



VIRGINIA RAILWAY EXPRESS

REQUEST FOR PROPOSALS

(RFP) No. 025-005

**PHOTOGRAPHY AND VIDEOGRAPHY
SERVICES**

RFP Issued: May 22, 2025

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I. INTRODUCTION TO RFP

01. PURPOSE

The purpose of this Request for Proposals (RFP) is to establish two (2) Contracts with two (2) qualified and experienced Contractors to provide photography and videography services, on an as needed basis through Task Orders initiated by Virginia Railway Express. The two (2) Contractors selected shall each be capable of providing both photography and videography services.

02. VRE BACKGROUND

- A. The Virginia Railway Express (VRE) is a commuter rail service linking the District of Columbia and Northern Virginia. The Northern Virginia Transportation Commission (NVTC) and the Potomac and Rappahannock Transportation Commission (PRTC) are transportation districts established under Virginia law and jointly own this service. An Operations Board consisting of members from each of the jurisdictions within the VRE service area governs the development and operation of VRE and serves as an advisory board to the NVTC and PRTC governing boards. Use of the term VRE in this RFP refers to NVTC and PRTC.
- B. VRE began operations in 1992 on two (2) lines, Fredericksburg and Manassas. In January 2014, VRE's Operations Board adopted System Plan 2040 which calls for expansion of service, requiring the addition of railcars, expansion of station and yard facilities, as well as expanding operations to meet the goal of doubling ridership by 2040. VRE's multi-prong program addresses short term growth needs, as well as longer term capacity improvements and investments in maintaining and servicing VRE's equipment and facilities.
- C. The primary mission of VRE is to provide commuter-oriented passenger rail service between the outlying suburbs and the Washington-Arlington-Alexandria urban core. Some tourists and "day-trippers" also ride the trains. The service is heavily oriented towards that core area in the morning peak and in the opposite direction in the evening peak.



II. PROCUREMENT SCHEDULE

| | |
|---|--|
| RFP Issued | May 22, 2025 |
| Confirm Attendance at the Pre-Proposal Meeting | June 2, 2025 by 2:00 P.M. Eastern Time (ET) |
| Pre-Proposal Meeting | June 4, 2025 at 10:00 A.M. ET |
| Submission of Written Questions | June 11, 2025 at 10:00 A.M. ET |
| Proposals Due (Closing Date and Time) | July 9, 2025 at 2:00 P.M. ET |
| Interviews (Optional) | August 13 and 14, 2025 |

Virginia Railway Express (VRE) reserves the right to make changes to the above-mentioned schedule. All such changes shall be made by an addendum to the solicitation. Offerors must frequently monitor VRE's website at www.vre.org for information concerning this solicitation, including any addenda or notices.



III. INSTRUCTIONS FOR OFFERORS

01. COMPETITIVE NEGOTIATION

This solicitation is a competitive negotiation as defined in the PRTC and VRE Public Procurement Policy and Procedures Manual. The content of the Proposals and the identity of the Offerors are not public record until a Notice of Intent to Award has been issued. The opening of Proposals is therefore not public.

02. PROPOSAL AND CONTRACT REQUIREMENTS

- A. VRE follows Virginia procurement laws. Accordingly, all applicable Federal and State requirements will apply. Offerors are expected to become familiar with these requirements and shall not submit Proposals if unable to execute a Contract containing such provisions.
- B. VRE will provide a Contract containing these provisions for execution by the prospective Contractor that is selected. Offerors shall not use their own standard contracts for this engagement.

03. OBLIGATION OF CONTRACTOR

- A. Before submitting a Proposal, the Offeror shall be responsible for reading and examining the solicitation documents including these Instructions for Offerors. Submission of a Proposal shall be deemed verification of such reading and examination by the Offeror.
- B. By submitting a Proposal, the Offeror agrees that it has satisfied itself from a personal investigation of the conditions to be met, that the obligations herein are fully understood, and no claim may be made nor will there be any right to cancellation or relief from the Contract because of any misunderstanding or lack of information.

04. COMPETITION INTENDED

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

05. INTEREST IN MORE THAN ONE PROPOSAL AND COLLUSION

Reasonable grounds for believing that an Offeror is interested in more than one Proposal for a solicitation, including both as an Offeror and as a Subcontractor for another Offeror, or that collusion exists between two or more Offerors, will result in rejection of all affected Proposals. However, an individual or entity acting only as a Subcontractor may be included as a Subcontractor on two or more different



Offerors' Proposals. Offerors rejected under this provision will also be disqualified if they respond to a re-solicitation for the same work.

06. POINT OF CONTACT

- A. All inquiries or correspondence shall be directed to the Purchasing & Contract Compliance Specialist and the Director of Purchasing whose names and contact information appear on the face of this solicitation.
- B. Communications relating to this RFP, other than to the Purchasing & Contract Compliance Specialist and the Director of Purchasing, are prohibited during the RFP response period. **Do not contact VRE consultants, or VRE personnel other than the Purchasing & Contract Compliance Specialist and Director of Purchasing regarding this solicitation.**

07. WRITTEN COMMUNICATIONS

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

08. CLARIFICATION OF TERMS

If an Offeror has questions about the solicitation documents, the Offeror shall contact the VRE Purchasing & Contract Compliance Specialist and Director of Purchasing whose names appear on the face of the solicitation. Any revisions to the solicitation will be made only by addendum issued by VRE.

09. AVAILABILITY OF SOLICITATION DOCUMENTS

The electronic versions of the solicitation documents are intended to provide convenience to prospective Offerors. Be advised that it is the responsibility of prospective Offerors to monitor VRE's website for any addenda, notices or postings. Failure to submit the signed addenda may be grounds to declare a Proposal non-responsive.

10. PRE-PROPOSAL MEETING

- A. A **non-mandatory pre-proposal meeting** to discuss the requirements of this solicitation will be held for prospective Offerors at VRE's Headquarters Office located at 1500 King Street, Suite 202, Alexandria, VA 22314 and via Microsoft Teams videoconference. ***The date and time are specified in PART II. – PROCUREMENT SCHEDULE*** of this RFP.
- B. Attendance at the pre-proposal meeting is limited to no more than two (2) representatives of each firm.
- C. Parking is limited and shall be the responsibility of prospective Offerors. Offerors are responsible for the payment of any parking charges or fines for illegal parking.



- D. Individuals interested in participating in the video conference via computer, tablet or smartphone can join by clicking:

Join the meeting now (link)

Meeting ID: 225 740 791 535 3

Passcode: 5ro6UB9i

OR

Dial in by phone

+1 540-566-5614, 886538802# United States, Roanoke

Phone conference ID: 886 538 802#

- E. Participants utilizing a cell phone are required to download the Microsoft Teams app in advance of the meeting or to participate in the meeting using the audio only option identified above. The app is available free of charge from the Apple and Google app stores.

11. CONFIRM ATTENDANCE AT THE PRE-PROPOSAL MEETING

Offerors must confirm their attendance at the non-mandatory pre-proposal meeting by contacting the Purchasing & Contract Compliance Specialist whose name and contact information appear on the face of this solicitation, prior to the ***date and time specified in PART II. – PROCUREMENT SCHEDULE*** of this RFP. *It is recommended that prospective Offerors monitor VRE's website for an addendum which may change the location or date/time of the pre-proposal meeting.*

12. SUBMISSION OF WRITTEN QUESTIONS

- A. **Deadline:** All questions and requests for clarification regarding the meaning or interpretation of this RFP and other solicitation documents, or any ambiguities, discrepancies, inconsistencies, or conflicts in or between any of the technical, pricing, or contractual provisions, must be submitted no later than the ***date and time specified in PART II. – PROCUREMENT SCHEDULE*** of this RFP. Questions and clarifications requested after such time will not be answered unless VRE elects, at its sole discretion, to do so.
- B. **Format for Questions:** Questions must be submitted in Microsoft Word format and include the related Section number and title.
- C. **VRE Point of Contact:** Questions must be submitted to the VRE Purchasing & Contract Compliance Specialist and Director of Purchasing in writing via electronic mail as listed on Page 1 of this RFP. No questions or requests for additional information, clarification or any other communication should be directed to any other individual.
- D. **No oral communication will be accepted.** VRE will not be bound by any oral communications, or written interpretations or clarifications that are not set forth in an addendum.



- E. Questions and responses will be posted on VRE's website at www.vre.org.
- F. Any interpretation of a question made by VRE will be responded to and distributed in the form of an addendum to the RFP and will be available to all interested Offerors through VRE's website.

13. ADDENDA

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

14. MODIFICATION OF PROPOSAL CLOSING DATE

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

15. VRE INCLEMENT WEATHER POLICY

In the event of inclement weather conditions, such as heavy snowfall, icy streets and sidewalks, flooding, earthquakes, tornadoes, and other natural disasters, which result in the cancellation of VRE service operation, the Proposal due date will be extended to the next business day VRE service operates. Notifications of service operation interruptions and the resumption of service are generally posted on VRE's website. An official addendum to the solicitation will be posted on VRE's website at the earliest opportunity once VRE service resumes operation.

16. CANCELLATION/WITHDRAWAL OF RFP

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

17. WAIVER OF INFORMALITIES

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

18. WITHDRAWAL OF PROPOSAL PRIOR TO CLOSING DATE

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

19. LATE PROPOSALS

Proposals received after the Proposal closing date and time shall not be considered. Late Proposals received in hardcopy format will be returned to the Offeror



UNOPENED, if the solicitation number, closing date and Offeror's return address are shown on the package.

20. WITHDRAWAL OF PROPOSALS AFTER PROPOSAL OPENING

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

21. REJECTION OF PROPOSALS

- A. VRE expressly reserves the right to reject any or all Proposals or any part of a Proposal, and to resolicit the services in question, if such action is deemed to be in the best interest of VRE.
- B. Proposals which fail to meet the solicitation requirements, or which are incomplete, conditional or obscure, or which contain additions not called for, erasures, alterations or irregularities of any kind or in which errors occur, or which contain abnormally high or abnormally low prices, for any class or item of work, may be rejected as invalid at VRE's discretion.



- C. The receipt of more than one (1) Proposal from the same Offeror, whether the same or different names appear on the signature page, shall result in none of the Offeror's Proposals being considered.
- D. Reasonable proof for believing that any Offeror has an interest in more than one (1) Proposal for the work contemplated will cause the rejection of all Proposals made by the Offeror directly or indirectly.
- E. Any or all Proposals shall be rejected if there is reason to believe that collusion exists among the Offerors.

22. DISPOSITION OF PROPOSALS

Offerors' Proposals will not be returned. VRE will retain the Proposals for the contract file.

23. PROPOSAL PREPARATION COSTS

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

24. QUALIFICATION OF OFFERORS

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

25. ADDITIONAL INFORMATION

VRE reserves the right to ask any Offeror to clarify its Proposal.

26. PRE-AWARD SURVEY

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



27. DEBARMENT STATUS

- A. By submitting a Proposal, and completing the representation and certifications, the Offeror certifies that it is not currently debarred, suspended, declared ineligible or voluntarily excluded from submitting Proposals on contracts by any agency of the Commonwealth of Virginia or the U.S. Federal Government, nor are they an agent of any person or entity that is currently debarred from submitting Proposals on contracts by an agency of the Commonwealth of Virginia or the U.S. Federal Government. Contractors debarred by the Commonwealth Transportation Board and/or the U.S. Federal Government shall be ineligible to submit a Proposal to VRE.
- B. By submitting a Proposal, the Contractor further certifies that it is not debarred, suspended, declared ineligible, or voluntarily excluded from participating in contracts with the Commonwealth of Virginia or the U.S. Federal Government, and that it will refrain from awarding any subcontract to a debarred or suspended Subcontractor.
- C. In addition, prospective contractors agree to comply with the requirements of Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 USC Section §6101 note; and U.S. DOT regulations, "Government Debarment and Suspension (Non-procurement)," within 49 CFR Part 29.

28. CONFLICT OF INTEREST STATEMENT

- A. A conflict situation can arise when an Offeror acts or has interests that interfere with the Offeror's ability to perform its work objectively and effectively. The Director of Purchasing and Contract Administration may preclude those entities from receiving an award for any such work reasonably deemed to pose a conflict of interest with the work provided hereunder.
- B. Prior to submitting a Proposal in response to this solicitation, each Offeror shall conduct an internal review of its current affiliations, its joint venture partners, as well as any subsidiaries of a joint venture partner, to include any companies sharing common ownership with a joint venture partner, to identify potential conflicts of interest relative to the anticipated Contract. The Offeror shall also require its team members (proposed Subcontractors) to identify potential conflicts of interest they may have in regard to this procurement.
- C. If a potential conflict of interest or competitive advantage is identified, the organization shall submit in writing the pertinent information to the VRE Director of Purchasing and Contract Administration, whose name and contact information appear on the face of this solicitation, so that a determination can be made as to the extent of the conflict or competitive advantage. The statement shall have the notarized signature of a principal of the Offeror, on the form provided in this solicitation.
- D. VRE, in its sole discretion, will make a formal written determination relative to each potential organizational conflict of interest, and its ability to mitigate such a conflict. If VRE determines that a conflict of interest cannot be mitigated, the



organization determined to have the conflict of interest shall not be allowed to participate in response to the solicitation. Failure to abide by VRE's determination in this matter may result in a Proposal being declared non-responsive.

- E. The Offeror, any of its joint venture partners, any subsidiaries of a joint venture partner, any companies sharing common ownership with a joint venture partner, or any of its Subcontractors will be precluded from providing other services to VRE which conflict with its services under this Contract.

29. INSPECTION OF PROPOSALS

The Virginia Freedom of Information Act, §2.2-3700 *et seq.* shall govern the release of public records related to this procurement. Trade secrets or proprietary information related to a procurement may not be subject to public disclosure, provided the requirements of §2.2-4342F VA Code Ann. are met.

30. TRADE SECRETS OR PROPRIETARY INFORMATION

- A. Trade secrets or proprietary information submitted by an Offeror in connection with a procurement transaction submitted pursuant to the Code of Virginia, subsection F of §2.2-4342 shall not be subject to the Virginia Freedom of Information Act (§ 2.2- 3700 *et seq.*).

- B. However, the Offeror shall:

- 1. Invoke the protections of this Section prior to or upon submission of the data or other materials:
- 2. Identify the data or other materials to be protected by clearly marking each individual page with "PROPRIETARY"; and
- 3. State the reason why protection is necessary.

- C. It is the Offeror's sole responsibility to defend such exemptions if challenged in a court of competent jurisdiction.

- D. Except for the foregoing limitation, VRE may duplicate, use, and disclose in any matter and for any purpose whatsoever and have others do so, all data furnished in response to this RFP. VRE has the right to release trade secrets or proprietary information to a third party which may assist VRE in the review and evaluation of Proposals.

31. REPLACEMENT OR AUGMENTATION OF KEY PERSONNEL OR SUBCONTRACTORS

The key personnel and Subcontractors in an Offeror's Proposal are considered essential to the Offeror's qualifications and may not be replaced or substituted, nor may additional key personnel or Subcontractors be added, after qualification of the Offeror's Proposal unless VRE approves the changes in advance in writing.



32. AUTHORITY TO TRANSACT BUSINESS

- A. Any Offeror organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a limited liability partnership must be authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia, or as otherwise required by law. The proper and full legal name of the entity and the identification number issued to the Offeror by the Virginia State Corporation Commission must be included in the Representations, Certifications and Other Statements of Bidders/Offerors provided as an attachment to this solicitation.
- B. Any Offeror that is not required to be authorized to transact business in the Commonwealth must include in its Proposal a statement describing why the Offeror is not required to be so authorized. VRE may require an Offeror to provide documentation that 1) clearly identifies the complete name and legal form of the entity and 2) establishes that the entity is authorized by the State Corporation Commission to transact business in the Commonwealth of Virginia. Failure of an Offeror to provide such documentation may be grounds for rejection of its Proposal or cancellation of any award. For further information, refer to the Commonwealth of Virginia State Corporation Commission's website at: www.scc.virginia.gov.

33. EXCEPTION TO TERMS AND CONDITIONS

- A. The Offeror must state whether it requests revisions to any of the terms and, if so, the Offeror must explain the reason(s) for the request(s) and propose alternative language. An Offeror who does not request a revision in its Proposal may not object or request revisions to any contract terms during the negotiation process.
- B. VRE will review any request for revisions to terms after selection of an Offeror for negotiation. Such requests will not factor into the evaluation of Proposals.

34. INSURANCE

Each Offeror must be able to demonstrate proof of the specific coverage requirements and limits applicable to this solicitation.

35. IMMIGRATION REFORM AND CONTROL ACT OF 1986

By submitting a Proposal and completing the Representations and Certifications, the Contractor certifies that it does not and will not, during the performance of the Contract, employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986. Unauthorized alien means, with respect to the employment of an alien (which is defined as any person not a citizen or national of the United States), at a particular time, that the alien is not at that time either (a) an alien lawfully admitted for permanent residence, or (b) authorized to be so employed by the Act or by the United States Attorney General.



IV. PROPOSAL REQUIREMENTS

01. GENERAL REQUIREMENTS

- A. The requirements included in this Section are purposely established to facilitate an objective, timely and efficient evaluation by VRE. The Offeror is advised to ensure that their Proposal is in compliance with all such requirements.
- B. Proposals shall include all of the requirements requested in this RFP. Failure to include all the information requested may adversely affect the evaluation. Noncompliance with the RFP requirements will affect the evaluation of the Offeror's technical and/or past performance and may be grounds to eliminate the Proposal from consideration.
- C. Offerors are advised their Proposal represents their company's or team's best efforts and most complete responses to this solicitation. Assurance of experience, capability, and qualifications that clearly demonstrate and support the Offeror's claim are essential. The absence of such evidence will adversely influence evaluation of the Proposal.
- D. Offerors are to submit Proposals that present the Offeror's qualifications and understanding of the overall work to be performed.
- E. Proposals must provide a clear and concise response to the requirements of the solicitation.
- F. The Offeror's submission of a Proposal represents their firm will comply with all the requirements specified in this RFP.
- G. Offerors must submit the required information identified in this Section as a complete Proposal package. Information in addition to that requested below will not be considered in evaluating the Proposal and shall not be provided. **Incomplete Proposals may cause the Proposal to be deemed non-responsive.**
- H. Offerors are to submit Proposals that present the Offeror's qualifications and understanding of the overall work to be performed. Offerors are directed to **PART VI. - EVALUATION PROCESS AND CRITERIA** and shall respond to each factor in detail so VRE may properly evaluate the Offeror's capabilities to perform the work described in this RFP.

02. OFFEROR'S RESPONSIBILITY FOR ERRORS OR OMISSIONS IN DOCUMENTS

- A. Each Offeror is responsible for having determined the accuracy and/or completeness of the solicitation documents, including electronic documents, upon which it relied in making its Proposal and has an affirmative obligation to notify the VRE Director of Purchasing immediately upon discovery of an apparent inaccuracy or error in or omission from the solicitation documents.



- B. If the successful Offeror is aware of such an error or omission and has not notified the VRE Director of Purchasing, the Offeror must perform any work described in such incomplete or missing documents at no additional cost to VRE.

03. PROPOSAL SUBMITTAL ELEMENTS

The Proposal must be separated with the respective numbered and titled tabs and include all written documentation outlined below:

TAB 1- Table of Contents: Furnish a table of contents to delineate all the sections of the Proposal package.

TAB 2- Title Page: Furnish the name and address of the company, local address, if any; name, title, address, email address, and telephone number of the *contact person* and the *company officer* responsible for ascertaining the correctness of the Proposal.

TAB 3- Transmittal Letter: Submit a transmittal letter dated and signed by a company officer authorized to bind the firm(s) or entity in a Contract. Failure to sign the letter may disqualify the Proposal. The following information shall be provided in the transmittal letter:

- a. Type and size of business;
- b. Years of operation; and
- c. Description of the company (or other structure in the case of a partnership or joint venture), and relevance of services to this RFP

TAB 4- Evaluation Criteria No. 1:
Response to Criteria No 1. (See Part VI. - Evaluation Process and Criteria)

TAB 5- Evaluation Criteria No. 2:
Response to Criteria No 2. (See Part VI. - Evaluation Process and Criteria)

TAB 6- Evaluation Criteria No. 3
Response to Criteria No 3. (See Part VI. - Evaluation Process and Criteria)

TAB 7- Evaluation Criteria No. 4
Response to Criteria No 4. (See Part VI. - Evaluation Process and Criteria)



TAB 8- Subcontractors: Identify any Subcontractors and the type of work anticipated to be performed on the Contract by completing the **SUBCONTRACTOR FORM** included below.

- a. During Contract performance, **ALL** Subcontractors shall be approved in advance by VRE.
- b. The Offeror shall ensure lower-tier Subcontractors in support of this solicitation are in compliance with the certifications included herein, including the insurance coverage described in this solicitation and all requirements to Federal and State procurement regulations referenced herein.
- c. At VRE's direction, any proposed Subcontractor(s) identified by the Offeror may be contacted for the purpose of determining the responsibility of the Offeror.

TAB 9- Point of Contact: Identify an assigned single point of contact who is available twenty-four (24) hours a day, seven (7) days a week, along with a telephone number and an email address.

TAB 10- References (Past and Present Experience): Identify three (3) clients for whom comparable work has been done by the Prime Contractor or is currently being performed; complete the forms included in **ATTACHMENT C – COST CERTIFICATION** (Section C and D) and include in this tab. If applicable, the following information must be provided:

- a. Information on contracts performed by each of the Offeror's Subcontractors that are considered most relevant in demonstrating their ability to support the Offeror in the effort, including rationale supporting the Offeror's assertion of relevance. At VRE's direction, any proposed Subcontractor(s) identified by the Offeror may be contacted for the purpose of determining the responsibility of the Offeror.
- b. A list of contracts within the past five (5) years, if any, on which failure to complete the work within the specified time frame resulted either in the assessment of liquidated damages, penalties, or contract termination.

TAB 11- Exceptions to the Solicitation: State whether the Special Provisions and General Provisions are accepted as presented in this solicitation or if exceptions are taken; identify exceptions taken to the solicitation; provide rationale in support of the exception and fully explain its impact, if any, on the performance, schedule, cost, and specific requirements of the solicitation; and relate each exception specifically to each section/paragraph and/or specific part of the solicitation to which the



exception is taken. **If no exceptions are taken to the solicitation, the Offeror shall specifically state “no exceptions”.**

TAB 12- Acknowledge Receipt of Addenda Issued: Include a signed acknowledgement of receipt of all addenda issued to this solicitation.

TAB 13- Representation and Certifications: Complete and sign the forms in **ATTACHMENT B – REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF BIDDERS/OFFERORS** included herein.

04. SUBMISSION OF FINANCIAL STATEMENTS

If submitting a hardcopy Proposal, Offerors shall submit one (1) USB memory device, containing one (1) continuous electronic copy of the financial statements in **PDF**, separate from the Proposal USB memory device. The USB memory device shall be labeled appropriately with the RFP number and title, company’s name and date. **A hard copy is not required.** *Due to the sensitive nature of the financial statements, the USB memory device may be enclosed in a separate envelope addressed to VRE’s Chief Financial Officer and included in the Proposal package. The financial information will remain confidential and be discarded upon completion of the financial analysis.* **Financial Statements must also be provided by Offerors when submitting an electronic proposal.**

1. Offerors shall furnish complete financial statements for the current fiscal year (interim statements are acceptable) and the past two (2) years. The financial statements shall include the following:
 - a. Statement of Financial Position (Balance Sheet)
 - b. Results of Operation (Income Statement)
 - c. Statement of Cash Flow (if available)
 - d. Statement of Current and Retained Earnings
2. These statements (a through d) shall be certified indicating disclosure of all facts that could impair or affect the statements presented.
3. The term “certified” is defined to mean that an officer of the corporation includes a statement that the financial statements fairly present the financial position of the Offeror. The term “officer” is defined to mean the President, Chief Financial Officer, or Treasurer. Audited financial statements with the auditor’s opinion meet this requirement. Audited statements must be submitted, if available.



4. The certified statement provided with the financial statements must read as follows:

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

5. If audited financial statements are not available, the above statement shall also note the following:

“No audited statements are available for the periods reported in the accompanying information.”

6. VRE reserves the right to request additional financial information as may be required to determine the Offeror’s financial responsibility. If required, a formal request shall be made by VRE to the Offeror.



SUBCONTRACTOR FORM (TAB 8)

(Offerors shall make additional copies of this form.)

☐ No Subcontractors will be utilized.

1. Firm Name: _____

2. Address: _____

3. Contact: _____ Title: _____

4. Phone No.: _____ Email Address: _____

5. **Check (☑) all of the following which apply:**

☐ Small, Woman-owned and Minority-owned Business (SWaM)

*Certified by: _____

*(**The SWaM certification must be attached**)

☐ Disadvantaged Business Enterprise (DBE)

*Certified by: _____

*(**The DBE certification must be attached**)

6. **Annual Gross Receipts:**

Indicate by checking (☑) the appropriate block that applies to the firm:

☐ Less than \$7,500,000

☐ More than \$7,500,000

7. Type of work to be performed by the Subcontractor: _____

8. Location of work: _____

9. Estimated percentage of the work: _____

NOTE: The following certifications included herein must be attached for each Subcontractor:

- 1) Certification of Primary Participants Regarding Debarment, Suspension, and Other Ineligibility and Voluntary Exclusion*
- 2) Certification of Restrictions on Lobbying*
- 3) Non-Collusion Affidavit*

(Prime Contractor)



05. COST PROPOSAL

- A. Offerors must submit a signed Cost Proposal Certification **ATTACHMENT C** with their Cost Proposal.
- B. Offerors must submit a Cost Proposal, which represents proposed hourly billing rates, utilizing the form provided in **ATTACHMENT C-1** to this solicitation.
- C. All cost data shall be quoted in U.S. Dollars.
- D. Unless indicated otherwise, each Offeror's proposal shall be inclusive of all costs including full compensation for all taxes, fees, labor, supervision, equipment, materials, supplies, tools, transportation, insurance, permits, certifications, overhead and profit, etc. necessary to complete the work in conformance with the Contract and to the satisfaction of VRE.
- E. The Cost Proposal shall represent the fully loaded billing rates to be charged to VRE to perform the required work/services. Extra charges will not be allowed unless prior approval is received from VRE in writing.
- F. No erasures or other handwritten changes may appear on the Cost Proposal.
- G. Offerors agree to provide the work/services specified in compliance with the terms and conditions in this Request for Proposals at the rates provided in the Cost Proposal.



V. SUBMISSION OF PROPOSAL

01. **PROPOSAL ORGANIZATION (FOR HARDCOPY SUBMISSION)**

- A. **Binding**: Each volume of the Proposal shall be separately bound using either wire, comb, spiral, or interscrew binding methods.
- B. **Cover**: The covers must be titled “Technical Proposal” and “Cost Proposal” and clearly identify the Offeror’s name, RFP number, and RFP title.
- C. **Tabs**: Tabs must be included and shall be identified by the *respective numbers and titles* as outlined in **PART IV. – PROPOSAL REQUIREMENTS**.

02. **PROPOSAL FORMAT**

- A. **Text**: The Proposal must be typed. Type size must not be smaller than Microsoft Word Times New Roman 11-point font, normal proportional spacing. Text lines must be single-spaced.
- B. **Pages for hardcopy submissions**: A page shall be:
 - 1. 8-1/2” x 11” sheet of paper (minimum of ½” margins);
 - 2. 11” x 17” sheet of paper for a foldout only such as illustrations, charts, appendices, graphs, drawings, photographs, diagrams and tables;
 - 3. Printed on one-side only; and
 - 4. White or ivory stock background color.


03. **HARDCOPY PROPOSALS**

- A. Offerors may submit Proposals electronically or in hardcopy format. Offerors submitting hardcopy Proposals shall provide **one (1)** signed original “Technical Proposal” and **one (1)** signed original “Cost Proposal” in **one (1)** sealed package.
- B. The Technical Proposal and the Cost Proposal shall be physically broken into two (2) separate parts. Each part shall be distinct and complete in and of itself so that evaluation of one (or any portion thereof) may be accomplished independently of evaluation of the other.
- C. Offerors shall submit **one (1)** USB memory device, containing one (1) continuous electronic copy of the “Technical Proposal” package and one (1) continuous electronic copy of the “Cost Proposal” in PDF. Additionally, Offerors shall submit **one (1)** USB memory device, containing one (1) continuous electronic copy of the financial statements in PDF, separate from the Technical Proposal/Cost Proposal USB memory device. Each USB memory device shall be labeled appropriately with the RFP number and title, Offeror’s name, and date.



04. **IDENTIFICATION OF PROPOSAL PACKAGE (FOR HARDCOPY SUBMISSIONS)**

- A. The Proposal shall be *clearly marked* in a sealed package.
- B. It is *imperative* that the label shown below is filled in and pasted on the lower left corner of the sealed package conspicuously identified.

| | |
|---|---|
| SEALED PROPOSAL IN RESPONSE TO: | |
|  | RFP No.: 025-005 Title: Photography & Videography Services |
| Proposals Due Date: | |
| Name of Offeror: | |

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

05. **HAND DELIVER OR MAILING OF PROPOSALS (FOR HARDCOPY SUBMISSIONS)**

- A. Offerors shall deliver or mail Proposals to:

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

- B. A Proposal may be mailed via USPS, delivered by private courier, or delivered via FedEx, UPS, or other package delivery service to VRE Headquarters in Alexandria, VA prior to the Proposal closing date and time, between 9:00 A.M. and 5:00 P.M. Eastern Time, Monday through Friday, on days that VRE operates train service.
- C. It is the responsibility of the Offeror to ensure that its Proposal is delivered to the place designated for receipt of Proposals on or before the day and time set for receipt of Proposals.
- D. Proposals will be time stamped by VRE's official time clock at the receptionist's desk in the foyer.
- E. Verbal Proposals shall **not** be accepted.



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

06. ELECTRONIC PROPOSALS

A. In lieu of hardcopy submissions, Offerors may submit Proposals electronically through the Commonwealth of Virginia's e-procurement portal (eVA). **In order to submit Proposals electronically, Offerors must be registered in eVA** www.eva.virginia.gov.

B. Proposals can be submitted through eVA by:

1. Clicking on Business Opportunities -> Virginia Business Opportunities (VBO).
2. Typing "Virginia Railway Express" into the Search Box.
3. Finding VRE RFP No. 025-005.
4. Clicking "View Opportunity" to select the solicitation.
5. Clicking "Respond Online" in the upper right corner of the screen.
6. Following the instructions online to submit a response.

C. Offerors must submit one (1) complete copy of their Proposal, including cost information, attachments, resumes and financial statements.

D. Offerors requiring assistance submitting an electronic response, must contact eVA Customer Care via email at eVACustomerCare@dgs.virginia.gov or at 866-289-7367.

07. PROPOSALS DUE (CLOSING DATE)

Proposals must be received by VRE at **2:00 P.M. Eastern Time on the date specified in PART II. – PROCUREMENT SCHEDULE** of this RFP. Proposals received after the Proposal closing date and time ***will not be considered***.



VI. EVALUATION PROCESS AND CRITERIA

01. **EVALUATION PROCESS**

A Technical Evaluation Team (TET) will review and evaluate all written Proposals based on the criteria identified in this section. Subsequent evaluations, such as to select firms for negotiation, may include, but are not limited to, review of more detailed Proposals and/or oral presentations from the highest ranked, short-listed firms. Any such subsequent evaluations will be based on the same criteria.

02. **GENERAL**

Proposals will be evaluated based on the evaluation criteria as stated below. An 1000-point scale will be used to create the final evaluation recommendation. When assessing points, a 1-10 scale will be utilized and multiplied by the weight assigned.

03. **SCORING METHODOLOGY**

The TET will review and evaluate the Proposals using the following scale:

| Points | Guidance |
|--------|--|
| 9 - 10 | <u>Outstanding</u> : Meets all of the requirements / exceeds expectations / excellent probability of success in achieving all objectives / very innovative. |
| 6 - 8 | <u>Above Average</u> : Exceeds minimum requirement / sound response / very good probability of success. |
| 4 - 5 | <u>Average</u> : Meets minimum requirement / has a reasonable probability of success. |
| 2 - 3 | <u>Fair</u> : Partially responsive / falls short of meeting basic expectations / has a low probability of success. |
| 1 | <u>Poor</u> : Inadequate / fails to meet the requirement. |
| 0 | <u>Failure</u> : No response / the information is missing altogether. |



04. EVALUATION CRITERIA AND WEIGHTS

The following criteria and weighting scheme will be utilized to evaluate Proposals. The criteria are listed in descending order of importance the most weight (points) and each of the following criterion having less weight (points) than the one preceding it:

Criteria No. 1- Knowledge, Qualifications and Relevant Experience of the Proposed Project Manager and Key Personnel: Personnel who will perform work under the Contract must have demonstrated experience to perform the work delineated in the Scope of Work. The Offeror shall Furnish a summary of the knowledge, prior work experience and qualifications of the proposed Project Manager and Key Personnel to perform the work described in the RFP.

An individual whose qualifications are submitted by the Offeror must be committed to the project and have availability for the duration of the Contract unless otherwise approved by VRE.

- a. One (1) of the proposed Key Personnel must be the designated **Project Manager** who will be the single point of contact for the Contract and has experience managing project(s) of comparable size, scope and complexity as detailed in the RFP.
 1. The Project Manager shall have a minimum of three (3) years of experience in Project Management and shall possess the following.
 2. Ability to manage Task Orders initiated by VRE.
 3. Experience managing the performance of the Offeror's team.
 4. Ability to oversee Subcontractor assignments and performance.
 5. Experience providing oversight and addressing any performance issues with assigned team members.
 6. Ability to plan, coordinate and supervise the work, including Subcontractors and other personnel.
- b. One or more of the proposed Key Personnel shall be the designated **Photographer** with experience in professional photography, ideally covering projects of similar size, scope, and complexity as identified in this RFP.
 1. The Photographer shall have a minimum of five (5) years of experience in professional photography and shall possess the following.
 2. Experience in the specific types of photography required by the RFP, such as events, portraits, or products.



3. Ability to creatively capture moments, tell visual stories, and use innovative techniques.
 4. Ability to understand and adapt to the client's specific visual style, brand, or project requirements. Experience in tailoring projects to match diverse client needs, branding guidelines, or intended audiences.
- c. One or more of the proposed Key Personnel may be a **Videographer** with experience in professional videography, ideally covering projects of similar size, scope, and complexity as identified in this RFP.
1. The Videographer shall have a minimum of five (5) years of experience in professional videography and shall possess the following.
 2. Proficiency in operating professional video cameras, lighting setups, and audio equipment. Skilled use of cinematic techniques, such as framing, color grading, and shot composition. Familiarity with specialized equipment like drones, stabilizers, or high-resolution cameras.
 3. Ability to creatively capture moments, tell visual stories, and use innovative techniques suited to the project.
 4. Ability to understand and adapt to the client's specific visual style, brand, or project requirements. Experience in tailoring projects to match diverse client needs, branding guidelines, or intended audiences.
- d. Provide four (4) project summary sheets, two (2) specific to photography and two (2) specific to videography from projects completed in the past five (5) years or which are currently being performed by the Key Personnel. Each project should demonstrate the Key Personnel's skills, experience and creative approaches that align with the requirements of the RFP. The project summaries shall include the following:
1. Project name and location;
 2. A thorough description, highlighting the purpose, scope, and unique elements of the project; and
 3. An explanation of the similarity or relevance of the project to the RFP requirements.
- e. In addition to the relevant experience required above, full resumes for each of the Key Personnel shall be included as an appendix to the Proposal. Resumes must include education, degrees, experience, qualifications,



background, accomplishments, and current professional certifications to include the issuing organization, date, and other specifications of the certification.

Criteria No. 2- Technical Abilities

- a. Demonstrate knowledge in relevant technologies in photography, such as drones for aerial shots, lighting equipment, lenses and optics, color management and calibration editing software, or other specialized equipment.
- b. Demonstrate advanced videography skills in post-production software, such as Adobe Premiere Pro, Final Cut Pro, or equivalent, with a focus on creating polished, high-quality final edits. Ability to handle color correction, sound mixing, and other essential editing tasks to produce visually compelling content.

Criteria No. 3- Portfolio

- a. Provide a portfolio demonstrating a proficient and consistent body of work including environmental, editorial, documentary, advertising, on-location, candid, and still/stand photography.
- b. Specific work examples showcasing high-quality, professional-level photography and videography. Consider image clarity, framing, style, and overall execution.
- c. The Offeror shall provide a portfolio that includes a range of work samples relevant to the objectives of the RFP, with each image clearly labeled or accompanied by descriptions that explain the context, purpose, and techniques used.
- d. The portfolio shall be accessible to VRE for evaluation through a portal or link provided and hosted by the Offeror.

Criteria No. 4- Cost Proposal

Complete the Cost Proposal Certification provided in Attachment C and Cost Proposal in Attachment C-1.



| Evaluation Criteria | | Maximum Points | Weight | Maximum Score |
|---------------------|---|----------------|--------|---------------|
| 1. | Knowledge, Qualifications and Relevant Experience of the Proposed Project Manager and Key Personnel | 10 | 30 | 300 |
| 2. | Technical Abilities | 10 | 30 | 300 |
| 3. | Portfolio | 10 | 25 | 250 |
| 4. | Cost for Photography & Videography Services | 10 | 15 | 150 |
| TOTAL POINTS | | | | 1000 |

05. SELECTION PROCESS

- A. The Technical Evaluation Team will review the Proposals using written score sheets. Proposals will be evaluated based on the evaluation criteria as stated above.
- B. Offerors will be in ranked order according to the scores of the TET and a short list of the most qualified Offeror(s) will be created. Selection shall be made of two (2) short-listed Offerors deemed to be the best for the project on the basis of the evaluation factors.

06. INTERVIEWS (OPTIONAL)

- A. VRE reserves the right to conduct oral interviews with short-listed firms, based on the results of the TET, prior to making a selection. ***The date and time for interviews is specified in PART II. – PROCUREMENT SCHEDULE*** of this RFP shall be reserved for possible interviews. Interviews will be held at the VRE Offices located at 1500 King Street, Suite 202, Alexandria, Virginia 22314.
- B. The interview will provide an opportunity for Offeror(s) to clarify their Proposal in response to questions from the TET. This is a fact-finding and explanation session and does not include negotiations.
- C. As interviews are *optional* for VRE, Offerors must treat their Proposals as a final product.
- D. Upon selection of the most technically qualified Offerors, VRE shall commence negotiations.

07. NEGOTIATIONS

- A. For the purposes of negotiations, selection shall be made of two (2) or more Offerors deemed to be fully qualified and best suited among those submitting



Proposals for Photography and Videography Services, on the basis of the factors specified in the evaluation criteria.

- B. Negotiations shall be conducted with each of the selected Offerors to achieve a binding agreement with respect to hourly billing rates and Contract terms. The price/cost information provided shall be considered but is not the sole or primary determining factor for award of the Contract.
- C. Following negotiations, VRE will request each of the selected Offerors to submit a Best and Final Offer (BAFO).



VII. CONTRACT AWARD/EXECUTION

01. GENERAL

VRE may cancel this RFP or reject Proposals at any time prior to an award and is not required to furnish a statement of the reason why a particular Proposal was not deemed to be the most advantageous (Code of Virginia, § 2.2-4359D).

02. TYPE OF CONTRACT

VRE contemplates award of two (2) indefinite delivery indefinite quantity (IDIQ) Contracts based upon the hourly rates agreed upon between VRE and the Contractor.

03. AWARD DOCUMENTS

The award document will be a Contract incorporating by reference the Request for Proposals, Special Provisions, General Provisions, Scope of Work/Services and the Contractor's Proposal as negotiated.

04. NOTICE OF INTENT TO AWARD

VRE will post the "Notice of Intent to Award" on its website at www.vre.org, for a minimum of ten (10) calendar days. The "Notice of Intent to Award" shall not be construed as a "Notice-To-Proceed (NTP)."

05. NOTICE OF AWARD

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

06. PROTEST OF AWARD

- A. An Offeror wishing to protest an award or a decision to award a Contract must submit the protest, in writing, to the VRE Director of Purchasing no later than ten (10) calendar days after either the decision to award or the award, whichever occurs first. The protest must include the basis for the protest and the relief sought. Within ten (10) calendar days after receipt of the protest, the Chief Executive Officer of VRE will issue a written decision stating the reasons for the action taken. This decision is final. Further action, by an Offeror, may be taken by instituting action as provided by the Code of Virginia.
- B. VRE policy and procedure for the administrative resolution of protests is set forth in §3.8 of the Public Procurement Policy and Procedures Manual (Procurement Manual). The Procurement Manual contains rules for the filing and administration of protests. The Purchasing & Contract Compliance Specialist shall furnish a copy of §3.8 upon request. Chapter VII, Sec. 1.b. of Federal Transit Administration (FTA) Circular 4220.1G addresses protests where Federal funds are involved.
- C. VRE may proceed with award of the Contract and Notice-To-Proceed while a protest is pending if it is determined to be in VRE's best interest to do so.



07. DELAYS IN AWARD

Delays in award of a Contract, beyond the anticipated starting date, may result in a change in the Contract period indicated in the solicitation. If this situation occurs, VRE reserves the right to award a Contract covering the period equal to or less than the initial term indicated in the solicitation.

08. AWARD FOR ALL OR PART

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

09. CONTRACT DOCUMENTS

D. The successful Offeror shall execute and deliver the following Contract documents to VRE:

1. Signed Contract
2. Insurance Certificates
3. Form W-9 Request for Taxpayer Identification Number and Certification

E. The aforementioned documents must be submitted to VRE not later than ten (10) calendar days after receipt of the Contract and “Notice of Intent to Award.”

F. The Contract shall be in writing. The Contractor shall execute the Contract in the number of copies required by VRE. One (1) fully executed original shall be delivered to the Contractor.

10. FAILURE TO EXECUTE CONTRACT

Should the successful Offeror fail to execute the Contract within ten (10) calendar days after receipt and submit the required Insurance Certificates, VRE may at its option, determine that the Offeror has abandoned the Contract, and thereupon, the Proposal and acceptance shall be null and void. VRE may also seek all available remedies at law and equity.

11. NOTICE-TO-PROCEED (NTP)

A “Notice-To-Proceed” (NTP) will be issued separately upon execution of the Contract. Contract performance shall begin on the date set forth in the written NTP. The NTP shall start the time for which the Contractor is responsible for completion of the project.



VIII. SPECIAL PROVISIONS

01. **SIGNATURES**

All documents to be delivered pursuant to this solicitation, requiring a signature, may be executed via handwritten (manual), stamped, electronic (portable document format), photocopied, digital or scanned signature. A signed copy of the documents transmitted by any of the means listed above shall be deemed to have the same legal effect as delivery of an original executed copy.

02. **TASK ORDER REQUIREMENTS**

- A. The Contractor shall perform the work on this Contract through Task Orders initiated by VRE. All Task Orders and the provision of services pursuant to such Task Orders are subject to the terms and conditions of this Contract and in the event of a conflict between the Task Order and the Contract, the Contract shall control.
- B. All Task Orders issued under this Contract shall either be Firm Fixed Price or Cost-Plus Fixed Fee, as specifically defined in the Request for Task Order Proposal.
- C. Any Task Order issued during the effective period of the Contract and not completed within that period shall be completed by the Contractor within the time specified in the Task Order.
- D. Any Task Order issued during the effective period of the Contract and not completed within that period shall be completed by the Contractor within the time specified in the Task Order.

03. **MINIMUM GUARANTEE AND TASK ORDER FUNDING**

- A. The Contracts resulting from this solicitation shall be Indefinite Delivery/Indefinite Quantity (IDIQ) and the total cost for any individual Task Order (including modifications) shall not exceed \$150,000. The cumulative ceiling amount for all Task Orders issued for both Contracts in any given contract year (Base Period and any subsequent Option Year Period exercised by VRE) shall not exceed a maximum of \$175,000 in aggregate per year or \$875,000 in aggregate for a term of up to five (5) years.
- B. As a minimum guarantee, at least one (1) Task Order will be issued to the Contractor during the term of the Contract. There is no limit on the number of Task Orders that may be issued against this Contract. If and when needed, the maximum number of Task Orders issued will be contingent upon the requirements of VRE and shall be subject to the appropriation and availability of funds and will be within the maximum value of the Contract.
- C. Individual Task Orders will be funded separately. VRE will not issue any Task Orders that are not fully funded, and the Contractor shall not perform any work which is not funded. In no event shall the Contractor be authorized to incur costs under an individual Task Order in excess of the total amount of funds obligated



against that Task Order unless authorized by an approved change order or Task Order Amendment in advance. Refer to Clause 14 - Changes, located in the General Provisions.

- D. VRE reserves the right to issue separate solicitation(s) for project(s) if it is determined to be in the best interest of VRE.
- E. VRE shall authorize Task Orders, in writing, under the Contract at its sole discretion and shall not be obligated to issue more than one (1) Task Order to the Contractor during the Contract term, nor to expend all funds authorized for Task Orders for the Contract.

04. COMMENCEMENT OF WORK

- A. The Contractor shall not proceed with any work without a fully executed Task Order issued by the VRE Chief Executive Officer or his/her designee. VRE will not accept responsibility for work or services for which there is no specific written authorization.
- B. Task Orders that exceed the VRE Chief Executive Officer's spending authority, currently \$200,000, shall be authorized by the VRE Operations Board/Commissions.
- C. The Contractor shall assign a single point of contact responsible for ensuring the work is completed in close coordination with VRE.
- D. The Contractor shall perform work assigned under this Contract as further described in Task Orders issued by VRE. The work shall be in accordance with the terms and conditions of the Task Order or as specified elsewhere in the Contract. Upon execution of Task Orders, the Contractor shall provide skilled and professional personnel together with the supervision, management, administrative services, equipment, and all other materials and services necessary to successfully accomplish the work set forth in each Task Order.

05. TASK ORDER ASSIGNMENTS AND PROCEDURES

- A. For Task Order services, VRE will initiate work by requesting a Task Order Proposal from the Contractor. The Contractor must provide a Task Order Proposal in writing or indicate why they cannot produce a proposal within the time allowed.
- B. VRE will provide a written Request for Task Order Proposal to the Contractor and shall request a Task Order Proposal from the Contractor based on the fixed unit rates, contract labor rates, agreed to at the time of contract award.
- C. Each Request for Task Order Proposal shall include at a minimum:
 - 1. Scope of Work describing the technical requirements of the task and the required completion date(s).
 - 2. Period of Performance.



3. Reporting Requirements and Deliverables.
 4. Type of Task Order (Firm Fixed Price Task Order or Cost-Plus Fixed Fee Task Order).
 5. Proposal Due Date.
- D. In response to the Request for Task Order Proposal, the Contractor shall submit a Task Order Proposal to VRE, within the time stated in the Request for Task Order Proposal, that includes at a minimum the following:
1. Approach (technical proposal) to meet the Scope of Work referencing VRE's Request for Task Order Proposal and highlighting any variations.
 2. Listing of Subcontractors to be utilized to include proposed DBE or SWaM participation, if applicable.
 3. Project completion schedule, including milestones, if required.
 4. Price Proposal, which shall be in sufficient detail to permit an analysis of all material, labor, equipment, Subcontractor and overhead costs and which shall cover all the work included in the Request for Task Order Proposal. Any proposed costs for Subcontractors shall be supported by a similar price breakdown.
- E. Preparation or revisions of Task Order Proposals by the Contractor shall not be compensated under this Contract. VRE's request for a proposal to perform the work does not represent a commitment to authorize the work, nor obligate VRE in any way.
- F. Procedures for incorporating each Task Order into the Contract shall be in accordance with the following:
1. VRE issues a Request for Task Order Proposal in the form of a letter or e-mail to the Contractor, to include a Scope of Work, requesting a Task Order Proposal from the Contractor, to include a price proposal, by a specified date. The Task Order Scope of Work constitutes what VRE believes to be the major project elements. It is the responsibility of the Contractor to identify all necessary associated work whether or not specifically listed in the Scope of Work.
 2. The Contractor responds with a Task Order Proposal, which includes both a technical proposal regarding the Scope of Work and a price proposal stating proposed disciplines, manhours per discipline, and authorized reimbursable expenses, as well as responses to other requirements of the task assignment.
 3. Following VRE's review of the technical proposal submitted by the Contractor, negotiations or discussions regarding the scope and approach may occur. VRE



may request a revised proposal or revise the project scope as a result of these negotiations or discussions.

4. VRE will evaluate the price proposal against VRE's Independent Cost Estimate and negotiations may be initiated by VRE as necessary in order to reach an agreement on a reasonable Task Order amount.
 5. Following any negotiations and upon written approval of the technical proposal, level of effort, pricing, profit, project schedule, and any other pertinent information, a Task Order is prepared, processed, and formally executed incorporating the task assignment into the Contract. Task Orders shall be sequentially numbered.
 6. VRE issues a written Notice-To-Proceed, as required.
- G. VRE may request the Contractor to present an informal briefing and review of the work conducted under any Task Order.
- H. In the event that a Task Order is cancelled prior to completion of the work, the Contractor will be paid for VRE-approved incurred costs up to the date of issuance of the cancellation notice by VRE or as otherwise agreed to by the parties.
- I. Consistent non-responses to Request for Task Order Proposals may negatively impact or prohibit the Contractor from proposing on future Task Orders. Additionally, failure of the Contractor to meet the deadlines specified in individual Task Orders may be kept on file with the Contractor's record of performance deficiencies.



IX. GENERAL PROVISIONS

01. **PRECEDENCE OF TERMS**

- A. In the event of an inconsistency between the Request for Proposals or Invitation for Bids, the Contract Terms and Conditions, other included documents, or the Federal Transit Administration (FTA) Master Agreement and state procurement law, the inconsistency shall be resolved by the following order of precedence:
1. Virginia's Public Procurement Act, as amended
 2. Invitation for Bids (IFB)/Request for Proposals (RFP)
 3. Special Provisions
 4. General Provisions
 5. Contractor's Bid/Proposal
- B. Where the terms of these Contract Documents vary the most stringent shall apply.

02. **VRE CONTRACT MANAGEMENT**

- A. **Purchasing & Contract Compliance Specialist:** During the term of the Contract, matters relating to bonding, insurance, terms and conditions, and other contract administration matters shall be directed to the Purchasing & Contract Compliance Specialist. Changes to the Contract value, scope, or schedule will require consultation with the Purchasing & Contract Compliance Specialist.
- B. **Contracting Officer:** The Contracting Officer is the only individual who can legally commit or obligate VRE for the expenditure of federal/public funds. The technical administration of the Contract shall not be construed to authorize the revision of the terms and conditions of the Contract. Any such revision shall be authorized in writing only by the Contracting Officer. The Contracting Officer may designate personnel to act as their authorized representatives for one or more contract administration functions not involving a change in the scope, price, terms, or conditions of the Contract. Such designation will be in writing, set forth by a separate letter signed by the Contracting Officer, and will contain specific instructions as to the extent to which the representative may take action for the Contracting Officer. Such designation will not contain authority to sign contractual documents, nor will it authorize the designee to order contract changes, modify contract terms, or create any liability on the part of VRE.
- C. **Project Manager:** During the term of the Contract, the Contracting Officer may designate a Project Manager (PM) to represent VRE and assist in monitoring the work under the Contract. The PM is responsible for the overall project management and serves as the technical liaison to the Contractor. The PM is responsible for the day-to-day clarification and guidance of the Contractor's personnel as may be required under the Contract. The VRE PM will conduct ongoing reviews of the Contractor's progress in performing the work and will furnish comments in a timely manner. Only the PM consulting with the Purchasing & Contract Compliance Specialist and/or the Contracting Officer, as necessary is authorized to provide



direction to the Contractor. All communications to other agencies shall be through the VRE PM, unless directed otherwise.

03. PRIME CONTRACTOR RESPONSIBILITIES

- A. The Contractor shall be responsible for completely supervising and directing the work under this Contract and all Subcontractor(s) that it may utilize, using adequate skill and attention. Subcontractor(s) who perform work under this Contract shall be responsible to the Prime Contractor.
- B. During the period of performance, the Contractor shall not substitute personnel without the written approval of VRE. The Contractor shall provide VRE with information as to the circumstances necessitating the proposed change and other information as requested. Periodically, the VRE Project Manager may request an updated list of personnel.
- C. The Contractor agrees that it is fully responsible for the acts and omissions of its Subcontractor(s) and of persons employed by the Subcontractor as it is for the acts and omissions of its own employees.
- D. The VRE PM shall coordinate the work on this Contract with VRE's ongoing operations and other activities performed by VRE or other contractors.

04. CONFORMITY WITH SCOPE OF WORK

All deviations from the Scope of Work shall be authorized in writing by VRE. No extra compensation for material or labor shall be allowed for work evidently necessary within the general intent of the Scope of Work.

05. TERM OF CONTRACT

- A. The term of the Contract shall be for a Base Period of one (1) year with the option to extend for four (4) additional one-year periods, not to exceed five (5) years. The Base Period will commence on the date set forth in the written Notice-To-Proceed.
- B. The exercise of the Contract option will be at the sole discretion of VRE. Unless otherwise directed in writing, the Contract will be extended by VRE under the terms and conditions of the original Contract.
- C. A preliminary written notice of VRE's intention to exercise the option will be given approximately thirty (30) calendar days prior to the expiration date of the Base Period. The preliminary notice does not commit VRE to an extension. The exercise of the option is subject to the availability of funds.
- D. The Contractor may submit in writing to VRE a request for an escalator sixty (60) consecutive calendar days prior to the expiration of the Base Period and the commencement of each subsequent Option Year Period of the Contract.
- E. Escalation of hourly rates shall not exceed the percentage of change in the U.S. Department of Labor Consumer Price Index, All Items, Unadjusted, Urban Areas ("CPI-U") for the most recent twelve (12) month period, for which statistics are



available, ending immediately prior to the date of the request; or ii) five percent (5%); whichever percentage is lower.

- F. VRE shall modify this Contract to adjust the hourly rates and their effective date. The Contractor shall continue performance pending agreement on, or determination of, any adjustment.
- G. Any Contract adjusted hourly rates that result from this provision will be binding and shall become effective the first day of the corresponding Option Year Period. No adjustment shall apply to services that are required to be performed before the effective date of the adjustment.

06. PAYMENTS

A. Terms

1. The Contractor shall submit monthly invoices for work/goods ordered, delivered, and accepted by VRE by the 15th of each month. ***The invoice period shall be the calendar month.*** This payment schedule shall be maintained throughout the duration of the Contract, unless directed otherwise.
2. If no charges have been incurred for a particular month, no invoice is required. However, the VRE Project Manager shall be notified that no invoice will be submitted.
3. Any Contractor's payment terms requiring payment in less than thirty (30) days will be regarded as requiring payment thirty (30) days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than thirty (30) days.
4. If funds are not appropriated for purposes of the Contract for the current or any succeeding fiscal year subsequent to the one in which the Contract is entered into, then VRE may terminate the Contract upon prior written notice to the Contractor. Should termination be accomplished in accordance with this Section, VRE shall be liable only for payments due through the date of termination.

B. Billing Instructions

1. Invoices shall be submitted electronically in one (1) continuous electronic copy in PDF to accountspayable@vre.org. The VRE Project Manager shall be copied on the email at cdunston@vre.org.
2. The VRE Project Manager shall be indicated on the invoice cover sheet.
3. At a minimum, invoices shall contain the following information:
 - a. Name, address, and telephone number of the Contractor
 - b. VRE Contract number
 - c. VRE Task Order number



- d. Contractor's invoice number
 - e. Sequential invoice number for the Contract
 - f. Date of invoice
 - g. Period of invoice
 - h. Summary description of work performed, including hours worked
 - i. Breakdown of invoice amount by Prime Contractor and Subcontractor
 - j. Total invoice amount
 - k. Total cumulative amount invoiced
 - l. Contractor's signature
4. If invoices fail to meet all of the above requirements, they will not be processed for payment and will result in the invoice being returned to the Contractor for correction and resubmission. VRE may request additional substantiating documentation as necessary.

07. PAYMENTS TO SUBCONTRACTORS

In the event that the Contractor utilizes a Subcontractor for any portion of the work under this Contract, the Contractor hereby agrees to:

- 1. Provide payment of Subcontractors within seven (7) days of receipt of payment by VRE for work completed and approved expenses. The Contractor shall take one (1) of the two (2) following actions within seven (7) days after receipt of amounts paid to the Contractor by VRE for work performed by a Subcontractor under the Contract.
 - a. Pay a Subcontractor for the proportionate share of the total payment received from VRE attributable to the work performed and completed by that Subcontractor under the Contract; or
 - b. Notify VRE and any Subcontractors, in writing, of its intention to withhold all or a part of the Subcontractor's payment with the reason for nonpayment.
- 2. The Contractor shall be obligated to pay interest to a Subcontractor on all monies owed by the Contractor that remain unpaid after seven (7) days following receipt by the Contractor of payment from VRE for work performed by a Subcontractor under the Contract, except for amounts withheld under subsection 1.b. of this Section. Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent (1%) per month. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary Contract.



3. The Contractor's obligation to pay an interest charge to a Subcontractor pursuant to the provisions of this Section may not be construed as an obligation by VRE. A contract modification may not be made for the purpose of providing reimbursement for any such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

08. EXTRA CHARGES NOT ALLOWED

Unless otherwise provided in the Contract, the Contract price shall be for the complete installation ready for VRE use, and shall include all applicable freight and installation charges; extra charges will not be allowed.

09. REGULATORY COMPLIANCE WITH LAWS AND PERMITS

- A. The Contractor agrees it shall be responsible for the professional quality, technical accuracy, and coordination of all designs, drawings, specifications, and other services furnished by the Contractor under this Contract. All work shall be performed in accordance with all applicable Federal, State and Local Laws, Rules and Regulations. In addition to the requirements described in the preceding Sections and the Scope of Work, any additional regulatory compliance required by the United States Department of Transportation shall be complied with during the term of the Contract.
- B. The Contractor shall, without additional compensation, correct or revise any errors or deficiencies in its work or services provided for VRE.
- C. Neither VRE's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to VRE in accordance with applicable law for all damages to VRE caused by the Contractor's negligent performance of any of the services furnished under this Contract.
- D. If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.
- E. The rights and remedies of VRE provided for under this Contract are in addition to any other rights and remedies provided by law.

10. RELEASES, LICENSES, PERMITS AND AUTHORIZATIONS

It is the Contractor's responsibility to obtain all releases, licenses, permits and other usage authorizations for all matters within its ordinary sphere of activity, including photographs, copyrighted materials, artwork or any other property or rights belonging to third parties obtained by the Contractor for use in performing services for VRE. The Contractor shall save the VRE harmless from all claims, demands, expenses (including reasonable attorney's fees), liabilities, suits, and proceedings (including any brought in or before any court, administrative body, arbitration panel or other tribunal) against or involving VRE on account of or arising out of such use. VRE shall obtain the same for any such items obtained by VRE which are used by the Contractor in performing services for VRE. The Contractor shall save VRE



harmless from all claims, demands, expenses (including reasonable attorneys' fees), liabilities, suits, and proceeding (including any brought in or before any court, administrative body, arbitration panel or other tribunal) against or involving VRE on account of or arising out of any assertions, claims, slogans, headlines or the like made by the Contractor for any VRE products, as well as for all claims, demands, expenses, liabilities, suits and proceedings arising out of the nature or use of VRE's products by the Contractor.

11. OWNERSHIP OF WORK PRODUCTS

- A. This Contract does not confer on the Contractor any ownership rights or rights to use or disclose VRE's data or inputs. VRE shall have unlimited rights, for the benefit of VRE, in all work products including, but not limited to, drawings, designs, specifications, notes and other work developed in the performance of this Contract. VRE shall have the right to use the work products on any other VRE work without additional cost to VRE.
- B. All work products, in any form, that result from this Contract are the property of VRE and must be provided or returned to VRE upon completion, termination, or cancellation of this Contract. The Contractor shall not use or allow others to use the work products for any purpose other than performance of this Contract without the written consent of VRE.
- C. The work products are confidential, and the Contractor may neither release the work products nor share their contents. The Contractor shall refer all inquiries regarding the status of any work product to the VRE Project Manager or to their designee. At VRE 's request, the Contractor shall deliver all work products, including hard copies of electronic files, to the VRE Project Manager.
- D. The Contractor must include the provisions of this Section as part of any contract or agreement related to this Contract into which it enters with Subcontractors or other third parties.
- E. If any invention, improvement, or discovery of the Contractor or any of its Subcontractors or lower-tier subcontractors is conceived or first actually reduced to practice in the course of or under the Contract, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, VRE and the Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until all applicable VRE funding partners are ultimately notified.
- F. The provisions of this Section will survive any termination or cancellation of this Contract.

12. CONFIDENTIAL INFORMATION

- A. The Contractor and its employees, agents and Subcontractors shall hold as confidential all VRE information obtained under this Contract. Confidential information includes, but is not limited to, non-public personal information; social security numbers; addresses; dates of birth; other contact information or medical



information about a person; and information pertaining to products, operations, systems, customers, prospective customers, techniques, intentions, processes, plans and expertise.

- B. The Contractor must take reasonable measures to ensure that all of its employees, agents and Subcontractors are informed of and abide by this requirement.

13. DISSEMINATION OF CONTRACT INFORMATION

The Contractor shall not discuss, publish, permit to be published, or distribute for public consumption, and information, oral or written, or any material concerning this Contract, without the prior written consent of VRE.

14. CHANGES

- A. By written notice to the Contractor, VRE may from time to time make changes within the general scope of the Contract in the services to be provided by the Contractor, the method or place of delivery, or the place of performance. Changes may also be made by mutual agreement between the parties in writing. The Contractor shall promptly comply with the notice and shall perform all services in conformity to the notice.
- B. If any such changes cause an increase or decrease in the Contractor's cost of performance or the time required for performance, an equitable adjustment in the Contract price and/or the time allowed for performance of the Contract shall be negotiated and the Contract modified accordingly. Any claim by the Contractor for adjustment under this clause must be asserted by written notice to VRE within thirty (30) days from the date of receipt by the Contractor of the change notice. If the parties fail to agree to an adjustment, the question of an increase or decrease in the Contract price or time allowed for performance shall be resolved in accordance with the procedures for resolving disputes provided by the disputes clause of the Contract. Neither the existence of a claim, a dispute, submission of the dispute or the dispute resolution process, litigation or any portion of this provision or changes shall excuse the Contractor from promptly proceeding with performance of the Contract as changed by the notice.

15. FORCE MAJEURE

When delay occurs due to reasonable causes beyond the control of the Contractor, including but not limited to, acts of God, acts of government or any governmental agency, war or war conditions, riot or civil conditions, sabotage, strikes, lockouts, accident, fire, flood, typhoons, hurricanes, explosion, damage to equipment or facilities, the time for performance and completion of work may be adjusted and extended as required to accommodate those delay and their effects.

16. DELAYS

- A. Upon written receipt of a request and justification for an extension from the Contractor, the VRE Contracting Officer may extend the time for performance of the Contract or delivery of work specified herein at the VRE Contracting Officer's sole discretion for good cause shown. Under no circumstances will VRE be responsible for consequential costs associated with delays.



- B. The Contractor shall use reasonable diligence to remove or overcome any such causes as expeditiously as possible.

17. SUBCONTRACTING

- A. No portion of the work shall be subcontracted without the prior written consent of VRE. In the event the Contractor desires to subcontract part of the work specified herein, the Contractor shall submit with its Proposal, a list of the Subcontractor(s) and their names, required certifications, qualifications, experience, project assignment and contact information.
- B. The Contractor shall be responsible for completely supervising and directing the work under this Contract and all Subcontractors that it may utilize, using its best skill and attention. Subcontractors who perform work under this Contract shall be responsible to the Prime Contractor. The Contractor agrees that it is as fully responsible for the acts and omissions of its Subcontractors and of persons employed by each Subcontractor as it is for the acts and omissions of its own employees.
- C. Any Subcontractor and outside associates or consultants required by the Contractor in connection with the services covered by the Contract will be limited to individuals or firms that were specifically identified and agreed to during negotiations. The Contractor shall obtain the Contracting Officer's written consent before making any substitution or addition to these Subcontractors, associates, or consultants.
- D. During the period of performance, the Contractor shall not substitute Subcontractor(s) and/or the Subcontractors' key personnel without the prior written approval of VRE. Any new Subcontractor(s) must be identified as per the above paragraph. The Contractor shall provide VRE with information as to the circumstances necessitating the proposed change and other information as requested.
- E. The Contractor shall notify VRE within five (5) calendar days after the occurrence of any of these events and provide information as to the circumstances necessitating the proposed change, the new Subcontractor information and other information as requested. Proposed substitutions must have comparable qualifications and experience to those being replaced. VRE will notify the Contractor within ten (10) calendar days after the receipt of all required information if this change is approved. VRE and the Contractor shall subsequently amend the required Contract documents.
- F. VRE reserves the right to request from the Contractor during the solicitation process and any time during Contract performance, additional information about a Subcontractor proposed by the Contractor, that VRE deems necessary to evaluate the qualifications of the Subcontractor.
- G. The Contractor shall, however, remain fully liable and responsible for the work to



be done by its Subcontractor(s) and their subcontractor(s) and shall assure compliance with all requirements of the Contract.

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

18. KEY PERSONNEL

- A. Certain skilled, experienced, professional and/or technical personnel are essential for successful accomplishment of the work to be performed under the Contract. These are defined as "Key Personnel" and are those persons whose resumes were submitted for approval as part of the Proposal for evaluation. No substitutions may be made except in accordance with this clause.

1. Key personnel are defined as follows:

- a. Personnel identified in the Bid/Proposal as key individuals to be assigned for participation of the Contract;
- b. Personnel whose resumes were submitted and approved by VRE; or
- c. Individuals who are designated as key personnel by VRE.

- B. The Contractor understands that no Key Personnel substitutions will be permitted unless these substitutions are unavoidable because of sudden illness, death or termination of employment. In any of these events, the Contractor shall promptly notify the VRE Purchasing Director and provide the information described in Paragraph D. below.

- C. The Contractor must submit to the VRE Purchasing Director all proposed substitutions, in writing, at least fifteen (15) calendar days in advance and provide the information required by Paragraph D. below.

- D. Any request for substitution must include a detailed explanation of the circumstances necessitating the proposed substitution, a resume for the proposed substitute, and any other information requested by the VRE Purchasing Director. Any proposed substitute must have qualifications equal to or superior to the qualifications of the incumbent. VRE will evaluate such requests and promptly notify the Contractor in writing of its approval or disapproval. If disapproved, VRE may, in its sole discretion, permit the Contractor to promptly submit an alternate substitution.

- E. The provisions of this Section shall be applicable to any subcontract which may be entered into.



- F. In the event that any of the identified Key Personnel cease to perform under the Contract and the substitute is disapproved, the Contract may be immediately terminated in accordance with the Termination for Default provision of the Contract.

19. INDEPENDENT CONTRACTOR

The Contractor is and shall be in all events, an independent contractor. Nothing herein shall be construed as constituting the Contractor as an agent, partner, employee, or legal representative of VRE for any purpose. Neither the Contractor nor its employees shall be entitled to or be eligible to participate in any benefits, privileges or plans given by or established for the benefit of VRE or its employees.

20. NOTIFICATION OF OWNERSHIP CHANGES

The Contractor shall notify VRE in writing when the Contractor becomes aware that a change in its ownership is certain to occur. The Contractor shall also include this provision in all subcontracts under this Contract, requiring each Subcontractor to notify VRE in writing when the Subcontractor becomes aware that a change in its ownership is certain to occur.

21. AVAILABILITY OF FUNDS

It is understood and agreed that VRE shall be bound to the Contract only to the extent of the funds appropriated for the purpose of the Contract. If funds are reduced or eliminated by the Commonwealth of Virginia or any Federal, State or Local funding partners, the Contract can be terminated under the provisions of the Contract.

22. AUTHORIZED FUNDING

- A. If at any time the Contractor has reason to believe that the costs to VRE which will accrue in the performance of the Contract in the next succeeding thirty (30) days, when added to all other payments previously accrued, will exceed seventy-five percent (75%) of the then current total authorized funding, the Contractor shall notify VRE to that effect, advising the estimate of additional funds required for completion of the Contract. The Contractor shall be under no obligation to perform any work hereunder, and VRE shall not be obligated to reimburse the Contractor for any work performed, if in the performance thereof the total funding then allotted to the Contract will be exceeded.
- B. VRE shall not be obligated to pay the Contractor any amount in excess of the ceiling price reflected in the Contract, and the Contractor shall not be obligated to continue performance if to do so would exceed the price set forth in the Contract, unless and until the VRE Contracting Officer shall have notified the Contractor in writing that the price(s) have been increased and shall have specified in the notice a revised price that shall constitute the price for performance under this Contract, and the Contract has been duly modified. When and to the extent that the price set forth in the Task Order or Contract has been increased, any hours expended and material costs incurred by the Contractor in excess of the price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the price.



23. ASSIGNMENT OF CONTRACT

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

24. DISALLOWED COSTS INCLUDING INTEREST

- A. The Contractor agrees to remit to VRE, which in turn will remit to its funding partners, any excess payments made to the Contractor disallowed by Federal, State and Local funding partners.
- B. VRE will exclude any project costs incurred by the Contractor before the date of the Notice-To-Proceed unless otherwise authorized by VRE in writing. VRE will also exclude any project cost not included in the approved project budget, any ordinary governmental or non-project operating cost deemed ineligible by a funding partner. VRE shall make the final determination as to what costs are eligible.
- C. Payment does not constitute a final decision about whether a cost is eligible for reimbursement and does not constitute a waiver of any violation by the Contractor of the terms and conditions of the Contract.
- D. The Contractor agrees to incur costs in accordance with all provisions of this Contract and any other requirements referenced herein. Payment shall be made for eligible project costs as listed in the Contract and for no other purpose.
- E. The Contractor shall remit to VRE any excess payments made to the Contractor disallowed by VRE, or any of their funding agencies, as well as any interest required.

25. APPLICABLE LAW AND COURTS

Any Contract resulting from this solicitation shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the federal and state courts of the Commonwealth. The successful Contractor shall comply with applicable Federal, State, and Local laws and regulations.

26. LITIGATION AND NOTIFICATION

The Contractor shall notify the VRE Purchasing Director if any of the following occur:

- 1. The Contractor or any of the Subcontractors are served with a notice of violation of any law, regulation, permit or license which relates to this Contract.
- 2. Proceedings are commenced which could lead to revocation of related permits or licenses.
- 3. Permits, licenses or other Government authorizations relating to this Contract are revoked.



4. Litigation is commenced in which the Contractor is a named party, and which also involves as a named party, any Subcontractor of the Contractor who is otherwise a provider of indirect services or products under this Contract.
5. The Contractor or any of the Subcontractors become aware their equipment or facilities or actions are not in compliance or may fail to comply in the future with applicable laws or regulations.

27. CONTRACTUAL DISPUTES

Disputes by the Contractor with respect to the Contract shall be decided in the first instance by the Purchasing & Contract Compliance Specialist or designee who shall reduce their decision to writing, and mail or otherwise furnish a copy thereof to the Contractor. This decision shall be final and binding unless within thirty (30) days from the date of such decision the Contractor institutes legal action in accordance with the Code of Virginia. Pending a final determination of a properly appealed decision of the Purchasing & Contract Compliance Specialist, the Contractor shall proceed diligently with the performance of the Contract, including the disputed portions, in accordance with that decision.

28. TERMINATION FOR THE CONVENIENCE OF VRE

- A. The parties agree that VRE may terminate the Contract or any work or delivery required thereunder, from time-to-time either in whole or in part, without cause whenever the VRE Contracting Officer shall determine that such termination is in the best interest of VRE.
- B. Termination, in whole or in part, shall be affected by delivery of a Notice of Termination signed by the VRE Contracting Officer, mailed or delivered to the Contractor, and specifying the extent of termination and the effective date of termination. Upon receipt of such notice, the Contractor shall:
 1. Cease any further deliveries or work due under the Contract on the date and to the extent which may be specified in the notice;
 2. Place no further orders with any Subcontractor except as may be necessary to perform that portion of the Contract not subject to the notice;
 3. Terminate all Subcontractors except those made with respect to Contract performance not subject to the notice;
 4. Settle all outstanding liabilities and claims which may arise out of such termination, with the ratification of VRE;
 5. Use its best effort to mitigate any damages which may be sustained by the Contractor as a consequence of termination under this Section;
 6. As directed by the VRE Contracting Officer, transfer title and deliver to VRE:



- a. The fabricated or un-fabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and
 - b. The completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to VRE.
 - 7. Complete performance of the work not terminated; and
 - 8. Take any action that may be necessary, or that the VRE Contracting Officer may direct, for the protection and preservation of the property related to the Contract that is in the possession of the Contractor and in which VRE or the Government has or may acquire an interest.
- C. After complying with the foregoing provisions, the Contractor shall submit a termination claim, no later than sixty (60) days after the effective date of its termination, unless an extension is granted by the VRE Purchasing & Contract Compliance Specialist. If the Contractor fails to submit the claim within the time allowed, the VRE Contracting Officer may determine, on the basis of information available, the amount, if any, due to the Contractor because of the termination and shall pay the amount determined.
- D. If the termination is partial, the Contractor may file a claim with the VRE Contracting Officer or his/her designee for an equitable adjustment of the price(s) of the continued portion of the Contract. The VRE Contracting Officer shall make any equitable adjustment agreed upon. Any claim by the Contractor for an equitable adjustment under this Section shall be requested within thirty (30) days from the effective date of termination unless extended in writing by the VRE Contracting Officer.
- E. The VRE Purchasing & Contract Compliance Specialist, with the approval of the VRE Contracting Officer, shall pay reasonable costs of termination, including a reasonable amount for profit on services delivered or completed. In no event shall this amount be greater than the original Contract price, reduced by any payments made prior to the Notice of Termination, and further reduced by the price of the serviced not delivered, or those services not provided. The Contract shall be amended accordingly, and the Contractor shall be paid the agreed upon amount.
- F. In the event that the parties cannot agree on the whole amount to be paid to the Contractor by reason of termination under this Section, the VRE Purchasing & Contract Compliance Specialist shall pay to the Contractor the amounts determined as follows, without duplicating any amount which may have already been paid under Paragraph E. of this Section.
- G. With respect to all Contract performance prior to the effective date of Notice of Termination, the total of:



1. Cost of the work performed;
 2. The cost of settling and paying any reasonable claims as provided in Paragraph B. above; and
 3. A sum as profit on Paragraph G. above determined by VRE to be fair and reasonable.
- H. The total sum to be paid shall not exceed the Contract price, as reduced by the amount of payments otherwise made, and as further reduced by the Contract price of services not terminated.
- I. In the event that the Contractor is not satisfied with any payments which the Purchasing & Contract Compliance Specialist shall determine to be due under this Section, the Contractor may appeal any claim to VRE in accordance with the Contractual Disputes provision of the Contract.
- J. Unless otherwise provided in the Contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of the Contract for three (3) years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under the Contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the VRE Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.
- K. When termination for the convenience of VRE is a provision of the Contract, the Contractor shall include similar provisions in any subcontract, and shall specifically include requirements that Subcontractors make all reasonable efforts to mitigate damages which may be suffered. Failure to include such provisions shall bar the Contractor from any recovery from VRE whatsoever of loss or damage sustained by a Subcontractor as a consequence of termination for convenience.

29. TERMINATION FOR DEFAULT

- A. Either party may terminate the Contract, without further obligation, for the default of the other party or its agents or employees with respect to any agreement or provision contained herein.
- B. If through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under the Contract, or if the Contractor shall violate any of the covenants, agreements or stipulations of the Contract, VRE shall thereupon have the right to terminate the Contract by giving written notice to the Contractor of such termination. The written notice shall specify the effective date of termination and shall be delivered to the Contractor prior to the effective date of termination.



- C. The Contractor shall have the right to cure its default, and thereby avoid termination, during the aforesaid notice period by remedying the circumstances which constitute the default or, where completion of such a remedy is not reasonably possible, then by taking all reasonable steps possible designed to remedy the default promptly.
- D. Successive defaults of the same nature, regardless of the Contractor's effort to cure, shall not prevent VRE from terminating the Contract.

30. INDEMNIFICATION

The Contractor shall not seek to hold liable VRE, or any of its officers, agents and employees for any claims, judgments, losses, and expenses of any nature whatsoever arising out of the Contract or arising out of the activities funded in whole or in part by the Contract. The Contractor shall defend, indemnify, save, and hold harmless VRE, and its officers, agents and employees against all claims and liability, including cost and expenses, arising out of, in whole or part, the acts or omissions of the Contractor or the acts or omissions of the Contractor's Subcontractors, agents or employees. The foregoing obligations shall survive termination of this Contract with respect to liabilities arising during its term. The Contractor agrees to maintain adequate insurance in an amount and form herein specified and approved by VRE to protect VRE and its officers, agents, and employees from liability arising out of the Contract.

31. ANTITRUST

By entering into a Contract, the Contractor conveys, sells, assigns, and transfers to VRE all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by VRE under said Contract.

32. SEVERABILITY

In the event that any provision shall be adjudged or decreed to be invalid, such ruling shall not invalidate the entire Contract but shall pertain only to the provision in question and the remaining provisions shall continue to be valid, binding and in full force and effect.

33. FAIR EMPLOYMENT CONTRACTING ACT

The Contractor, its agents, employees, assigns or successors, and any persons, firm, or agency of whatever nature with whom it may Contract or make a Contract, shall comply with the provisions of the Virginia Fair Employment Contract Act, Section 2.2-4200 et seq., VA Code Ann. the terms of which are incorporated herein by reference.

34. EMPLOYMENT OF PERSONNEL

The Contractor shall not employ any persons or persons in the employment of VRE for any work required by the terms of the Contract, without the prior written permission of VRE.



35. CONVICT LABOR

In connection with the performance of work under the Contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment except as provided by Public Law 89-176, as amended.

36. GEOGRAPHIC RESTRICTIONS

Procurement transactions will be conducted in a manner that prohibits the use of in state or local geographical preferences in the solicitation and evaluation of Bids or Proposals, except in those cases where applicable statutes or regulations expressly mandate or permit geographic preference. This does not preempt State or local licensing laws. However, geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services, provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the Contract.

37. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that it has not employed or retained any company or person, other than bona fide employees working solely for the Contractor, to solicit or secure the Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor, any fee, VRE percentage, brokerage fee, or other considerations, contingent upon or resulting from the award of making of the Contract. For breach or violation of this warranty, VRE shall have the right to annul the Contract without liability, or, at its discretion, to deduct from the Contract price or consideration, or otherwise recover the full amount of such fee, VRE percentage, brokerage fee, gift, or contingent fee.

38. CONFLICT OF INTEREST

- A. The Contractor and its officers and employees shall comply with the provisions of the Virginia Conflict of Interest Act (Section 2.2-3100 et. seq., of the Code of Virginia), as amended, the State and Local Government Conflict of Interests Act, and Section 2.2-4300 et. seq. of the Code, the Virginia Public Procurement Act, the terms of which are incorporated herein by reference.
- B. VRE is intent on avoiding conflicts of interest associated with the award of the Contract. To these ends, prospective Contractors must identify existing and prospective contractual relations they have (or could have) with agencies which could present sources of conflict as part of the Bid or Proposal submission.
- C. VRE standards of conflict prohibit VRE employees, officers, board members, or agents from participating in the selection, award, or administration of a third-party contract or sub agreement supported by federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the following parties has a financial or other interest in the entity selected for award (a) an employee, officer, board member or agent (b) any member of his or her family (c) his or her partner or (d) an organization that employs or intends to employ any of the above.



- D. VRE standards of conflict also prohibit real or apparent organizational conflicts of interest. An organizational conflict of interest exists when the nature of the work to be performed under a third-party contract or sub agreement may, without some restriction on future activities, result in an unfair competitive advantage to the third-party Contractor or subrecipient or impair its objectivity in performing the Contract work.

39. ETHICS IN PUBLIC CONTRACTING

- A. This Contract incorporates by reference any State or Federal law related to ethics, conflicts of interest, or bribery, including, by way of illustration and not limitation, the State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.), and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.).
- B. The Contractor certifies that its Bid or Proposal is made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other Contractor, supplier, manufacturer or Subcontractor in connection with their Bid or Proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

40. OFFICIALS NOT TO BENEFIT

No member of or delegate to the Virginia General Assembly, and no member of VRE, the Northern Virginia Transportation Commission, the Potomac and Rappahannock Transportation Commission or the Virginia Department of Rail and Public Transportation, shall be admitted to any share or part of the Contract, or to any benefit that may arise there from; but this provision shall not be construed to extend to the Contract if made with a corporation for its general benefits. No member, officer, or employee of VRE, during his/her tenure or one (1) year thereafter shall have any interest, direct or indirect, in the Contract or the proceeds thereof.

41. ANTI-DISCRIMINATION

- A. By submitting a Bid or Proposal, the prospective Contractor certifies to VRE that it will conform to the provisions of Title VI of the Federal Civil Rights Act of 1964, as amended; DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation" -- Effectuation of Title VI of the Civil Rights Act; the Virginia Fair Employment Act of 1975, as amended, where applicable; all requirements of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 20003, and 49 U.S.C. §4332 and any implementing requirements FTA may issue; the provisions of 49 U.S.C. § 5332, "Nondiscrimination in Federal Transit Programs," which prohibits discrimination on the basis of race, color, religion, national origin, sex, or age, and prohibits discrimination in employment or business opportunity; and Section 2.2-4311 of the Virginia Public Procurement Act.



- B. During the performance of the Contract, the Contractor agrees as follows:
1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, sex, disability, age, religion, or national origin. The Contractor agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrade, demotion or transfer, recruitment, or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The Contractor also agrees to comply with any implementing requirements FTA may issue.
 2. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, shall state that such Contractor is an equal opportunity employer.
 3. Notices, advertisements, and solicitations placed in accordance with Federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section.
 4. The Contractor will comply with all applicable requirements of Title IX of Education Amendments of 1972, as amended, 20 U.S.C. §§1681-1683, 1685-1688, with U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 25, and with any implementing directives that U.S. DOT or FTA may promulgate, which prohibit discrimination on the basis of sex.
 5. The Contractor shall comply with applicable Federal guidance issued in compliance with Executive Order Number 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. §2000d-1 note, and with the requirements and provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 66 Fed. Reg. 6733 et seq., January 22, 2001.
 6. With respect to activities deemed by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the Contractor agrees to comply, and assures the compliance of each Subcontractor at any tier with all applicable EEO requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000(e) note,) and any Federal statutes, executive



orders, regulations, and Federal policies affecting construction undertaken as part of the Contract.

7. The Contractor agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 et seq., and implementing regulations, which prohibit employment and other discrimination against individuals on the basis of age.
8. The Contractor agrees to comply with all applicable requirements of any other nondiscrimination statutes(s) that may apply.
9. The Contractor agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary, to identify the affected parties.

42. AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE

- A. The Contractor is solely responsible for its compliance with the Americans with Disabilities Act (ADA) and must meet all ADA requirements.
- B. The Contractor shall defend and hold VRE harmless from any expense or liability arising from the Contractor's non-compliance in meeting its obligations herein. The Contractor shall be responsible for all costs related to delays, redesign, corrective work, and litigation relating to such non-compliance.

43. DRUG OR ALCOHOL ABUSE- CONFIDENTIALITY AND OTHER CIVIL RIGHTS PROTECTIONS

The Contractor agrees to comply with confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1174 et seq., with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4581 et seq., and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd-3 and 290ee-3, and any subsequent amendments to these acts.

44. DRUG-FREE WORKPLACE

- A. During the performance of the Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each Subcontractor or vendor.
- B. "Drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this



chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.

45. AUDIT

- A. The Contractor hereby agrees to maintain all books, records, accounts, and reports required under the Contract for a period of not less than five (5) years after the date of termination or expiration of the Contract, except in the event of litigation or settlement of claims arising from the performance of the Contract, in which case the Contractor agrees to maintain same until VRE, the FTA Administrator, the Comptroller General, or any their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto. Reference 49 CFR 18.39(i)(11). The Contractor shall provide any documentation requested by VRE within fifteen (15) calendar days of such request.
- B. VRE, its authorized agents, the Federal Government, and/or state auditors shall also have full access to and the right to examine any of said materials during said period. The Contractor shall conduct audits in accordance with U.S. General Accounting Office, Government Auditing Standards.

46. PUBLICATIONS

Articles, papers, bulletins, reports or other material reporting the results and findings of the work conducted under the Contract shall not be presented publicly or published without the prior written approval of VRE, and all materials shall remain the sole property of VRE. Publications and reports officially released after the date of execution of the Contract describing the results of any investigation or study hereunder participated in by VRE shall give recognition to VRE in the text and title page to the nature of its cooperative character.

47. COPYRIGHTS

- A. All copyrightable works created pursuant to the Contract shall be considered work made for hire and shall belong solely and exclusively to VRE. If, despite the foregoing, VRE is not deemed the author and initial owner of any copyrightable works created pursuant to the Contract, the Contractor agrees to irrevocable assign and does hereby irrevocably assign to VRE the sole, exclusive and complete copyright interest in such works, and the Contractor shall execute and deliver such further documents as VRE may reasonably request for the purpose of acknowledging, implementing or recording this assignment.
- B. The Contractor agrees and warrants that no individual, other than regular employees of the Contractor or VRE working within the scope of their employment, shall participate in the creation of any copyrightable works to be delivered under the Contract, unless such individual and his or her employer, if any, have signed an intellectual property agreement satisfactory to VRE before commencing such participation.
- C. The Contractor hereby agrees that, notwithstanding anything else in the Contract, in the event of any breach of the Contract by VRE, the Contractor's remedy shall



not include any right to rescind or otherwise revoke or invalidate the provisions of this Section. Similarly, no expiration or termination of the Contract by VRE shall have the effect of rescinding, terminating or otherwise invalidating the provisions of this Section.

48. RIGHTS IN DATA

- A. Data and information submitted to VRE may be required to be made available for dissemination under the Freedom of Information Act, or other Federal, State and Local statute(s) in accordance with implementation instructions contained in 49 C.F.R. §19.36, revised March 2000, to the extent applicable, and any subsequent applicable Federal, State and Local requirements that may be promulgated.
- B. All "subject data" first produced in the performance of this Contract shall be the sole property of VRE. The Contractor agrees not to assert any rights at common law or equity and not to establish any claim to statutory copyright in such data. Except for its own internal use, the Contractor shall not publish or reproduce such data, in whole or in part, or in any manner or form, nor authorize others to do so without the prior written consent of VRE, until such time as the Federal Government or VRE may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any Contract with an academic institution.

49. ROYALTIES

While VRE recognizes that certain materials or component parts may be produced under the terms of licensing or cross licensing agreements, it must be understood that the use of such materials and component parts requiring the application of recurring royalty charges, costs or payments is specifically prohibited. The Contractor agrees to and does hereby grant VRE a royalty-free license to all such data which they may cover by copyright and to all designs as to which they may assert any rights or establish any claim under the design patent or copyright laws.

50. PROTECTION OF SENSITIVE SECURITY INFORMATION

To the extent applicable, the Contractor shall comply with 49 C.F.R. Part 1520, "Protection of Sensitive Security Information," and with any implementing regulations, requirements, or guidelines that the Federal Government may issue.

51. EXAMINATION OF RECORDS

- A. The Contractor agrees as follows:
1. Reports. The Contractor agrees to provide to VRE those reports required by the U.S. DOT's grant management rules and any other reports the Federal Government may require.
 2. Records Retention. The Contractor agrees to provide VRE, the FTA Administrator, the Comptroller General of the United States or any authorized representatives access to any books, documents, paper and records of the Contractor which are directly pertinent to the Contract for the purpose of making audits, examinations, excerpts and transcriptions even after the project



has been closed-out. The Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his/her authorized representatives including any PMO contractor access to the Contractor's records and sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309, or 5311. The Contractor agrees that it will maintain intact and readily accessible all data, books, accounts, documents, reports, records, contracts, and supporting materials relating to the Contract as the Federal Government and Commonwealth of Virginia may require during the course of the Contract and for five (5) years thereafter, except in the event of litigation of settlement of claims arising from the performance of the Contract, in which case the Contractor agrees to maintain the same until VRE, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives have disposed of all such litigation appeals claims or exceptions related thereto.

3. Access to Records. Upon request, the Contractor shall permit VRE, its authorized agents, state auditors, the Secretary of Transportation, and the Comptroller General of the United States, or their authorized representatives, to inspect all project work, materials, payrolls, and other data, and to audit the books, records, and accounts pertaining to the project.
 - a. The Contractor further agrees to include in all of its subcontracts hereunder a provision to the effect that the Subcontractor agrees that VRE, its authorized agents, state auditors, the Secretary of Transportation, and the Comptroller of the United States, or their authorized representatives, until the expiration of five (5) years after final payment under the subcontract, be permitted to inspect and audit all data and records of the Subcontractor relating to its performance under the subcontract.
 - b. The term "subcontract" as used in this clause excludes (1) purchase orders not exceeding \$100,000 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.
 - c. VRE shall continue to have for a period beyond five (5) years after Final payment under the Contract, the right to inspect and audit all data and records which relate to:
 1. Appeals under the "Disputes" clause of the Contract;
 2. Litigation of claims arising out of the performance of the Contract; or
 3. Costs and expenses of the Contract as to which exception has been taken by VRE or the Commonwealth of Virginia or any of its duly authorized representatives.



4. The extended right of inspection shall continue for such period beyond five (5) years after final payment under the Contract until such appeals, litigations, claims or exceptions have been disposed of, and for such period thereafter as required for review by the Virginia Department of Transportation (VDOT) and VRE.

d. Notification of Federal Participation. In the announcement of any contract award for goods or services (including construction services) having an aggregate value of \$500,000 or more, the Contractor agrees to specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express the amount of that Federal assistance as a percentage of the total cost of that third-party contract.

52. TAXES

Sales of items purchased directly by VRE under the Contract shall be exempt from state sales and use tax and federal excise and transportation taxes to the extent permitted by law. State sales and use tax certificates of exemption, and VRE's federal excise tax exemption registration number will be furnished upon request. The foregoing shall not be construed to imply that the Contractor is exempt from all applicable taxes.

53. INSURANCE

Before beginning work under the Contract or any extension, the Contractor must provide to VRE a Certificate of Insurance indicating that the Contractor has in force, at a minimum, the coverage denoted by the insurance requirements included herein this solicitation. The Contractor must maintain this coverage until the completion of the Contract or as otherwise stated in the Contract Documents. All required insurance coverage must be acquired from insurers that are authorized to do business in the Commonwealth of Virginia, with a rating of "A-" or better and a financial size of "Class VII" or better in the latest edition of the A.M. Best Co. Guides.

54. SAFETY RULES AND SECURITY AT VRE'S RAILROAD FACILITIES

- A. The Contractor, its Subcontractors and its employees performing work on this Contract must complete the online Contractor safety and security orientation video provided by VRE at <https://www.vre.org/contractors/>. Payment of employees for time spent completing the online safety training and any expenses incurred is the sole responsibility of the Contractor and is not eligible for reimbursement from VRE.
- B. Prior to the start of work the Contractor shall complete **ATTACHMENT D – VRE SAFETY AND SECURITY RULES TO LIVE BY** and shall submit page 2 with an original signature for each employee who will access VRE property.
- C. In an emergency, the Contractor shall act at its discretion to prevent threatened damage, injury or loss.



- D. The Contractor is responsible for initiating, maintaining and supervising all safety precautions and programs in connection with this Contract. This includes the Contractor's employees and other persons who may be affected thereby, as well as materials and equipment, both in storage and on-site.
- E. It is incumbent upon the Contractor and its employees to work in a safe manner at all times due to the nature of the rail service. The Contractor while performing work around VRE's facilities shall be alert for train movement through the facility to ensure a safe operation. While train movement is ongoing at the facility the Contractor shall move to a safe distance. The VRE reserves the right to require the Contractor to be qualified and its employees to meet the safety qualifications required by the applicable railroads, Federal Railroad Administration, and VRE's safety rules for operations.

55. INSPECTION OF WORK

- A. VRE reserves the right to conduct any test/inspection it may deem advisable to assure supplies and services conform to the Scope of Work. The Contractor is responsible for performing work according to specifications in a professional, high-quality standard.
- B. Inspections will be performed by the PM routinely throughout the Contract. All stages, materials, and details of the work are subject to inspection. The Contractor shall provide the PM and inspectors full and safe access to all parts of the work. The Contractor shall furnish the PM and inspectors with such information and assistance as required to make complete, timely, and detailed inspections.
- C. The Contractor shall cooperate with VRE and facilitate the inspection activity by providing necessary equipment for access to aid in the inspection and verification activity.
- D. If an inspection reveals that work has not been properly performed, or materials used are unacceptable, the Contractor will be so advised and shall immediately inform the PM of their schedule for correcting such work and materials, and the time when a reinspection can be made.
- E. Nothing in this section shall abrogate or otherwise limits or relieves the Contractor's independent duty to inspect the work.



X. INSURANCE REQUIREMENTS

01. GENERAL REQUIREMENTS

- A. The Contractor shall secure, pay the premiums for and keep in force until the expiration of the Contract, and any renewal thereof, adequate insurance as identified in the “VRE Insurance Coverage Requirements” document. Items marked “X” are required to be provided. By signing and submitting a Bid or Proposal under this solicitation, the Contractor certifies if awarded the Contract, the Contractor will have the insurance coverage identified and described below in the VRE Insurance Coverage Requirements at the time of Contract award.
- B. All required insurance coverage must be acquired from insurers that are authorized to do business in the Commonwealth of Virginia, with a rating of “A-” or better and a financial size of “Class VII” or better in the latest edition of the A.M. Best Co. Guides.
- C. The Contractor agrees to include the provisions of the foregoing clause in every subcontract or purchase order so that the provisions will be binding upon each Subcontractor or vendor. All insurance provided by the Contractor and the Contractor’s Subcontractors shall be primary to any insurance coverage VRE may possess.
- D. The Contractor further certifies that it and any Subcontractors shall maintain these insurance coverages and the minimum limits of liability as stated, during the entire term of the Contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in the Commonwealth of Virginia.
- E. The Contractor shall furnish VRE proof of compliance with these insurance requirements in the form of an original Certificate of Insurance signed by an authorized representative or agent of the insurance company(ies). The Certificate of Insurance must be furnished within ten (10) calendar days of receipt of the “Notice of Intent to Award” and before any work under the resultant Contract will be allowed to commence.
- F. Failure to provide the Certificate(s) when required may be cause for VRE to award a Contract to the next responsible and responsive Bidder or Offeror. However, in no event shall work be performed until the required Certificates of Insurance have been furnished and approved by VRE.
- G. All insurance must be raised to an amount approved by VRE as modifications are made to the Contract.
- H. Renewal certificates shall be furnished to VRE not less than fourteen (14) calendar days prior to the expiration or termination date of the applicable policy(ies). Otherwise, VRE may halt all work under the Contract upon expiration or other



termination of any required coverage and work will not be allowed to resume until a satisfactory renewal certificate is received.

- I. If the Contractor is furnished a written notice of cancellation from the insurance carrier, the Contractor shall provide VRE a copy of the cancellation notice within thirty (30) calendar days of receipt of the notification.
- J. In no event shall the failure by VRE to receive certificates of insurance required hereunder, or to receive them by the date(s) required hereunder, be construed as a waiver of the Contractor's obligation to obtain the required insurance coverages. Failure by VRE to demand any certificate of insurance or other evidence of full compliance with the insurance requirements set forth herein, or failure by VRE to identify a deficiency in the evidence provided, shall not be construed as a waiver of the obligation to procure or maintain the insurance required hereunder. The acceptance of delivery by VRE does not constitute approval or agreement that the insurance requirements have been met or that the insurance policies identified in the certificates of insurance are in compliance with such requirements.



02. VRE INSURANCE COVERAGE REQUIREMENTS

| "X" denotes that coverage is required. Applicability | Description | Coverage |
|---|---|--|
| X | 1. Workers' Compensation | Limits as required by the Workers' Compensation Act of Virginia. |
| X | Admitted in Virginia | YES |
| X | All States Endorsement | Statutory |
| | USL&H Endorsement | Statutory |
| | Voluntary Compensation | Statutory |
| | | |
| X | 2. General Liability shall be Commercial General Liability endorsed as broad form to include minimum limits: <ul style="list-style-type: none"> General Aggregate Products & Completed Operations Aggregate Personal & Advertising Injury Each Occurrence | \$2,000,000 \$2,000,000 \$1,000,000 \$1,000,000 |
| | Contractual Liability | |
| | Personal Injury | |
| | Independent Contractors | |
| | XCU Property Damage Exclusion Deleted | |
| | | |
| X | 3. Automobile Liability (Coverage sufficient to cover all vehicles owned, used, or hired, by the Bidder/Offeror, its agents, representatives, employees, or Subcontractors.) Minimum limits: <ul style="list-style-type: none"> Combined Single Limit Medical Expense Limit | \$1,000,000 \$ 5,000 |
| | 4. Professional Errors and Omissions (Professional Liability) | \$1,000,000 |
| | 5. Builder's Risk | Contract Value |
| | 6. Installation Floater | Contract Value |
| | 7. Garage Liability | |
| | 8. Garage Keeper's Legal Liability | |
| | 9. Fire Legal Liability | |
| | 10. Railroad Protective Liability Insurance. VRE and other agencies shall be named as insured. The language shall read as follows: "Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission, together known as Virginia Railway Express. | \$5,000,000 per occurrence; \$10,000,000 aggregate |
| | 11. Railroad Protective Liability Insurance. An additional policy shall name the Host Railroad as insured. Furnish a copy of the Certificate to VRE, prior to entry on VRE property or any other railroad property upon which VRE operates. | \$5,000,000 per occurrence; \$10,000,000 aggregate |
| | 12. Pollution Liability. | Contract Value |
| X | 13. VRE shall be named as additional insured on General Liability Policy. This coverage is primary to all other coverage VRE may possess. The language shall read as follows: "Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission, together known as Virginia Railway Express." | |
| X | 14. Best's Guide Rating – A-VII or better or Equivalent | |
| X | 15. The Certification must state: RFP No. 025-005 Photography & Videography Services | |
| | 16. Umbrella Liability | \$5,000,000 |



XI. SMALL BUSINESS AND VETERAN BUSINESS CONCERNS

01. SMALL BUSINESS CONCERN POLICY

- A. It is the policy of VRE that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by VRE, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems.
- B. It is further the policy of VRE that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.
- C. The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the Federal Transit Administration or VRE as may be necessary to determine the extent of the Contractor's compliance with this clause.
- D. Definitions as used in this Contract:
1. "HUBZone small business concern" means a small business concern:

That appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.
 2. "Service-disabled veteran-owned business concern" means a small business concern:
 - a. Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans.
 - b. The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.



- c. “Service-disabled veteran” means:

A veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).
 - d. “Small business concern” means:

A small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.
3. “Small disadvantaged business concern” means a small business concern that represents, as part of its offer that:
- a. It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, Subpart B;
 - b. No material change in disadvantaged ownership and control has occurred since its certification;
 - c. Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
 - d. It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).
4. “Veteran-owned small business concern” means a small business concern:
- a. Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
 - b. The management and daily business operations of which are controlled by one or more veterans.
5. “Women-owned small business concern” means a small business concern:
- a. That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
 - b. Whose management and daily business operations are controlled by one or more women.



- E. The Contractor acting in good faith may rely on written representations by its Subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small, disadvantaged business concern, or a women-owned small business concern.



XII. ATTACHMENTS

- A. SCOPE OF WORK**
- B. REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF BIDDERS/OFFERORS**
- C. COST PROPOSAL CERTIFICATION**
- C-1 COST PROPOSAL**
- D. VRE SAFETY AND SECURITY RULES TO LIVE BY**

