

103. Section 2.8, Criminal Background Check - The section appears to require (a) a criminal background check on all “Contractor Personnel”, (b) the criminal background check to cover the five (5) year period immediately prior to the date hereof, and (c) the provision of the background check to VRE upon request. (See also Section 2.7, pursuant to which VRE seeks access to a variety of personnel records, including background checks, which are likely to be protected against disclosure by collective bargaining agreements or Federal or State law.) The Offeror requests clarification that the term “Contractor Personnel” refers only to persons actually providing services to VRE pursuant to the RFP. The Offeror further requests clarification that such background check be conducted only on new Contractor Personnel hired to perform services to VRE pursuant to the RFP (as personnel hired by the Offeror had to undergo a background check upon being initially hired by the Offeror). Finally, the Offeror requests clarification that the background checks will only be provided to VRE if permitted pursuant to the Offeror’s collective bargaining agreements, Federal and State law.

Contractor Personnel include any staff whose time will be invoiced to VRE, including service providers and management. Background checks for these employees, covering the period of the date hereof to five years prior, must be made available upon request by VRE, regardless of when an employee was hired by the Offeror. VRE is not aware of any federal or state law that would prevent this request from being honored, particularly if a release is obtained from the employee.

104. Section 2.10.2, Labor Disputes - The section appears to remove from consideration as “an event beyond the Contractor’s control” a strike, work stoppage or other labor dispute “if the Contractor fails to ... pursue other means of ending such strike, work stoppage or labor dispute after the court or administrative agency initially denies Contractor’s request for such order,” regardless of whether the strike, work stoppage or other labor dispute is one that was initiated or continued by Contractor’s employees. The Offeror makes specific reference to the fact that VRE’s operations are those taking place on the property of CSXT, NSR and Amtrak. Further, the Offeror notes that Section 2.15.1.B, Picketing or Other Disruptions, provides that the Contractor shall indemnify and reimburse VRE for expenses incurred by VRE in its efforts to terminate certain covered picketing or disruption. The Offeror notes that it may not have the legal right to terminate such covered picketing or disruption if brought about as a result of political or other actions of VRE. The Offeror proposes that VRE clarify that Section 2.10.2, Labor Disputes applies only to the taking of reasonable commercial means to end a strike, work stoppage or labor dispute of Contractor’s own employees or those of its Subcontractors, in each case with reference to that is within the Contractor’s or Subcontractor’s power to end, and that VRE clarify Section 2.15.1.B to require indemnification only for the same.

VRE does not conclude revisions to section 2.10.2 are necessary as the current language adequately addresses the circumstances described above.

105. Section 6.5.2, VRE Provided Training. -The section requires that train operations department personnel are available for VRE training in at least five (5) different subjects. Clarify the number of days each year each train operations department employee must be made available for training.

The training schedule is at the discretion of the Contractor. Many of the training listed in 6.5.2 can be completed in a quick amount of time (around 1 hour each) and can likely be combined with other yearly training and qualification classes.

106. Section 5.9.5.E, Technical Training - requires a “mechanical person who is also qualified to operate locomotives for switching cars in and out of consists and at all other times that switching activities are required.” Clarify that the new Contractor may fulfill this obligation by having available an individual who is so qualified, but who is not necessarily a mechanical person.

This obligation should be fulfilled such that the mechanical person is “available” while also performing other duties. This individual must be qualified by FRA standards to conduct operations within the VRE yards.

107. Section 26.4.B, Indemnification of Contactor by VRE – This section requires the Contractor to indemnify VRE for “all claims arising out of the Contract services with a value up to five (5) million dollars...” state whether the five (5) million dollar limit applies to each individual claimant, each occurrence or is an annual aggregate amount.

The indemnification limit applies to each claim irrespective of any insurance limits.

108. Section 26.4.C, Indemnification of Contractor by VRE - This section states that VRE shall indemnify the Contractor “for all claims arising out of the Contract services in excess of five (5) million dollars up to a total annual aggregate value of two hundred and fifty (250) million dollars.” State whether the five (5) million dollar threshold for indemnification by VRE applies to each individual claimant, each occurrence or is an annual aggregate amount. State whether the indemnification applies to claims:

(a) originally valued to exceed \$5 million (and thus investigated and managed by VRE) regardless of the final payment value;

(b) originally valued to exceed, and final payment value actually exceeds, \$5 million; or

(c) with a final payment value in excess of \$5 million, regardless of its original valuation.

The \$5 million threshold applies to each claim, meaning that item (c) above is correct.

109. Section 26.4, Indemnification of Contractor by VRE - In order to evaluate potential exposure for liability of the Contractor, will VRE provide the following claims history information for each claim arising in calendar years 2004 through 2008 inclusive:

- a) Name of claimant
- b) Place of residence of claimant (city and state)
- c) Date of occurrence
- d) Location of occurrence
- e) Brief description of occurrence
- f) Class of claim (employee, passenger, trespasser, grade crossing collision, etc.)
- g) Suit filed? Y/N (and if yes, in what court)
- h) Disposition of claim (settled, verdict, etc.)
- i) Amount (if any) paid to claimant
- j) Amount paid for legal fees and expenses

Claims history is included in Attachment A herewith.

110. Section 26.4.C, Indemnification of Contractor by VRE - This section provides that "VRE shall indemnify the Contractor for all claims arising out of the Contract services in excess of 5 million dollars up to a total annual aggregate value of 250 million dollars." The Offeror assumes that the reference to 250 million is the current upper level of VRE's insurance coverage. Clarify that if VRE's insurance is reinstated, the VRE indemnification of the Contractor is similarly reinstated. If the foregoing clarification cannot be made, clarify that Contractor is relieved of its obligation to provide services until the VRE indemnification, supported by insurance, is reinstated. Clarify VRE's indemnification obligations during the period between exhaustion of VRE's annual aggregate coverage and reinstatement.

VRE is able to provide indemnification only to the extent it carries insurance covering the indemnified risk. VRE carries a maximum coverage of \$250 million which is subject to reinstatement in the event the annual aggregate is exhausted or approaches exhaustion. The indemnification of the Contractor would be reinstated as well. In the event there is no reinstatement, the service would be suspended until it is reinstated.

111. Section 26, Indemnification of Contractor by VRE nor Section 59, General Terms and Conditions, Attachment H-1 – Neither section provides for self-insurance or self-insurance retentions for required insurance. Clarify that any or all of the required insurance coverage items may be provided through self-insurance and those provided through policies may have self-insurance retentions.

VRE will modify the RFP via an Addendum to permit self-insurance as an alternative to the required insurance provided it is in a form acceptable to VRE.

112. Section 20.2, Management Services – This section provides that the cost of insurance is to be included in the fixed price management fee. The cost of insurance is directly related to claims experience, both on property and operations being insured and on the universe of other but similar properties and similar operations. Clarify that any insurance coverage that is either required or optionally obtained by the Contractor can be separated out for reimbursement.

VRE will modify the RFP via an Addendum to provide that the cost of insurance is as reimbursable amount.

113. Section 26.5.D, Claims Services – This section notes that “all claims with a value anticipated to exceed five (5) million dollars shall be investigated and managed by VRE under the Commuter Rail Operations Liability Insurance Plan.” Clarify how claims are to be handled when revalued above or below this limit. Provide for review the Commuter Rail Operations Liability Insurance Plan.

VRE and the Contractor will communicate with each other throughout the administration of all claims. If the value of a claim is subsequently valued as above or below the \$5 million threshold, VRE and the Contractor will determine how to handle changes in the lead responsibility for investigation and management of the claim. A copy of the Plan is provided as Attachment B herewith.

114. Section 26.4.C, Indemnification of Contractor by VRE – This section refers to VRE’s Commuter Rail Operations Liability Insurance Plan. Will VRE provide this plan?

A copy of the Plan is provided as Attachment B herewith.

115. Section 25.C, Payment Bond – This section requires a payment bond in the amount of the value of the subcontracted work. The Offeror anticipates subcontracting work to an affiliate company. Does the value of the payment bond have to include the value of subcontract to that affiliate company?

Yes.

116. Section 2.6.1, Contractor’s Responsibilities - This section states that the Contractor would be financially and legally responsible for Section 13(c) claims “arising out of the Contract services,” it does not explain what “arising out of the Contract services” means. The natural reading would be that the Contractor would not be liable for Section 13(c) claims filed by any employees of previous contractors, such as Amtrak, due to the replacement of those Contractors’ employees with the employees of the Contractor, and would not be liable for Section 13(c) claims filed by VRE employees. Indeed, the natural reading would be that the Contractor would be liable only for the claims, if any, of its own employees and those of its subcontractors. Clarify that the natural reading, as set forth above, is what is meant by Section 2.6.1.

VRE finds the language to be clear.

117. Section 2.6.1, Contractor’s Responsibilities – This Section includes an indemnity by Contractor for claims “that may arise as a result of termination or the expiration without renewal of the Contract”. Clarify that the inclusion of this protection for VRE does not reflect any VRE belief or experience that Contract termination or expiration will produce or result in valid Section 13(c) claims.

VRE does not believe that 13(c) claims of any merit will result from the Contract termination or expiration.

118. Section 2.6.1, Contractor’s Responsibilities - Clarify that the indemnification described in this section refers only to an indemnification to the extent such claims would be available under current law or Department of Labor practice.

Any claim would have to have a valid legal basis.

119. Confirm whether the current agreement(s) pursuant to which Amtrak and other Contractors are currently performing will Contract Services contain provisions allocating Section 13(c) liability, and, if so, will VRE provide said agreement(s)?

See answer to question #21.

120. Section 2.6.1, Contractor's Responsibilities - Section 13(c) liability potentially could arise during the Contract term due to actions undertaken by VRE without the knowledge or concurrence of the Contractor, particularly as to the acceptance of public funding that institutes efficiencies or modifications of those Contract Services. Clarify that such Section 13(c) liabilities would not be covered by the provisions of this section, and that these liabilities would instead be the responsibility of VRE.

The Contractor's 13(c) liability arises out of the actions of the Contractor.

121. Have VRE, Amtrak or other Contractors received or paid Section 13(c) claims based on what will be Contract Services during the last five years? If yes, will VRE set out the amounts paid and describe the circumstances of the claims and payments?

There have been no section 13(c) claims during the last five (5) years.

122. If VRE determines not to provide one or more of the clarifications set forth above, will VRE provide sufficient information (wages, hours, and terms of service) for all persons (other than Contractor employees or its contractors' employees) that could submit a claim sought to be covered by the indemnification in Section 2.6.1.

Since VRE has responded to all of the foregoing questions, no additional response is required.

123. Identify all financial assistance VRE or its Contractors have received in the last five years, or that VRE expects to be received in future, which would or could trigger a requirement for a Section 13(c) arrangement or agreement.

VRE receives approximately \$27 million of federal funding on an annual basis. Receipt of this funding triggers 13(c) regulations.

124. Section 2.13.F, Right to Subcontract - The Offeror is a team consisting of two (2) established companies. One of the team members would supply the Contract Manager, who would also be the General Manager. That General Manager desires to maintain his employment with his current (and long-time) employer. Clarify that the assignment of an employee of one of the team to be the Contract Manager/General Manager would not be "subcontracting" the role of Contract Manager in violation of this section.

This question was interpreted by VRE staff in two different ways so answers to both options will be addressed.

a) If the question asks if the Contract Manager/General Manager can continue in a current position while taking on the additional responsibilities of the

Contract Manager/General Manager, the answer is no. This is a full time job and the employee must be dedicated to working VRE service and not another job for the Contractor.

b) If the question asks if the Contract Manager/General Manager can still be an employee of the current employer and not of the subsidiary, the answer is yes, provided the Contract Manager/General Manager is only performing work associated with this Contract.

125. Section 1.8, Definitions -

- (a) Clarify the roles of the Contract Administration Manager and the Contracting Officer.

The Contract Administration Manager is responsible for the day to day management of the procurement process and Contract and serves as the point of contact throughout the procurement.

In addition, the Contract Administration Manger reviews proposals for completeness and administrative compliance; ensures bond and insurance requirements have been completed; manages contract execution; coordinates contract amendments; ensures retainage and final payments have been resolved prior to contract closeout; and other contract administration matters.

The Contracting Officer is the only individual authorized to sign and enter into a contract on behalf of VRE; revise the Contract terms and conditions, scope of services, schedule and value; and commit or obligate VRE for the expenditure of federal/public funds.

- (b) Which position would be the Contractor's key contact for Contract matters?

The Contract Administration Manager is the key contact.

126. Section 2.4, Penalties – Will penalties be charged against the Contractor due to any delays or problems arising from VRE-provided computer, internet and network systems?

If there is a delay or situation that warrants a penalty (per section 2.4), it will be imposed regardless of the ultimate cause. It is the Contractor's duty to ensure that all systems are working as needed and to resolve the issue before it becomes a problem. However, if computer, internet, and/or network system issues interfere with a reporting requirement, VRE will accept a verbal or handwritten report until a formal electronic report can be submitted.

127. Section 2.4.2.A, Other Maintenance Penalties – The Offeror requests that the phrase “directly due to Contractor’s failure to properly maintain” be inserted after “mechanical failures.”

VRE cannot agree to this change.

128. Section 2.4.4.C, Other Penalties - The Offeror requests that the phrase “directly due to Contractor’s failure to properly maintain” be inserted after “mechanical failure.”

VRE cannot agree to this change.

129. Section 2.6.1, Contractor’s Responsibilities -

- (a) The requirement for Contractor to assume all 13(c) liability, even as a result of a termination of the Contract for VRE’s convenience or as a result of the normal expiration of the Contract appears to be an unreasonable requirement. The Offeror requests that VRE consider limiting Contractor’s 13(c) liability only to those affirmative acts by Contractor which result in a 13(c) impact during the contract period.

VRE will not modify its RFP as requested, as the current language sufficiently addresses the concern.

- (b) In addition, will VRE provide copies of any VRE 13(c) labor agreements?

VRE has no 13(c) labor agreements.

130. Section 2.7, Availability of Employee Records – The Offeror requests that VRE modify Section 2.7, by inserting “and consistent with any confidentiality or legal restrictions,” before “Upon request of VRE” in line 1.

See answer to question #215.

131. Section 2.8, Criminal Background Check -

- (a) “Contractor Personnel” is not a defined term. Clarify whether this requirement applies to all employees of Contractor, or just those assigned to the Contract?

See answer to question #103.

- (b) Provide a description of VRE’s policies and practices with regard to criminal background checks and how VRE applies the results of background checks to its employment decisions.

VRE's personnel policies are not relevant.

132. Section 2.10.3, Weather Conditions Not Force Majeure Events -

- (a) This provision states that conditions caused by a storm or other weather condition shall not constitute an event beyond the Parties' control and shall not be the basis for excuse. The provision further states that the obligations of the Parties in the event of a storm or other weather condition shall be in accordance with the provisions of the Contract services. If a "condition" caused by a storm includes track or facility outages which are beyond the control of the Contractor (e.g., a track outage on a host railroad's right of way caused by a storm or other weather condition), would VRE consider such conditions a force majeure?

Weather in and of itself is not a force majeure event. However, if weather causes a condition to arise, such as track or facility outages, that prevents the Contractor from performing contract duties then the failure to perform will likely be excused.

- (b) Will VRE consider deleting Section 2.10.3 and expanding Section 2.10.1, General examples to include traditional force majeure events such as storms and other weather conditions, terrorism, etc?

VRE will not modify the RFP as requested.

133. Section 2.13.F, Right to Subcontract -

- (a) Clarify whether the reference to "Contract Manager" is meant to be the "General Manager" referenced in Sections 6 and 7?

VRE will modify the RFP via an Addendum to delete "Contract Manager" and replace with "General Manager".

- (b) Further, VRE disclaims any liability for termination of a subcontractor, but there should be an exception to this disclaimer if VRE requires such termination.

VRE will not make an exception to this disclaimer.

134. Section 2.15.1.B, Picketing and Other Labor Disputes – Will VRE consider deleting this provision requiring Contractor to indemnify VRE for any legal expense incurred should Contractor fail to terminate any picketing or disruption within six hours of such request from VRE?

VRE will not modify the RFP as requested.

135. Section 2.18, Termination for Default – This provision states that any en route failures of VRE trains caused by the Contractor's failure to meet the fueling schedules shall be a default and VRE shall have the right to immediately terminate the Contract with no opportunity to cure. However, Section 5.7, Warehouse, Materials, and Tool Management states that VRE will continue to manage the fuel supply under the Contract, and Section 5.5.5, General Oversight states that VRE fuel vendors will fuel the locomotives. Clarify the meaning of Section 2.18 as it appears to be unreasonable to hold the Contractor in default for VRE's (or its fuel vendors') improper management of the fuel supply.

Section 2.18 will be deleted from the RFP via an addendum.

136. Section 5.1, General – VRE maintains a warehouse in Manassas, near the Broad Run Yard, for all inventory that supports its rolling stock. The current VRE warehouse contains inventory to support the car fleet, but not the locomotive fleet. Clarify whether it is the intent of VRE to use the Manassas warehouse for locomotive inventory as well as car inventory, and if so, identify what the expected locomotive inventory will be at the start of the Contract.

See answer to question #24.

137. Section 5.1.1.G, Objectives – Currently, a VRE security force monitors and controls access to the VRE yards. Is the intent for Contractor to take over that responsibility, or will VRE security forces still actively monitor and control access to the VRE yards?

VRE shall maintain control of the Contract for security forces.

138. Section 5.1.1.O, Objectives –

- (a) Clarify how VRE intends to coordinate with Contractor regarding Contractor's oversight and management of third party VRE contractors relating to operations or equipment maintenance within VRE yards.

As stated in Section 5.5.5 of the RFP, VRE will hold the contractual relationship with the third party contractors. However, the Contractor is responsible for the oversight and management of these contracts. If issues arise that could negatively affect service, the Contractor must take whatever actions are necessary to insure train operations as well as inform VRE of such actions.

- (b) Further, it is not clear what specific operations or equipment maintenance items will be retained by VRE (and contracted to separate third party VRE contractors). Identify those operating or equipment maintenance items being contracted by VRE to third parties.

See answers to questions #71 & #72.

139. Section 5.3, Performance Requirements – Explain why the Contractor should be fully liable for cost of repairs to rolling stock and facilities due to damage beyond usual wear and tear; what if repairs are not due to the Contractor’s fault or negligence?

The default presumption will be that the Contractor caused the damage. The burden of proof is on the Contractor to demonstrate to VRE that they are not responsible for such damage.

140. Section 5.3 Performance Requirements – The current VRE facilities and most of the rolling stock are aging and in need of major overhaul or replacement. As such, proper maintenance of the rolling stock and facilities may not be enough to consistently meet the reliability and availability expectations of the parties.

The Offeror recommends the following provision be added to the Contract:

“Contractor shall, on an annual basis, submit to VRE a report titled ‘Recommendations for VRE Facility and Rolling Stock Recapitalization’ which shall detail the Recapitalization Projects that Contractor recommends VRE should fund and undertake in each year following the date of the report. In the event VRE fails to secure funding for and undertake suggested Recapitalization Projects in any given year, Contractor shall be relieved from the liability obligations set forth in Sections 5.3.1 and 5.3.2, and from any assessments for performance failures set forth in Section 2.4.1. Should VRE fail to secure full funding for and undertake the suggested Recapitalization Projects relating to VRE facilities for a period of two consecutive years, and such failure causes Contractor’s costs for facility maintenance services to materially increase, the Contractor may terminate the Contract pursuant to Section 14 of the General Terms and Conditions.”

VRE does not agree that “the current VRE facilities and most of the rolling stock are aging and in need of major overhaul or replacement” given that the overwhelming majority of the railcars are new, twelve new locomotives are on order, and the yard facilities are new. While VRE welcomes the Contractor’s suggestions regarding capital projects, VRE controls the process and no changes will be made to the RFP.

The Contractor is expected to keep all equipment running reliably and yard facilities in a state of good repair.

141. Section 5.4.2.F, VRE Responsibility – The Offeror requests that VRE consider adding relief provisions should VRE fail to meet parts and consumable delivery schedules or fail to approve the Contractor purchase orders for parts and material orders within 15 calendar days of receipt.

Since the Contractor controls inventory, there will be no relief in this area. VRE suggests ordering the parts with an appropriate lead time.

142. Section 5.5.1.A, Overview – The last sentence in this subsection states that “Spare equipment shall be ready, if required, for revenue service in support of the passenger train schedule and in compliance with all other requirements of this Contract.” Will the Contract specify an out-of-service (or spare) ratio as a performance measure?

VRE’s policy is a 20% spare ratio for older equipment (existing locomotives and Pullman Gallery cars) and a 10% spare ration for new equipment (Motive Power locomotives and Nippon Sharyo Gallery cars).

143. Section 5.5.1.C, Overview – Currently, there are no ground power and yard air facilities available at the L’Enfant Station storage track. Clarify whether VRE intends to have such facilities available by Contract inception.

Yes.

144. Section 5.5.4.A.2, Equipment – Note that there appears to be an incorrect quantity for the Sumitomo Gallery Trailers (Car Numbers V850-V869). There should be 20 cars noted, rather than 30 cars.

By the time this contract commences, the subject cars will be on the property.

145. Section 5.5.6.D.16, Inspections & Servicing – Currently, VRE contracts directly with a third party for AED inspections. Is the intent for the Contractor to subcontract this task under the new Contract?

See answer to question #71.

146. Section 5.5.8.B, Running Repairs -

(a) The provision requires switching out of a bad order vehicle to be performed using mechanical staff with all of the required qualifications to function as the locomotive engineer to accomplish the task. This requirement may be inconsistent with labor agreements. Will VRE

insert “to the extent allowable under Contractor’s labor agreements” after “accomplish this task” in the second-to-last line.

It is Contractor’s obligation to negotiate union contracts that conform to the VRE requirement.

- (b) Also, explain why all switching activities must be completed before midnight? This would prevent any shopping of cars after midnight.

The midnight requirement places the burden on the Contractor to perform meaningful, comprehensive inspections prior to midnight to avoid surprises after that time.

- 147. Section 5.5.10, Heavy Repairs – This provision requires the Contractor to perform Heavy Repairs at a site off VRE property. Does this mean that the Contractor is responsible for identifying a Heavy Repair site or will VRE negotiate access to a site for such Heavy Repair work to be performed by the Contractor?

The Contractor shall identify such a site and create the contractual relationship with the site owner.

- 148. Section 5.5.11.B, Cleaning of Rolling Stock – There appears to be an inconsistency relating to the scope of service. Section 5.5.11.B requires coach cleaning during the midday. However, midday trains stored at Washington Union Terminal will be cleaned by Amtrak pursuant the separate access agreement described in Section 1.4. The Offeror suggests clarifying Section 5.5.11.B by replacing “at midday” with “for those coach cars being stored midday at L’Enfant Station” in line 1.

The Contractor is responsible for mid-day cleaning of those train sets for which they have access. The cleaning of any trains stored mid-day at Washington Union Terminal will be the responsibility of VRE.

- 149. Section 5.5.11.C, Cleaning of Rolling Stock – There is currently no car wash facility at the Broad Run yard and the car wash facility at Crossroads is shut down. Clarify whether VRE intends to have such facilities available and in good working order by Contract inception.

The Crossroads car wash is now functioning and the Broad Run car wash is expected to be in service by July 1, 2010. Offerors should price their proposal as though both washers are in place and operational.

- 150. Section 5.6.1.A and 5.6.1.B, List of Facilities -

- (a) What are the specific limits of maintenance, especially regarding maintenance of way responsibilities (e.g., the clearance point from the siding switch or the fence perimeter)?

At Crossroads, CSX maintains the lead from the IJ for the signal, at the south end of the lead, through the Virginia Avenue Interlocking in Washington. At Broad Run, VRE maintenance begins at the IJ for the signal that controls access to the Norfolk Southern main track.

- (b) What are the physical characteristics and condition of yard tracks?

It shall be the Contractors responsibility to designate the classification of the yards to accomplish functions required by VRE. See Appendix #1 for the yard lay-out for both yards.

- (c) Will VRE provide maintenance of way inspection reports.

All track inspection reports will be made available to the successful Offeror. All proposers should assume that both yards and the Broad Run lead are fully compliant with FRA track requirements for yard (and passenger) tracks for restricted speed operations.

151. Section 5.6.7.A, Other – This provision requires that the Contractor will be responsible for service contracts not specifically indicated as being supplied by VRE, and provides some examples. Specify what service Contracts VRE will retain and what service Contracts the Contractor will be required to supply.

See answer to questions #71 and #72.

152. Section 5.6.7.C, Other – Does VRE intend to furnish track material or should the Offeror assume that the Contractor will procure any necessary track material?

All rail and OTM required for maintenance and repairs shall be purchased through VRE prescribed purchasing procedures. VRE currently maintains an inventory of track and OTM.

153. Section 5.7.E, Warehouse, Materials and Tool Management – Clarify specifically those elements of the inventory that VRE will purchase and/or manage directly.

VRE pays for all inventory. Replacement of current tools shall be at the Contractor's expense. The only support items that VRE intends to purchase would be the replacement, if necessary, of any fixtures or assets listed in Appendix #17.

154. Section 5.9.2, Training. The current Contractor does not issue training certifications for all equipment listed. Can VRE clarify whether specific certifications are required for each type of equipment listed, or whether receipt of operator training will be sufficient to satisfy this requirement?

Except where otherwise required by regulatory agencies or law, records of training are sufficient.

155. Section 5.9.5, Technical Training. Should “CAR” be replaced with “CFR” throughout the Section?

In this section, any reference to “CAR” should be assumed to mean “CFR”. VRE will modify the RFP via an Addendum.

156. Section 5.9.5.E, Technical Training. Under existing labor agreements, switching cars in and out of consists is normally performed by yard crew whether within, or outside, the mechanical facility/yard. Large equipment operators can and do move locomotives within a mechanical facility/yard in connection with the performance of mechanical work. Having mechanical employees switching out cars for other than mechanical related maintenance (to make up train consist, for example), will be a work jurisdiction problem under the Offeror’s labor agreements.

- (a) Therefore, what is VRE’s expectation of which craft will perform such work?

See answer to question #146(a).

- (b) Will VRE insert “To the extent allowable under Contractor’s labor agreements” before “the Contractor shall have available” in line 1?

See answer to question #146(a).

157. Section 5.9.6.D, Safety Training. This provision specifies that yard safety training is to be provided by the Contractor to other VRE contractors and vendors. Can VRE provide an estimated level of annual third party training Offerors are expected to assume under the Contract?

The requirement of the Contractor is to provide a one-time training event per vendor. All current vendors are trained and VRE will train the Contractor’s trainer.

158. Section 5.9.7.E.8, Employee Procedures Manual. Offeror’s employee benefits program is addressed through a separate, standalone communication source due to the complexity and the amount of information that must be provided. Confirm that it will be acceptable for the Employee Procedures Manual to

incorporate by reference other benefits materials provided by the Offeror to its employees.

A copy must be provided pursuant to the requirements of the RFP.

159. Section 5.9.9.B, Employee Discipline Process. Offeror proposes the following alternate language for Section 5.9.9.B:

“If requested by VRE, the Contractor will hold employees out of VRE service pending a disciplinary hearing into charges of conduct unbecoming an employee. If the hearing results in a finding of guilt, the employee shall be removed from VRE service. If the employee is returned to service as a result of the hearing, VRE will bear the cost of lost wages for an employee held out of VRE service when (1) VRE initiated the charge; and/or (2) an arbitrator rules the discipline assessed was excessive and awards back pay for time lost.”

Will VRE make this proposed change?

VRE will not modify the RFP as requested.

160. Section 5.9, Personnel/Staffing. Offeror requests the following provision be added to Section 5.9 as a new Section, 5.9.10:

“Nothing in this Contract will require the Contractor to perform any service or take any action that would violate any term or condition of any labor agreement between the Contractor and any organization representing the Contractor’s employees or applicable to the Contractor.”

Will VRE make this proposed change?

VRE will not modify the RFP as requested. See answer to question #146(a).

161. Section 6.1.1.E, Regularly Scheduled Commuter Service. Clarify whether VRE will follow the Service Changes process set forth in Section 2.5, should VRE decide to exercise its right to vary service days under Section 6.1.1.E.

Section 2.5 is designed to cover all aspects of the services of this contract, not just train operations. Changes in train schedules will follow the procedure set forth in 6.4.1. Any schedule changes will follow the procedure set out in 6.4.1. VRE expects that slight changes in the number of service days (per Section 6.1.1E) will not affect the price of the Contract.

162. Section 6.3.2.1.A.1, Operations Managers. Will VRE consider deleting the restriction for Operations Managers to reside in Virginia?

No.

163. Section 6.3.2.2.D.1, Transportation Managers. Will VRE consider deleting the restriction for Transportation Managers to reside in Virginia?

No.

164. Section 6.3.3.A.1, Train and Engine Crews (T&E). This provision requires a crew consist of one (1) engineer and one (1) conductor for trains with up to four (4) cars. Under the Offeror's current labor agreement with the UTU, an assistant conductor is added with the second car on a train. Under its current operating agreement with VRE, the Offeror approached the UTU, at VRE's request, to relax this crew consist rule for VRE for mid-day trains, but the UTU has refused. Will VRE consider inserting "to the extent allowable under Contractor's labor agreements" after "one (1) conductor" in line 1?

No.

165. Section 6.3.4.B, Conductor/Assistant Conductor Responsibilities. Will VRE consider further clarifying this provision by replacing "supplement their duties" with "observe their duties" in line 2?

No.

166. Section 6.3.4.C.7.b.v, Responsibilities During Delays. What is VRE's preferred protocol should the event occur on the last train of the day? Should the Contractor plan for alternate means of retrieving the crew member left behind?

VRE's preferred protocol is to incur as small of a delay as possible. If a medical emergency occurs on the last train and EMS has not arrived, the Contractor should plan on providing alternate transportation for that crew member.

167. Section 6.3.5.C.2, Locomotive Engineer Responsibilities. Clarify the inconsistency between Section 6.3.5.C.2 which restricts use of cell phones and Section 6.10.5 which requires the Contractor to provide cell phones to its locomotive engineers.

VRE recognizes that there are occasions when it may be appropriate for an engineer to make a call to 9-1-1. As a result, VRE would like engineers to have that capability. At the same, the Contractor must balance this provision with applicable regulations.

168. Section 6.3.5.C.4, Locomotive Engineer Responsibilities. There is no current provision for engineers' uniforms in existing labor agreements. Therefore, will

VRE insert “to the extent allowable under Contractor’s labor agreements” after “appropriate uniform” in line 1?

No.

169. Section 6.3.7.D.3.b, Other Transportation Related Duties. Placing trains on ground power is currently a mechanical labor union function. Will VRE consider mechanical union employees to provide this function? Also note that Amtrak will not permit train crews to perform this function at Washington Union Terminal.

The RFP merely requires that the crew be conversant with and particularly competent with the functions described in Section 6.3.7.D.3.b. It is the responsibility of the Contractor to discover the most cost effective means of accomplishing the work, not otherwise specifically required by VRE such as Section 6.3.7.D.3.c., which specifically states the crew requirements upon arrival at Ivy City. Any consideration of what Amtrak will or will not permit in Ivy City is a topic restricted to negotiations between Amtrak and VRE and not a matter for this RFP.

170. Section 6.3.7.E, Other Transportation Related Duties and Attachment H.1, General Terms and Conditions, Clause 60 – Provision for Flagman. Clarify in what context these flagging services would apply. Normally, host railroads perform their own flagging requirements.

See answer to question #16.

171. Section 6.4.1.A, Service Schedules. There appears to be an inconsistency between the second sentence in this Section, which refers to immediate changes, and the last sentence which refers to thirty (30) days advanced notice. Can VRE provide clarification?

VRE will make every effort to provide thirty (30) day notice for schedule changes. However, in today’s challenging financial market, VRE must allow for the possibility that the Operations Board may institute reductions in service that must be performed with less notice.

172. Section 6.4.5, Customer Service Survey. Is the Contractor responsible for performing the annual Customer Service Survey or will a third party contracted directly by VRE perform such survey?

VRE performs the survey. However, pursuant to 6.3.4C.3a, VRE expects contracted crew members to assist with the surveys on board the train (collect them as they walk through the train, make announcements, etc.)

173. Section 7.3.1.E.1, General Manager. Will VRE consider deleting the restriction for General Manager to reside in Virginia?

No.

174. Section 7.3.2.C, Other Key Personnel. Will VRE consider deleting the restriction for those holding the Senior Operations Manager, Operations Manager and Superintendent of Equipment positions to reside in Virginia?

No.

175. Section 7.5.1.F, Training Programs. This Section specifies that ten percent (10%) of the training slots shall be reserved for 'VRE contractors.' Can VRE provide an estimated level of annual third party training for all Offerors to assume under the Contract?

That sentence should read, "The Contractor shall reserve ten percent (10%) of the places in any Contractor-sponsored training program for VRE employees." VRE will modify the RFP via an Addendum.

176. Section 8.1, General. Can this Offeror's FRA approved System Safety Plan be adapted and used for VRE operations?

The Contractor may use any material at their disposal. However, the SSP must still be approved by VRE within the time frame stated in the RFP.

177. Section 8.4, Emergency Preparedness Plan. Can this Offeror's generic emergency response plan be used to meet the requirement of this Section?

The Contractor may use any material at their disposal. However, the ERP must still be approved by VRE within the time frame stated in the RFP.

178. Section 8.9.2.A, Drug and Alcohol Testing Requirements. Clarify whether VRE intends the drug and alcohol testing programs described in this Section to apply only to hours-of-service employees (as provided in 49 CFR Part 219) or whether the programs are also to apply to all employees involved in the performance of this Contract.

The Drug and Alcohol testing requirements apply to all employees involved in the performance of the Contract.

179. Section 9.3.1.A, Software Provided by VRE. This Section states that the Contractor shall use "VRE supplied software or current work management software." Describe what VRE means by the "current work management software."

VRE is currently using Micromain for work management software. In addition, VRE is currently providing Windows XP and Office 2003 as pre-installed applications on all VRE provided desktops.

180. Section 10.9, Equipment and Vehicles.

- (a) The Cost Proposal and Schedule of Prices (Attachment H.2.C) does not include a line item for the “Bill of Sale” for the purchase/acquisition of the equipment and facilities. Can VRE provide clarification?

Section 5.7.A. describes this transaction. All items in Appendix #16 will be “sold” to the Contractor, following a verification inventory conducted jointly by VRE and the Contractor. For the purposes of submitting a proposal, the Contractor shall use the gross price of that Appendix to determine the value of the transaction, less the Whiting jacks.

- (b) Can the specific items be listed that VRE is categorizing as “equipment, yard vehicles, furniture and other items” which are to be included on the itemized Bill of Sale?

See answer to question #180 (a).

- (c) Should Offerors assume, for purposes of their Mobilization price proposal, that all items identified in Appendix 20 Existing Inventory of Parts must be purchased by the Contractor, at the values identified in Appendix 20?

No. See Section 5.7.B. of the RFP. Additionally, offerors should assume that ownership of NONE of the items in Appendix 20 will be turned over to them.

- (d) Can the value of items identified in Appendix 20 be negotiated after Contract award?

No. Unless items come up missing, the value is irrelevant.

- e) Should “SECTION 5. EQUIPMENT AND FACILITIES” be replaced with “APPENDIX 20” in line 3 of Section 10.9?

No. See Section 5.7.A and 5.7.B.

181. Section 11, Environmental Services. Can VRE further explain the role of the environmental contractor? Can all or a portion of this role be performed by the Contractor’s employees or is it a Contract requirement to subcontract all of this work?

Environmental requirements may be performed by the Prime Contractor or its Subcontracts.

182. Section 11.2.J and 11.2.K, Environmental Permitting/Reporting.

- (a) The RFP indicates that VRE will retain responsibility for the Stormwater Plan and BMPs. Sections 11.2.J and 11.2.K appear to conflict with other provisions of the RFP that require the Contractor to be responsible for all environmental issues. Can VRE provide clarification?

The Contractor is responsible for all environmental issues except where otherwise noted in the RFP.

- (b) As the site operator, will the Contractor have any responsibility for the Stormwater Plan or BMPs?

The Contractor will be required to comply with the Stormwater Plan and BMP's. See also response (a) above.

- (c) Clarify what environmental responsibilities will be retained by VRE and what environmental responsibilities will be assigned to the Contractor.

See response to part (a) above.

183. Section 11.2, Environmental Permitting/Reporting. This Section indicates that the Contractor is responsible for all permits, certificates, licenses, etc. This Section also indicates that VRE will retain responsibility for the Stormwater Pollution Prevention Plan. Will VRE retain the responsibility for the existing Stormwater permit? What other permits, certificates, licenses, etc. apply to the facilities?

VRE will retain responsibility for the existing Stormwater permit (General Discharge Permit). The Contractor must comply with requirements of the permit and Stormwater Pollution Prevention Plans.

184. Section 11.3, Air Emissions Testing, Permitting and Reporting. Will VRE explain in more detail the Facility Wide Emissions Cap for the CRMF?

Section 11.3.A will be deleted from the RFP via an addendum.

185. Section 11.8, Pest Control. Can this Offeror use an existing national pest control contract to support the Contract with VRE?

Only if it satisfies the performance requirements of the RFP.

186. Section 18.3.A, Proposal Content, TABS 5 and 6. Clarify whether VRE seeks this contact information for use during the RFP evaluation process, or whether VRE is seeking contact information to be included in the Contract after award.

VRE seeks this contact information for use after award.

187. Section 20.2.A, Management Services. This Section provides for allowable annual adjustments to the fixed price. However, this Offeror recommends that the annual adjustment be based on the AAR index as it reflects changes in expenses incurred by the Class 1 railroads. Does VRE agree to make this change?

VRE believes that the CPI-U for all items is a better and more consistent measure for this purpose.

188. Section 25.F, Payment Bond. VRE has the right to increase the Payment Bond amount if the Contract price increases, but there should be a provision that VRE will reimburse the Contractor for the increased cost of the Payment Bond. Is VRE willing to consider this change?

VRE is willing to reimburse the Contractor for the increased cost of the Payment Bond. This cost should be included in the change order which implements the Contract price increase.

189. Section 26, Insurance Coverage. This Offeror requests that all references to the insurance limits contained throughout Section 26 and the limitation of the Contractor's indemnity set forth in Section 26.4 be consistently edited to refer to \$5 million per occurrence and a \$5 million annual aggregate. Any claims exceeding the \$5 million per occurrence/annual aggregate limit would be paid for out of the Commuter Rail Operations Liability Insurance Program. For example, in the event of one (1) occurrence with multiple claims from multiple passengers and the Contractor's employees, totaling \$8 million, the first \$5 million per occurrence and aggregate shall be paid by the Contractor. The remaining \$3 million and any future occurrences during the remaining Contract Year shall be paid by the Commuter Rail Operations Liability Insurance Program. As another example, if there were fourteen (14) occurrences with claims from various passengers and the Contractor's employees, totaling \$15 million, the Contractor would pay \$5 million annual aggregate for these, and the Commuter Rail Operations Liability Insurance Program would then pay the remainder, plus any future occurrences during the remaining Contract Year. Does VRE agree to make this revision?

VRE will not modify its RFP as requested. The Contractor's insurance and indemnification obligation is not a \$5 million annual aggregate. It is a per occurrence limit. The Contractor is expected to maintain coverage throughout the Contract term.

190. Section 26.2, VRE Insurance Coverage Requirements. The requirement for these coverages is new and will add to the cost of the Contract. Also, this Offeror has historically self-insured these exposures. Will VRE consider acceptance of the Contractor's self-insurance in lieu of purchased FELA and/or CGL insurance and Pollution Liability?

See answer to question #111.

191. Section 26.2, VRE Insurance Coverage Requirements. Will VRE allow the Contractor to combine coverage for CGL and FELA into one policy with limits of \$5 million per occurrence and a \$10 million annual aggregate?

VRE will not permit the \$5 million per occurrence limit for CGL and FELA to be combined into a single \$5 million limit.

192. Section 26.2, VRE Insurance Coverage Requirements and Section 26.3, Pollution Liability Insurance. Describe the environmental systems that the Contractor is responsible for managing and where they are located. The Offeror will require more information to obtain quotations for pollution liability insurance. Will the insurance industry's standard Contractor's Pollution Liability coverage meet this requirement?

See RFP Sections 5, 11 and 26.

193. Section 26.4.A, Indemnification of Contractor by VRE. VRE agrees to provide property insurance and include the Contractor as an additional insured. The limits should be sufficient to cover the value of the various trainsets, tracks and track beds, and facilities and stations that are owned by VRE and used by the Contractor under this Contract. Can VRE confirm the insurance coverage limits and whether the coverage includes extra expense, business income, contingent extra expense, contingent business income, and property damage?

VRE will modify the RFP via an Addendum to remove the Contractor from the VRE property insurance policy. The Contractor is responsible for any damage to VRE equipment and/or facilities.

194. Section 26.4.A, Indemnification of Contractor by VRE.

- (a) Describe the coverage included under the Commuter Rail Operations Liability Insurance Plan.

A copy of the Plan is provided as Attachment B herewith.

- (b) Can VRE provide a copy of the policy form and any brochures that might be available?

A copy of the Plan is provided as Attachment B herewith. No forms can be provided.

195. Section 26.4.C, Indemnification of Contractor by VRE.

- (a) Will VRE consider inserting “and defend” after “indemnify” in line 2 of this Section?

It is evident in the Plan that defense is part of the indemnity.

- (b) Can VRE explain how the liability will be handled if a claim exceeds \$250 million, the limit in the Commuter Rail Operations Liability Insurance Plan? This Offeror requests that VRE agree to purchase reinstatements of limits if the amount of coverage should drop below a certain level. For example, under the current agreement, VRE purchases reinstatement to restore the limits to \$250 million within thirty (30) days, if the total insurance limits applicable to the liabilities assumed by the Commissions fall below a certain level. Will VRE honor this request?

A copy of the Plan is provided as Attachment B herewith. VRE is required and intends to reinstate the coverage in the event it falls below the level stated in the Plan.

196. Attachment H.1, General Terms and Conditions, Clause 19.b – Payment to Subcontractor. Will VRE consider deleting this clause at the request of this Offeror?

VRE will not modify the RFP as requested.

197. Attachment H.1, General Terms and Conditions, Clause 39 – Indemnification.

- (a) This Offeror requests that the first sentence of Clause 39 be deleted as it appears to be in conflict with VRE’s obligations as set forth in Section 26.4 of the RFP. As an alternative, this Offeror recommends that VRE modify Section 26.4 by replacing “Subject to” with “Notwithstanding” in line 1. Will VRE consider making this change?

VRE will not modify the RFP as requested. Section 26.4.B should be sufficient to address the inconsistency raised in this question.

- (b) In addition, would VRE consider retaining responsibility for injury to VRE’s employees, passengers and property in the indemnity?

VRE will not modify the RFP as requested.

198. Attachment H.1, General Terms and Conditions, Clause 46 - Access Requirements for Individuals with Disabilities.

- (a) If the Contractor is not responsible for station maintenance, is there a conflict between Section 1.3.B of the RFP and Clause 46?

Section 46 applies to those matters for which the Contractor is responsible. The Contractor is not responsible for an ADA compliance issue arising out of station maintenance.

- (b) Are the stations or VRE maintenance facilities currently ADA-compliant?

Yes – all stations owned by VRE and both maintenance facilities are ADA compliant

- (c) Can VRE clarify the Contractor's ADA responsibilities under the RFP?

The Contractor must comply with ADA regulations in discharging all of its contract responsibilities.

199. Attachment H.1, General Terms and Conditions, Clause 59 – Insurance.

- (a) Can VRE clarify the need for flood insurance under this Contract? Flood insurance will typically cover buildings and platforms but not tracks and road beds.

Flood insurance is not applicable to this Contract.

- (b) Advise which locations are designated flood zones A, B or V?

Flood zones are not applicable to this Contract.

- (c) Since VRE is providing the property insurance, will VRE also consider providing the flood insurance for easier coordination in the event of a claim?

VRE has flood insurance that covers our property.

200. Attachment H.1, General Terms and Conditions, Clause 73 - Use of Real Property, Equipment and Supplies. Will VRE clarify the Federal interests in VRE property and how much this interest impacts the Contract?

The federal interest in VRE property is best described in federal documents such as the FTA Master Agreement (available on the FTA website) and should

be reviewed by the Contractor. It is not anticipated that this interest impacts day to day operation of the service except to the extent that all applicable federal requirements must be met.

201. Attachment H.3, Representation and Certification. If available, can VRE provide these forms in a Microsoft Word format for ease of completion?

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

202. Appendix 28, VRE's Rules to Live By. The Contractor safety information included in this Appendix alludes to work on and off platforms. Based on Section 1.3.B of the RFP, the Contractor is not responsible for station maintenance. Can VRE clarify what ADA responsibilities the Contractor may have with respect to station facilities and platforms?

Overall, the Contractor is responsible for ensuring that the wheelchair lifts on the trains are operational and that the crew is proficient in the operation of the wheelchair lifts. The Contractor is further responsible for accommodating ADA passengers as outlined in 6.3.4.C.3.d. The Contractor has no ADA responsibilities with respect to station facilities and platforms.

203. Appendix 29, Permits and Plans: Crossroads Yard and Appendix 30, Permits and Plans: Broad Run Yard. The yard layouts generally show drip pans situated at the end of the yard tracks, where the locomotives would be parked. However, Appendix 1 Diagrams of the Maintenance Facilities, Figures 5.1 and 5.2 indicate that trainsets over eight (8) cars long require two (2) locomotives, yet only about six (6) tracks are designed to carry more than 8 cars.

- (a) Is the intent of the design layout to use drip pans for the parked locomotives?

Yes.

- (b) If so, if two (2) locomotives are used on the same track for larger consists, will additional drip pans be needed for the second locomotive in order to avoid possible soil contamination and to comply with the Stormwater Plan?

No.

204. What is the Contractor's responsibility for warranty administration and management under this RFP?

Warranty administration and management shall be the responsibility of VRE as fully supported by the Contractor for such activities as failure reports on special forms and full support and cooperation with VRE's consultants.

205. Appendix 3, List of Parties under Contract Directly with VRE for the Provision of Parts and Services.

- (a) How will the process work in dealing with contractors that are under separate, direct contracts with VRE?

See answer to question #138(a).

- (b) Can VRE define to what extent the Contractor would be responsible for managing such third party contractors?

See answer to question #138(a).