
GENERAL PROVISIONS

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SECTION No.	Title	Page No.
1.	Proposal and Contract Requirements	4
2.	Applicable Law and Courts	4
3.	Precedence of Terms	4
4.	No Federal Government Obligations to Third Parties	5
5.	Key Personnel	5
6.	Inspection of Proposals	6
7.	Protest of Award	6
8.	Availability of Funds	6
9.	Payment Terms	6
10.	Disallowed Costs Including Interest	7
11.	Contractual Disputes	7
12.	Termination for the Convenience of VRE	8
13.	Antitrust	10
14.	Payment to Subcontractor	10
15.	Testing/Inspection/Review of Work	11
16.	Termination for Default	11
17.	Protection of Sensitive Security Information	12
18.	Severability	12
19.	Covenant Against Contingent Fees	12
20.	Fair Employment Contracting Act	12
21.	Geographic Restrictions	13
22.	Changes	13
23.	Immigration Reform and Control Act of 1986	13
24.	Indemnification	13
25.	Ethics in Public Contracting	14
26.	Prohibition Against the Use of Federal Funds for Lobbying	14
27.	Officials Not to Benefit	14
28.	Independent Contractor	14
29.	Debarment Status	15
30.	Anti-Discrimination	15
31.	Access Requirements for Individuals with Disabilities	17

SECTION No.	Title	Page No.
32.	Drug or Alcohol Abuse – Confidentiality and Other Civil Rights Protections	18
33.	Drug-Free Workplace	19
34.	Metric System	19
35.	Energy Conservation	19
36.	Environmental Regulations	19
37.	Planning	20
38.	Audit	21
39.	False or Fraudulent Statements and Claims	21
40.	Support of Exclusionary or Discriminatory Specifications	22
41.	Insurance	22
42.	Authorized Funding	23
43.	VRE Contract Management	23
44.	Taxes	24
45.	Employment of Personnel	24
46.	Fly America	24
47.	Conflict of Interest	25
48.	Notification of Federal Participation for States	25

GENERAL PROVISIONS

1. **PROPOSAL AND CONTRACT REQUIREMENTS**

Federal funds will be used for the Contract. VRE also follows Virginia procurement laws. Accordingly, all applicable Federal and State requirements will apply. Prospective Contractors are expected to become familiar with these requirements, and should not submit proposals if unable to execute a Contract containing such provisions. VRE will provide a Contract containing these provisions for execution by the prospective Contractor that is selected. Prospective Contractors should not expect to use their own standard contracts for this engagement. Federal requirements are subject to change. The prospective Contractor is responsible for complying with the most current regulations. The Contractor agrees that the most recent of such Federal requirements will govern the administration of the Contract at any particular time during the Contract's performance, unless VRE issues a written determination otherwise.

2. **APPLICABLE LAW AND COURTS**

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

3. **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 the state procurement law, the inconsistency shall be resolved by the following order of precedence:

1. Federal Transit Administration Master Agreement (21) (October 1, 2014) and FTA Circular 4220.IF, dated November 1, 2008, as amended
2. Virginia's Public Procurement Act, as amended
3. Invitation for Bids (IFB)/Request for Proposals (RFP)/Request for Quotes (RFQ)
4. Special Terms and Conditions
5. General Provisions
6. General Terms and Conditions
7. Technical Specifications
8. Plans
9. Contractor' Bid/Proposal

- B. Incorporation of Federal Transit Administration terms: these terms include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in the Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any VRE requests which would cause VRE to be in violation of the FTA terms and conditions.

4. **NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES**

The federal government shall not be subject to any obligations or liabilities of any Contractor, or any other person not a party to a Grant Agreement or Cooperative Agreement in connection with the performance of the Contract. Notwithstanding any concurrence or approval provided by the federal government of any solicitation, sub agreement, or third party Contract, the federal government continues to have no obligations or liabilities to any party, including the third party contractor.

5. **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 technical proposal for evaluations. No substitutions may be made except in accordance with this clause.
- 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 Contract Administration Manager and provide the information described in paragraph D. below.
- C. The Contractor must submit to the VRE Contract Administration Manager all proposed substitutions, in writing, at least fifteen (15) 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 Contract Administration Manager. Any proposed substitute must have qualifications equal to or superior to the qualifications of the incumbent. VRE will evaluate such requests and promptly notify the Contractor in writing of its approval or

disapproval. 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 Section of the Contract.

6. **INSPECTION OF PROPOSALS**

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

7. **PROTEST OF AWARD**

A Contractor wishing to protest an award or a decision to award a Contract must submit the protest, in writing, to VRE no later than ten (10) days after either the decision to award or the award, whichever occurs first. The protest must include the basis for the protest and the relief sought. Within ten (10) days after receipt of the protest, the Chief Executive Officer of VRE will issue a written decision stating the reasons for the action taken. This decision is final. Further action, by a Contractor may be taken by instituting action as provided by the Code of Virginia.

8. **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 Federal Transit Administration, the Contract can be terminated under the provisions of the Contract.

9. **PAYMENT TERMS**

- A. 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. Failure to pay Subcontractors in an expedient manner may result in the use of the payment bond and/or termination of the Contract. However, for production and research services and any other services as specified in a solicitation, all payments shall be made

upon the achievement of pre-established project milestones identified in the related task order accepted by VRE. The pro-rata milestone payment shall be according to a payment schedule directly related to the apportioned cost of the total project. Payment of Subcontractors shall occur within seven (7) days of receipt of payment by VRE for work completed and approved expenses.

- B. 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.

10. **DISALLOWED COSTS INCLUDING INTEREST**

- A. The Contractor agrees to remit to VRE, which in turn will remit to the Federal government, any excess payments made to the Contractor disallowed by the Federal government, as well as any interest required by Subsection 9 f. of the FTA Master Agreement.
- 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 consistent with prohibitions of 49 USC§5323 (h)(1) and any cost ineligible for FTA participation as required by Federal law, regulations or guidelines for Federal participation including the cost soliciting response.
- 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.

11. **CONTRACTUAL DISPUTES**

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

12. **TERMINATION FOR THE CONVENIENCE OF VRE**

- A. The parties agree that VRE may terminate the Contract of 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 effected by delivery of a Notice of Termination signed by the VRE Contracting Officer, mailed or delivered to the Contractor, and specifying the extent of termination and the effective date of termination. Upon receipt of such notice, the Contractor shall:
 - 1. Cease any further deliveries or work due under 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 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 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 Contract Administrator. If the Contractor fails to submit the claim within the time

allowed, the VRE Contracting Officer may determine, on the basis of information available, the amount, if any, due 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 Contract Administrator, with the approval of the VRE Contracting Officer, shall pay reasonable costs of termination, including a reasonable amount for profit on services delivered or completed. In no event shall this amount be greater than the original Contract price, reduced by any payments made prior to 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 Contract Administrator shall pay to the Contractor the amounts determined as follows, without duplicating any amount which may have already been paid under paragraph E. of this 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 Contract Administrator shall determine to be due under this Section, the Contractor may appeal any claim to VRE in accordance with the Contractual Disputes Section 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

13. **ANTITRUST**

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

14. **PAYMENT TO SUBCONTRACTOR**

- A. In the event that the Contractor utilizes a Subcontractor for any portion of the work under this Contract, the Contractor hereby agrees to:
 - 1. The Contractor shall take one (1) of the two (2) following actions within thirty (30) 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 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.
- B. The Contractor agrees further to return retainage payments to each Subcontractor within thirty (30) days after Subcontractor's work is satisfactorily completed. Work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required.
- C. The Contractor shall be obligated to pay interest to a Subcontractor on all monies owed by the Contractor that remain unpaid after thirty (30)

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. 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.

15. **TESTING/INSPECTION/REVIEW OF WORK**

- A. VRE reserves the right to conduct any test/inspection it may deem advisable to assure supplies and services conform to specifications. The Contractor is responsible for performing work according to specifications in a professional, high quality standard. Authorized representatives or agents of VRE, the Commonwealth of Virginia and/or the Federal Transit Administration may, during normal office hours, review and inspect the project activities, data, reports/studies, drawings, specifications, estimates, maps computations and financial records of the Contractor or Subcontractor at VRE facilities.
- B. 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. The VRE inspector shall have the authority to reject materials or workmanship that does not meet the Contract requirements. The inspector has no authority to make changes; no orders given by him, either written or verbal, will be considered basis of any claim by the Contractor for extra compensation. It is not the duty of the inspector to layout any work for the Contractor.

16. **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. Notwithstanding the foregoing right to cure, any enroute failure of VRE trains caused by the Contractor's failure to meet the fueling schedule shall be a default and VRE shall have the right to immediately terminate the Contract with no opportunity to cure.

17. **PROTECTION OF SENSITIVE SECURITY INFORMATION**

To the extent applicable, the Contractor shall comply with Section 101(e) of the Aviation and Transportation Security Act, 49 U.S.C. §4019(b), with U.S. Transportation Security Administration regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 1520, and with any implementing regulations, requirements, or guidelines that the Federal Government may issue.

18. **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.

19. **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.

20. **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.

21. GEOGRAPHIC RESTRICTIONS

The prospective contractor agrees to refrain from using state or local geographic preferences, except those expressly mandated or encouraged by federal statute, and as permitted by FTA, such as for professional services in areas where such a restriction.

22. 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 causes an increase or decrease in the Contractor's cost of performance or the time required for performance, an equitable adjustment in the Contract price and/or the time allowed for performance of the Contract shall be negotiated and the Contract modified accordingly. Any claim by the Contractor for adjustment under this clause must be asserted by written notice to VRE within thirty (30) days from the date of receipt by the Contractor of the change notice. If the parties fail to agree to an adjustment, the question of an increase or decrease in the Contract price or time allowed for performance shall be resolved in accordance with the procedures for resolving disputes provided by the disputes clause of the Contract. Neither the existence of a claim, a dispute, submission of the dispute or the dispute resolution process, litigation or any portion of this provision or changes shall excuse the Contractor from promptly proceeding with performance of the Contract as changed by the notice.

23. IMMIGRATION REFORM AND CONTROL ACT OF 1986

By submitting this proposal, 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.

24. 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 Agreement 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.

25. **ETHICS IN PUBLIC CONTRACTING**

By submitting its proposal, the Contractor certifies that its proposal is made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other Contractor, supplier, manufacturer or Subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

26. **PROHIBITION AGAINST THE USE OF FEDERAL FUNDS FOR LOBBYING**

The Contractor and all subcontracts agree to comply with the provisions of 31 U.S.C. § 1352, which prohibit the use of federal funds for lobbying any official or employee of any federal agency, or member or employee of Congress; and requires the recipient to disclose any lobbying of any official or employee of any federal agency, or member or employee of Congress in connection with federal assistance. In addition, no federal assistance funds shall be used for activities designed to influence Congress or State Legislature on legislation or appropriations, except through proper, official channels. The Contractor shall comply and assure the compliance of Subcontractors at any tier with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20.

27. **OFFICIALS NOT TO BENEFIT**

No member of or delegate to the Virginia General Assembly, and no member of VRE 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 year thereafter shall have any interest, direct or indirect, in the Contract or the proceeds thereof.

28. **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.

29. **DEBARMENT STATUS**

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

30. **ANTI-DISCRIMINATION**

- A. By submitting a 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, creed, 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 prospective contractor agrees as follows:
 - 1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, creed, 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, creed, sex, disability, age, religion, or national origin. Such action shall include, but not be limited to, the following: employment, upgrade, demotion or transfer, recruitment, or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The 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 prospective Contractor, will state that such prospective 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 will comply with applicable Federal guidance issued in compliance with Executive Order Number 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. §2000d-1 note, and with the requirements and provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 66 Fed. Reg. 6733 *et seq.*, January 22, 2001.
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 comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environment Justice in Minority Populations and Low-Income Populations," 42.U.S.C. § 4321.
10. The Contractor agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environment Justice in Minority Populations and Low-Income Populations," 42.U.S.C. § 4321.
11. 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

31. **ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES**

- A. The Contractor agrees to comply with the requirements of 49 U.S.C. § 5301(d), which states the Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The Contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the Contractor agrees to comply with all applicable requirements of the following regulations and any subsequent amendments thereto:
 1. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)", 49 C.F.R. Part 37;
 2. U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance", 49 C.F.R. Part 27;

3. U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles”, 49 C.F.R. Part 38;
 4. Department of Justice (DOJ) regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services”, 28 C.F.R. Part 35;
 5. DOT regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities”, 28 C.F.R. Part 36;
 6. General Services Administration regulations, “Construction and Alteration of Public Buildings, “Accommodations for the Physically Handicapped”, 41 C.F.R. Part 101-19;
 7. Equal Employment Opportunity Commission (EEOC) “Regulations to Implement the Equal Employment Provisions of the Americans With Disabilities Act”, 29 C.F.R. Part 1630;
 8. Federal Communications regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled”, 47 C.F.R. Part 64, Subpart F;
 9. FTA regulations, “Transportation for Elderly and Handicapped Persons”, C.F.R. Part 609;
 10. Architectural and Transportation Barriers Compliance Board regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. Part 1194; and
 11. Any implementing requirements FTA may issue.
- B. Any and all materials, drawings or plans produced for VRE shall reflect the requirements of the codes and regulations listed above.

32. **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.

33. **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.

34. **METRIC SYSTEM**

In accordance with Section 30 of the FTA Master Agreement, the FTA reserves the right to impose specific metric requirements for the Contract.

35. **ENERGY CONSERVATION**

The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

36. **ENVIRONMENTAL REGULATIONS**

- A. The Contractor and any Subcontractors are required to comply with all applicable federal environmental standards, orders or requirements issued under Section 306 of the Clean Air Act, as amended, 42 U.S.C. §7414, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §§7401 *et seq.*, and Section 508 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1368, and other provisions of the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§1251 *et seq.*; Environmental Protection agency regulations (40 C.F.R. Part 15); National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§4321 *et seq.*; Executive Order Number 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. §4321 note; FTA statutory requirements at 49 U.S.C. §5324(b); Council on Environmental Quality regulations pertaining to compliance with the National Environmental Quality Act of 1969, as

amended, 40 C.F.R Part 1500 *et seq.*; the joint FHWA/FTA regulations, “Environmental Impact and Related Procedures,” 23 C.F.R. Part 771 and 49 C.F.R. Part 622, and, when promulgated, FHWA/FTA joint regulations, “NEPA and Related Procedures for Transportation Decision making, Protection of Public Parks, Wildlife and Waterfowl Refuges, and Historic Sites,” 23 C.F.R. Part 1420 and 49 C.F.R Part 623.

- B. As stated in the aforementioned regulations, if the Contract causes or results in adverse environmental effects, all reasonable measures to minimize those adverse effects must be taken. In addition, all environmental mitigation measures identified as commitments in applicable environmental documents, such as environmental assessments and documents required by 49 U.S.C. §303, must be completed. These commitments include any conditions the Federal Government imposes on a finding of no significant impact or record of decision. These mitigations measures are incorporated by reference and made part of the Grant Agreement and may not be modified or withdrawn without written approval of the Federal Government.
- C. The Contractor agrees to include in Subcontracts exceeding \$100,000, adequate provisions to ensure that Contract participants report the use of facilities placed or likely to be placed on EPA's "List of Violating Facilities," refrain from using violating facilities, report violations to FTA and the Regional EPA Office. The VRE will report and requires the Contractor and any Subcontractor to report any violation of these requirements resulting from implementation of the Contract by the Contractor, Subcontractor (at any tier), or VRE to FTA and the appropriate U.S. EPA Regional Office. All plans, drawings, and other documents produced as a result of the Contract should comply with these regulations when applicable.
- D. The Contractor also shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

37. **PLANNING**

Projects financed with Federal assistance must be implemented in a manner consistent with the plans developed in compliance with the applicable planning and private enterprise provisions of 49 U.S.C. §5303 through 5306 and 5323(1) and with the joint Federal Highway Administration (FHWA)/FTA regulations, “Planning Assistance and Standards,” at 23 C.F.R. Part 450 and 49 C.F.R. Part 613 and, when promulgated, with FHWA/FTA regulations, “Metropolitan and Statewide Planning,” 23 C.F.R. Part 1410 and 49 C.F.R. Part 621; and to the extent applicable, with FTA regulations, “Major Capital Investment Projects,” 49 C.F.R. Part 611.

38. **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 three (3) 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).
- B. The agency, its authorized agents, Federal Government, and/or state auditors shall also have full access to and the right to examine any of said materials during said period. The Contractor shall conduct audits in accordance with U.S. General Accounting Office, Government Auditing Standards.

39. **FALSE OR FRAUDULENT STATEMENTS AND CLAIMS**

- A. The Contractor recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et. seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31 apply to its actions pertaining to the Project.
- B. Upon execution of the Contract, the prospective Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which the Contract work is being performed.
- C. In addition to other penalties that may be applicable, the offeror also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the prospective contractor to the extent the Federal Government deems appropriate.
- D. The contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contact connected with a project which is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § §5307, the Government reserves the right to impose the penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- E. The contractor agrees to include the above two clauses on each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

40. **SUPPORT OF EXCLUSIONARY OR DISCRIMINATORY SPECIFICATIONS**

Apart from inconsistent requirements by Federal statute or regulations, VRE complies with the requirements of 49 U.S.C. § 5323(h)(2) by refraining from using any Federal assistance awarded by FTA to procurements with exclusionary or discriminatory specifications.

41. **INSURANCE**

- 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 on the “VRE Insurance Requirements” document. Items marked “X” are required to be provided. By signing and submitting a proposal under this solicitation, the Offeror/Bidder certifies that if awarded the Contract, it will have the insurance coverages identified and described herein at the time the Contract is awarded. The Offeror/Bidder further certifies that it and any Subcontractors will maintain these insurance coverages and the minimum limits of liability as stated, during the entire term of the Contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia.
- B. Proof of compliance with these insurance requirements shall be furnished to VRE in the form of an original certificate of insurance signed by an authorized representative or agent of the insurance company (ies) within 10 calendar days of notice of award of Contract and before any work under the resultant Contract will be allowed to commence. All insurance must be raised as change orders are made to the Contract.
- C. Renewal certificates shall be furnished to VRE not less than 14 calendar days prior to the expiration or termination date of the applicable policy (ies). Otherwise, VRE may halt all work under the Contract upon expiration or other termination of any required coverage and work will not be allowed to resume until a satisfactory renewal certificate is received.
- D. To the extent applicable, the prospective contractor agrees to comply with the flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4012a(a), with respect to any Project activity involving construction or acquisition having an insurable cost of \$10,000 or more.
- E. 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.

42. **AUTHORIZED FUNDING**

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

43. **VRE CONTRACT MANAGEMENT**

- A. Project Manager: During the term of the Contract, the Contracting Officer may designate a Project Manager (PM) to represent VRE and assist in monitoring the work under 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 clarifications and guidance of Contractors personnel as may be required under the Contract. Only the PM consulting with the Contract Administrator and/or the Contracting Officer, as necessary is authorized to provide direction to the Contractor.

- B. Contract Administrator: During the term of the Contract, matters relating to bonding, insurance, terms and conditions, and other contract administration matters shall be directed to the Contract Administrator. Changes to the Contract value, scope, or schedule will require consultation with the Contract Administrator.
- C. Contracting Officer: The Contracting Officer is the only individual who can legally commit or obligate 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.
- D. Construction Manager: The Construction Manager (CM) for this project, if any, will be identified under a separate cover letter to the Contractor. The CM shall be responsible for oversight of quality assurance and scheduling of all Contract work specified herein.

44. **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 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.

45. **EMPLOYMENT OF PERSONNEL**

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

46. **FLY AMERICA**

The Contractor understands and agrees that VRE or the Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for the Project unless that air transportation is provided by U.S. flag air carriers to the extent service by U.S. flag air carriers is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. §40118, and with U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§301-10.131 through 301-10.143.

47. **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., VA Code Ann.), 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 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 subagreement supported by federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the following parties has a financial or other interest in the entity selected for award (a) an employee, officer, board member or agent (b) any member of his or her family (c) his or her partner or (d) an organization that employs or intends to employ any of the above.
- 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 subagreement may, without some restriction on future activities, result in an unfair competitive advantage to the third party Contractor or subrecipient or impair its objectivity in performing the Contract work.

48. **NOTIFICATION OF FEDERAL PARTICIPATION FOR STATES**

Federal grant monies fund this Contract, in whole or in part (Section 5311 – CFDA 20.395). As such, agencies receiving such funds and contractors awarded contracts that use such funds must comply with certain Federal certifications as well as requirements and certifications applicable under the Federal Motor Vehicle Safety Standard (FMVSS). It is the Contractor’s responsibility to be aware of the pertinent certifications and contract clauses, as identified by the issuing Agency for the instant procurement and ensure compliance with such requirements prior to award and throughout the term of any resultant contact. The full text of these clauses is available at the National Rural Transit Assistance Program (RTAP) website under “ProcurementPro.” The website address is <http://www.nationalrtap.org.home.aspx>.