiac Science, the vendor who maintains VRE's AEDs and provides blood borne pathogen awareness training for our contractor's cleaners as well as first aid and AED training for the VRE staff. Offerors shall anticipate providing their own program for training T&E personnel.

72. Is the Contractor expected to continue any of the present VRE subcontracts?

See answer to question #71, as well as Appendix #3.

73. Are there any spare Caterpillar auxiliary engines for the MPI locomotives?

There is a spare Cummins HEP and will be a spare Cat HEP by July 1, 2010.

74. How many spare Caterpillar and Cummins auxiliary engines and generators are there?

See answer to question #73.

75. What are the present hours on the auxiliary engines and what is the nominal rebuild hour range that VRE accepts for rebuilding?

HEPs were installed between 1990-1994 and rebuilt in 2004. VRE's policy is seven (7) years for top deck, 14 years for mid-life rebuild (diesel, generator, and cabinets). VRE HEPs operate about 4,160 hours per year under current circumstances. In the most recent 15 month period, VRE experienced 60 HEP problems that resulted in 31 delays for a variety of reasons.

76. Where are the spare auxiliary generator sets presently stored?

The Cummins is stored at Crossroads in a Connex box. The Cat will likely be similarly stored at Broad Run.

77. Appendix No. 16, VRE Tool Inventory - There is no mention of single car testers, does VRE own any and if so, how many?

VRE owns three (3), one (1) for each yard and one (1) for rotation for certification.

78. In Appendix No. 16, VRE Tool Inventory - There is no mention of cab signal test equipment in the tool inventory. Does VRE own this equipment, how many sets and where is it located?

VRE has one (1) loop tester at each yard. Higher level diagnostic testing is performed through software in our maintenance laptops for the cab cars and new locomotives. Cab signal equipment in the current locomotive fleet is swapped when a failure occurs.

79. Section 5.6.7, Facility Maintenance Plan, Other - Can VRE provide track inspection and repair records for the yards?

Yes, upon selection of the successful Offeror. The records were checked for 2008 and no defects were noted. However, VRE is currently conducting a small capital improvement program to the yard tracks that will be completed in 2009.

80. Section 5.6.7, Facility Maintenance Plan, Other – This section requires the Contractor to make repairs as required to the tracks. Are there any constraints as to what work the Contractor can make without VRE approval?

All track repairs beyond switch adjustments must be approved by VRE via a Task Order.

81. Section 5.6, Facility Use and Maintenance – Can VRE provide the following Environmental Information for the facilities/Yards if available?

- a) Phase I Environmental Site Assessment completed by ASTM standards in past 6 months? Available for reference/review?
- b) Phase II or Remediation Data
- c) Compliance Assessment completed in the past 12-months? Are there current NOVs at the facilities or Consent Orders?

This information does not exist.

82. Section 11, Environmental Services - Are the facilities participants of the Virginia Environmental Excellence Program (VEEP)?

No.

83. Appendix 29, Permits and Plans Crossroads and Appendix 30, Permits and Plans Broad Run - SPDES permits were included only. Are there Air Permits available for review SPCC plans (number, location (underground or above ground), and types of oil storage)?

No air permits are available. All storage tanks are registered with DEQ.

84. Provide a listing of the tools in inventory that require calibration and the last date that this was performed.

Single car test devices and dead weight testers are re-certified at VRE's expense.

85. Appendix No. 16, VRE Tool Inventory – This section lists a VRE truck as a location but other than fork trucks there are no road vehicles listed.

- (a) Will this vehicle be available to the contractor?
- (b) If so, provide a description and is the Contractor responsible for the maintenance of it?
- (c) Is there one at each yard?

The truck mentioned is a coach truck. Other than fork lifts and golf carts, no vehicles are included in the transfer of tools/equipment.

86. Appendix No. 16, VRE Tool Inventory - There is no mention of furniture for the office at the materials warehouse in Broad Run. Will the current office furniture remain in place? Are there any lease agreements for the equipment in the office?

All furniture seen on the tours will remain in place for the Contractor's use and will become part of the inventory of items turned over to the Contractor. The only lease besides the building is for the copier which is addressed in question #42.

87. Will VRE provide the forms that are required to be included in the Submittal in Word?

VRE will not convert forms to Microsoft Word format. These forms must remain in PDF to avoid any modification to the language included in the forms.

88. Section 2.4, Penalties - The imposition of "Penalties" may be found illegal by the court in the United States jurisdiction. However, the Offeror recognizes that damages may be suffered by VRE in the event of defaults by the

Contractor. Therefore, the practice in the industry is for the parties to agree to reasonably establish such damages at a predetermined amount, which is referred to "Liquidated damages". Some of the current requirements of section 2.4 seems excessive. As a few examples; each HEP failure for \$1,000/locomotive/day, each Prime mover failure for \$1,500/locomotives/days, each Cancelled train for \$2,500/day. The Offeror respectfully requests that VRE further evaluates its estimated damages that would be suffered in the event of a specific default and revises the Liquidated Damages amount requested per event.

Moreover, the Offeror suggests that the section 2.4 that provides for liquidated damages shall only apply in the case of damages which are due to the Contractor. For clarification purposes, it should be mentioned that liquidated damages shall not be applicable when the damages is due to a suspension, extension, change order, an act of a third party or an excusable delay.

The Offeror respectfully suggests that the following language be added, as the first paragraph of section 2.4:

"The Contractor shall pay Liquidated damages as stated in this section 2.4. In the event that the damage occurs is due to a suspension, extension, change order or an excusable delay the Contractor shall not pay such Liquidated Damages."

The term "penalties" will be replaced with liquidated damages via an Addendum. VRE has estimated its damages for the various instances and the stated amounts reflect those damages. The force majeure provisions in section 2.10 of the Special Conditions should be sufficient to excuse the Contractor from damages in appropriate situations.

89. Section 14 General Conditions for Offerors - the termination for default procedure should contain notice requirements with a minimum delay to cure, which equitably will provide the Contractor with the opportunity to take steps to remedy its default. The Offeror believes that to allow VRE to terminate the Contract without first providing the Contractor with a reasonable period of time to take steps to remedy its default would deprive the Contractor of its right to fundamental fairness, and would create insecurity in the relationship between the parties and could therefore jeopardize the successful performance of the Work.

Moreover, for similar reasons, a default that entitles the parties to terminate the Contract shall have a significant impact and we suggest that it should be referred as "a material breach of the contract".

As stated above and in accordance with industry practices, the Contractor shall be given the opportunity to cure the default. Time to cure the default

should at least be thirty (30) days or, if not curable within said delay, reasonable steps to substantially cure the default shall be taken during such time period.

The Offeror proposed the following language to modify this Section 14:

“Either Party may terminate the Contract, without further obligation, for the default of the other party, or its agents or employees with respect to any agreement or provision contain herein, whenever the default caused a material breach to the Contract.

...The written notice shall specify the default, the material breach and the expected effective-date of termination and shall be delivered to the Contractor at a minimum of thirty (30) days prior the expected effective-date of termination.

The Contractor shall have the right to cure the default within thirty (30) days or, and thereby avoid the termination.”

VRE will not modify its RFP as requested. Historically, VRE has not exercised termination rights except where the failure to perform relates to a significant contract obligation. VRE has always permitted reasonable periods to correct instances of noncompliance.

90. Section 2.5, Service Changes -, considering that the project may extend over a period of fifteen (15) years, many unforeseeable events and changes could occur. We suggest to include in the contract a process in the event of an *Extraordinary Change*. This will reduce the risk of dispute and increase the clarity of the contract. In addition to the Service Change stated in section 2.5 of the RFP, this project could be subject to other changes, such as; Change in law, change in reporting, change in the labor relation.

The Offeror respectfully submitted the following language to be added, as a new section following the section 2.5:

(a) If, during the Term, a Party is of the view that an Extraordinary Change has occurred, that Party shall have the right to initiate a contract modification, pursuant to and in accordance with this section. For the purposes of this Section, the term “Extraordinary Change” means a change which impacts the character of the Services or which has or could reasonably be expected to have a impact on the performance of the Services, and which change could not have been contemplated at the time of the RFP Submission. An Extraordinary Change may include:

(A) a change, imposed by VRE, any Railway or a Governmental Authority to the training or qualifications requirements,

(B) a change in the workforce's governing labour relations.

(C) a change in Applicable Law or the rules governing train operations and commuter operations in United States (as described in Section 1.7), or

(D) the imposition by VRE or a Governmental Authority of a different service or reporting requirement. For greater certainty, an "Extraordinary Change" shall not include a Service Change.

(b) A Party shall not be responsible for, and shall have no obligation to agree to a change to the Contract Price, if or to the extent that:

(i) the Extraordinary Change could have been prevented by means reasonably available to the initiating Party;

(ii) the initiating Party did not take reasonable steps to mitigate the impacts of the Extraordinary Change; or

(iii) the Extraordinary Change was the direct or indirect result of the negligence or willful misconduct of, or breach of contract by, the initiating Party.

(c) All Extraordinary Changes shall be assessed and implemented in accordance with the provisions of this Section.

(d) A Party shall initiate a request pursuant to this Section by submitting to the other Party a notice in writing containing sufficient detail to enable the other Party to evaluate the request, including:

(i) a description of the change in reasonable detail, including the reasons why it requires a Contract Change;

(ii) the impact of the change on the Services;

(iii) the date from which the change impacts the Agreement;

(iv) any additional costs associated with the change; and

(v) all steps taken by the initiating Party to mitigate the impact of the change.

The other Party shall provide an initial response to any request initiated pursuant to this Section within fifteen (15) days of receipt of such notice in writing, and shall provide a definitive response within thirty (30) days of receipt of such notice in writing. In the event that the other Party does not accept the contract modification request, the Parties shall initiate further discussions and negotiations.

(e) Any contract modifications agreed by the Parties pursuant to this Section shall be documented in a formal amendment to the Contract and executed by an authorized representative of each Party. Notwithstanding the foregoing, the Parties acknowledge and agree that the service impacts of an Extraordinary Change may require implementation prior to the execution of a formal amendment to the Contract.

(f) In the event that the Parties are unable to come to agreement with respect to whether an Extraordinary Change has occurred, whether a contract modification is required, or what the impact of an Extraordinary Change (including any pricing changes resulting there from) should be, such disagreement shall be resolved in accordance with the dispute resolution process set out in the General Terms and Conditions section 12.

VRE will not modify its RFP as requested.

91. Are there pending time claims from any of the union organizations that the Contractor would become liable for if the claim was not settled prior to the Contract going into effect?

This question is unclear.

92. Are there pending FELA claims that the successful Contractor would become liable for if the claim was not settled prior to the Contract going into effect?

The Contractor will not be liable for any pending or unresolved FELA claims.

93. What is the potential financial liability for any unresolved Time or FELA claims, if any?

There is no potential financial liability for any unresolved FELA claims.

94. Are coach wheels picked up and delivered back to each of the VRE facilities or are they picked up and delivered to a central location from where they would need to be redirected to the correct facility?

They are drop-shipped by our vendor to each yard as directed by our Contractor. Bad order wheels are picked up at the same time at each yard.

95. Does the VRE supplied software include systems to record all of the operational data necessary for, and the production of, all of VRE's required reports, including (but not limited to), on time performance, delays, ridership, daily equipment lineup, consists, etc. If not, will VRE provide a full scope and definition of any software that the Contractor is expected to provide for this, including all of the relevant business rules, the number of VRE users etc

Many of these reports are currently provided through Word or Excel. VRE will provide the Operating System, Microsoft Office Suite and Micromain for all reports. For other options, please see answer to question #17.

96. Is there any requirement for the interface of information between the Contractor's administrative systems (including crew management and time/payroll) and VRE supplied software? Will VRE provide full details?

If you are referring to being able to access an application owned and managed by the Contractor using VRE supplied desktop, VRE will not allow any other software client to run on our desktops. If the Contractor would like to use their own equipment, they must also provide their own secured communication circuit between nodes (remote location to office). VRE will not provide the Internet for this purpose.

97. Does VRE require the Contractors crew management and time/payroll administration systems to reside on VREs own server? Or in Virginia? If it is to reside on VRE server, will VRE provide full details of the current equipment and capabilities/capacity available, support arrangements etc?

VRE is not currently, and will not in the future, provide any service or equipment of any sort for the Contractor to run their crew management and time/payroll administration systems.

98. Will VRE provide full details of its TRIP computer system? If it is to be used by the Contractors staff, will training be supplied by VRE at no cost to the Contractor?

The TRIP system is a software package developed exclusively for VRE that monitors the trains' movements through cell modems located in each locomotive. With the software, VRE can also program announcements to play through the station variable message signs and/or over the public address system.

It is envisioned that the operation of the TRIP system will remain with the VRE Communications Room staff. The Contractor staff working in the Communications Room will be trained on its basic use by VRE personnel.

99. Is there any requirement for data migration from VRE's systems (or any other systems) to the Contractors systems (e.g. historical performance information)? Describe any requirements in full including the amount of data and who will be responsible for extracting the information and preparing into a suitable format/content for migration to the Contractors system.

Reports will be extracted using the Micromain work management system. Desktops provided by VRE will be equipped with Micromain and a secure

connection to VRE HQ where all Micromain data resides. This is the extent of the data output from the server. Data will not be extracted by VRE for the Contractor in any other format other than Micromain reports.

100. Is there any requirement for the Contractor to supply a system to record and report on vehicle and train mileage e.g. for vehicle maintenance purposes or track usage payments? Will VRE provide full details as well as the relevant business rules?

Micromain does not have the ability to keep track of vehicle mileage. However, the Contractor is required to maintain mileage records for all locomotives and coaches, hours for locomotives and HEP's, and mileage records for wheel sets. As such, the Contractor must supply software for these records. Track usage payments are made by VRE based on known track mileage and number of trains operated.

101. It is modern IS industry practice for software to be provided as a service. Will VRE confirm that this approach is acceptable for systems that are supplied by the Contractor

The Contractor must provide their own equipment and internet service to be able to use software as a service or cloud computing.

102. Section C.2, under "Notices for Offerors", page 12R, is ambiguous. That section states that proposals will only be accepted from "those Offerors who are represented" at the pre-proposal meeting and site visits. The Offeror may submit a proposal under the name of a subsidiary. Will VRE clarify that a subsidiary of a party represented at the pre-proposal meeting and site visits may submit a proposal.

This is acceptable provided the Offeror can verify that the submitting Offeror is a subsidiary of the entity that attended the pre-proposal meeting and site visits.