



Addendum No. 1

DATE: 10/13/2022

Reference: RFP No. 1-000-22-0005

Title: General Engineering Services, Passenger Rail Transportation Programs and Projects in Virginia

Issue Date: 9/30/2022

Proposal Due: **10/31/2022 by 2:00 PM EST**

TO ALL OFFERORS:

This Addendum No. 1 informs Offerors as amendments and modifications to the RFP documents relative to anticipated federal financial assistance on the Project in the form of a grant from the Federal Railroad Administration.

1. Section 1.0 of the RFP is hereby modified to read as follows:

1.0 PURPOSE; PROJECT OVERVIEW

- 1.1 The Virginia Passenger Rail Authority (VPRA) is issuing this Request for Proposal (RFP) to solicit proposals from qualified single entities or a team of firms to establish term contract(s) through competitive negotiation for the procurement of as-needed general engineering services for passenger rail transportation initiatives undertaken in connection with its Transforming Rail in Virginia program (such services being collectively defined herein as the "Project"). VPRA anticipates receiving federal financial assistance on the Project in the form of a grant from the Federal Railroad Administration.

2. Section 18 of the RFP is hereby modified to read as follows:

18.0 APPLICABLE COST PRINCIPLES; ACCOUNTING REQUIREMENTS

- 18.1 This Contract will be performed and audited in accordance with 2 C.F.R. Part 200, "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards," and 48 C.F.R Part 31, "Contract Cost Principles and Procedures," (FAR Part 31), which provisions are incorporated herein by reference. To be eligible for reimbursement, the Offeror's and Sub-offeror's costs must (1) be incurred in accordance with the terms of an agreed task order; (2) be in accordance with the final approved Fee Schedule; and (3) comply with cost principles set forth in 2 C.F.R. Part 200 and FAR Part 31. All Offerors submitting

Proposals (prime consultants, joint ventures and sub-consultants) must have internal control systems in place that meet federal requirements for accounting. These systems must comply with requirements of 2 C.F.R. Part 200/FAR Part 31 and be sufficient to exclude unallowable cost items from Project invoicing to VPRA.

3. **A new Attachment F, "Special Terms and Conditions – Federal Railroad Administration Clauses," (Form PD 210 (FRA/SVC) is now made a part of the RFP Documents (copy attached).**

NOTE: Offerors must acknowledge receipt of this Addendum in writing within the RFP Cover Page (FORM PD 07) at time of proposal submittal.

Very truly yours,

A handwritten signature in cursive script that reads "John Kostyniuk".

John Kostyniuk

ATTACHMENT F

SPECIAL TERMS AND CONDITIONS

(Federal Railroad Administration Clauses)

These Special Terms and Conditions shall apply in instances in which this Contract is funded in whole or in part by the United States Department of Transportation, Federal Railroad Administration. The requirements set forth herein are in addition to and, unless inconsistent and irreconcilable, do not supplant requirements found elsewhere in this Contract. If any requirement in these Special Terms and Conditions is inconsistent with a provision found elsewhere in this Contract and is irreconcilable with such provision, the requirement in these Special Terms and Conditions shall prevail.

ARTICLE-1: DEFINITIONS

- 1.1 “**C.F.R.**” means the United States Code of Federal Regulations, which contains regulations applicable to FRA grant recipients and their consultants and subconsultants.
- 1.2 “**Consultant**” means the service provider identified in the Contract.
- 1.3 “**DOT**” means the United States Department of Transportation (also represented as USDOT).
- 1.4 “**EPA**” means the United States Environmental Protection Agency (also represented as USEPA).
- 1.5 “**Federal Government**” means the government of the United States of America, and any body or entity exercising executive, legislative, judicial, regulatory or administrative functions of the government of the United States of America.
- 1.6 “**Grant Agreement**” shall mean the grant agreement between VPRA and FRA which forms the basis for federal financial assistance to the Contract.
- 1.7 “**FRA**” means the Federal Railroad Administration, an operating administration of the USDOT.
- 1.8 “**Project**” shall have the meaning set forth in the Contract and, if no such definition is specified, shall mean the subject matter pertaining to Consultant’s Contract services.
- 1.9 “**U.S.C.**” means the United States Code.
- 1.10 “**Work**” shall have the meaning set forth in the Contract and includes the services to be furnished by Consultant under the Contract.

ARTICLE 2: COMPLIANCE WITH LAWS, REGULATIONS, POLICIES, ETC.

- 2.1 The Consultant shall at all times comply with the required FRA clauses set forth in this Contract and with all applicable federal laws together with DOT/FRA regulations, policies, procedures, guidance, required terms and conditions, and directives including, without limitation, those listed directly or by reference in the Grant Agreement (or any underlying agreement thereto). Federal requirements applicable to this Contract may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the Grant Agreement (or any underlying agreement thereto), including any information incorporated by reference and made part of the Grant Agreement (or any underlying agreement thereto). The Consultant shall comply with any changes to the federal requirements as are applicable to this Contract, including but not limited to, any new DOT/FRA required terms and conditions as may be issued in response to changes in the federal requirements. The Consultant's failure to fully comply with the provisions of this Article 2.1 shall constitute a material breach of this Contract.
- 2.2 Specific provisions in this Contract include, in part, certain standard terms and conditions required by

USDOT, whether or not expressly set forth in the Contract provisions. All contractual provisions required by USDOT, including those set forth Appendix II of 2 C.F.R. Part 200 are hereby incorporated by reference. Notwithstanding anything to the contrary in this Contract, all FRA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Consultant shall not perform any act, fail to perform any act, or refuse to comply with any VPRA requests which would cause the VPRA to be in violation of the FRA terms and conditions and/or the Grant Agreement.

ARTICLE 3: PROHIBITED INTERESTS

- 3.1 No member of or delegate to, the Congress of the United States shall have any interest, direct or indirect, in this Contract or to the benefits thereof.

ARTICLE 4: UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES AND AUDIT REQUIREMENTS

- 4.1 The Consultant shall comply with applicable provisions of 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, and DOT's implementing regulations at 2 C.F.R. Part 1201.

ARTICLE 5: ACCESS TO RECORDS, ACCESS TO CONSTRUCTION SITE, AND MAINTENANCE OF RECORDS

- 5.1 **Access to Records.** The Consultant agrees to provide sufficient access to FRA and its agents to examine, inspect, and audit records and information related to performance of this Contract as reasonably may be required.
- 5.2 **Access to the Sites of Performance.** The Consultant agrees to permit FRA and its agents access to the sites of performance under this Contract as may reasonably may be required.
- 5.3 **Reproduction of Documents.** The Consultant will retain, and will require its subconsultants at all tiers to retain, complete and readily accessible records related in whole or in part to this Contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.
- 5.4 **Retention Period.** The Consultant agrees to comply with the record retention requirements in accordance with 2 C.F.R § 200.333. The Consultant shall maintain all books, records, accounts, and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims, or exceptions related thereto. The expiration or termination of this Contract does not alter the record retention or access requirements of this Article.

ARTICLE 6: PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

- 6.1 The Consultant acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.*, and USDOT regulations, "*Program Fraud Civil Remedies*," 49 C.F.R. Part 31, apply to its actions pertaining to this Contract. Upon execution of this Contract, the Consultant certifies or affirms the truthfulness and accuracy of any statement is has made, it makes, it may make, or causes to be made, pertaining to this Contract or the FRA-assisted project for which this work is being performed. In addition to other penalties that may be applicable, the Consultant further 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 Consultant to the extent the Federal Government deems appropriate.

ARTICLE 7: CIVIL RIGHTS

7.1 VPRA is an Equal Opportunity Employer. As such, the VPRA agrees to comply with all applicable Federal civil rights laws and implementing regulations. Under this Contract, the Consultant shall at all times comply with the following requirements.

7.2 ***Nondiscrimination.*** The following nondiscrimination requirements apply to this Contract:

7.2.1 ***Nondiscrimination in Employment.*** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, the Consultant agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex (including gender identity), age, or disability. In addition, the Consultant agrees to comply with applicable federal implementing regulations and other implementing requirements FRA may issue.

7.2.2 ***Nondiscrimination in Contracting.*** The Consultant agrees and assures that it will abide by the following conditions, and that it will include the following assurance in every subagreement and third-party contract it signs: The Consultant must not discriminate on the basis of race, color, national origin, or sex in the award and performance of any FRA or U.S. DOT-assisted subagreement, third party contract, or third party subcontract, as applicable.

7.3 ***Equal Employment Opportunity. The following equal employment opportunity requirements apply to this Contract:***

7.3.1 ***Race, Color, Religion, National Origin, Sex.*** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. section 2000e *et seq.*, the Consultant agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S.DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246, Relating to Equal Employment Opportunity," and implementing regulations at 41 C.F.R. Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." The Consultant 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 (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Consultant agrees to comply with any implementing requirements FRA may issue.

7.3.2 ***Age.*** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. Part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. Part 90, the Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Consultant agrees to comply with any implementing requirements FRA may issue.

7.4 ***Disabilities.*** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, the Consultant agrees that it will not discriminate against individuals on the basis of disability. In addition, the Consultant agrees to comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, and any implementing requirements FRA may issue. The Consultant will also ensure that accessible facilities (including vehicles and buildings) and services are made available to individuals

with disabilities in accordance with the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and any applicable implementing regulations.

7.5 Information and Reports. The Consultant shall provide all information and reports required by the regulations, or orders and instruction issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the VPRA to be pertinent to ascertain compliance with such regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the VPRA, and shall set forth what efforts it has made to obtain the information.

7.6 Sanctions for Noncompliance. In the event of the Consultant's noncompliance with the provisions of this Contract, VPRA shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to,

- i. Withholding the payments to the Consultant otherwise due under Contract until the Consultant achieves compliance, and/or
- ii. Cancellation, termination, or suspension of the Contract, in whole or in part.

ARTICLE 8: NONDISCRIMINATION LEGAL AUTHORITIES APPLICABLE TO THE CONTRACT

8.1 During the performance of this Contract, the Consultant, for itself, its assignees, and successors in interest agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 4 71, Section 4 7123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, subrecipients and consultants, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take

reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); and

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

8.2 USDOT 1050.2A, Appendices A and E are hereby incorporated by reference in all contracts and subcontracts funded in whole or in part with federal funds.

ARTICLE 9: EMPLOYEE PROTECTIONS

9.1 The Consultant agrees to comply and assures that each subconsultant will comply with all federal laws, regulations, and requirements providing wage and hour protections for employees, including Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, and other relevant parts of that Act, 40 U.S.C. § 3701, *et seq.*, and U.S.DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR Part 5.

9.2 The Consultant agrees to comply and assures that each subconsultant will comply with the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201, *et seq.* to the extent that the FLSA applies to employees performing Work under the Contract.

9.3 The Consultant shall maintain payrolls and basic payroll records during the course of the Work and shall preserve them for a period of three (3) years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Such records maintained under this paragraph shall be made available by the Consultant for inspection, copying, or transcription by authorized representatives of the FRA and the USDOL, and the Consultant will permit such representatives to interview employees during working hours on the job.

ARTICLE 10: CERTIFICATION REGARDING DEBARMENT; SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION

10.1 The Contractor shall comply and facilitate compliance with USDOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopts and supplements the U.S. Office of Management and Budget (USOMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. Part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FRA official irrespective of the contract amount. The Consultant agrees to, and assures that its third party contractors will, review the System for Award Management (SAM) before entering into any lower tier subconsultant/subcontractor agreements.

10.2 By signing this Contract, the Consultant certifies to the best of its knowledge and belief, that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; and have not been convicted of any violations of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

10.3 This certification is a material representation of fact upon which VPRA relies in entering this Contract. If it is later determined that the Consultant knowingly rendered an erroneous certification, in addition to other remedies available to the VPRA, the Federal Government may pursue available remedies, including suspension and/or debarment. The Consultant shall provide to VPRA immediate written notice if at any time the Consultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

ARTICLE 11: CERTIFICATION REGARDING LOBBYING

11.1 For any project of \$100,000 or more, the Consultant is required to make the following certifications. The Consultant must also require its consultants or subconsultants to make the following certification in any contracts or subcontracts valued at or above \$100,000.

- a. The Consultant certifies, to the best of its knowledge and belief, that no Federal appropriated funds have been paid or will be paid by or on behalf of the Consultant for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement, the Consultant shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96)]; and
- c. The Consultant shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

11.2 This certification is a material representation of fact upon which VPRA has relied to enter this Contract. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. section 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

11.3 By its signature on this Contract, the Consultant certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Consultant understands and agrees that the provisions of 31 U.S.C. § 3801, *et seq.*, apply to this certification and disclosure, if any.

ARTICLE 12: TELECOMMUNICATIONS CERTIFICATION

12.1 Consultant certifies through the signing of this Contract that, consistent with Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232 (Aug. 13, 2018), the Consultant does not and will not use any equipment, system, or service that uses "covered telecommunications equipment or services" (as that term is defined in Section 889 of the Act) as a substantial or essential component of any system or as critical technology as part of any system.

ARTICLE 13: INTELLECTUAL PROPERTY RIGHTS

- 13.1** The requirements of this Article apply to all contracts for experimental, developmental, or research work purposes. Certain patent rights and data rights apply to all subject data first produced in the performance of this Contract. The Consultant shall grant the VPRA intellectual property access and licenses deemed necessary for the Work performed under this Contract and in accordance with the requirements of 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FRA or USDOT.
- 13.2** Except for its own internal use, the Consultant may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Consultant authorize others to do so, without the written consent of FRA, until such time as FRA 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. For purposes of this Contract, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.
- 13.3** The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
- 13.3.1 Any subject data developed under the Contract, whether or not a copyright has been obtained; and
- 13.3.2 Any rights of copyright purchased by the Consultant using Federal assistance in whole or in part by the FRA.
- 13.4** Unless FRA determines otherwise, the Consultant performing experimental, developmental, or research work required as part of this Contract agrees to permit FRA to make available to the public, either FRA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
- 13.5** Unless prohibited by state law, upon request by the Federal Government, the Consultant agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Consultant of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the contract. Notwithstanding the foregoing, the Consultant shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
- 13.6** Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- 13.7** Data developed by the Consultant and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into Work required by the underlying Contract

is exempt from the requirements herein, provided that the Consultant identifies those data in writing at the time of delivery of the Contract Work.

ARTICLE 14: ENVIRONMENTAL STANDARDS AND PRACTICES

- 14.1** *Generally.* The Consultant agrees to, and assures that its subconsultants will, comply with all applicable environmental and resource use laws, regulations, and requirements, and follow applicable guidance, now in effect or that may become effective in the future, including state and local laws, ordinances, regulations, and requirements.
- 14.2** *Clean Water Act.* For any project of \$150,000 or more, the Consultant agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251-1387. The Consultant agrees to report each violation to the VPRA and understands and agrees that the VPRA will, in turn, report each violation as required to assure notification to FRA and the appropriate EPA Regional Office.
- 14.3** *Clean Air Act Compliance.* For any project of \$150,000 or more, the Consultant agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401-7671q. The Consultant agrees to report each violation to VPRA and understands and agrees that VPRA will, in turn, report each violation as required to assure notification to FRA and the appropriate EPA Regional Office.
- 14.4** *Energy Conservation.* The Consultant agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the federal Energy Policy and Conservation Act.
- 14.5** *Recovered Materials.* The Consultant agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and the EPA, "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. Part 247.

ARTICLE 15: GEOGRAPHIC RESTRICTIONS

- 15.1** The Recipient agrees that it will not use any state or local geographic preference, except as permitted by federal law (for example, Section 25019 of the Infrastructure Investment and Jobs Act of 2021, Pub. L. 117- 58), regulation, requirement, or guidance.

ARTICLE 16: FLY AMERICA REQUIREMENTS

- 16.1** The Consultant agrees to comply with 49 U.S.C. § 40118 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10, which provide that recipients and subrecipients of Federal funds and their consultants are required to use U.S. Flag Air Carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act.
- 16.2** The Consultant shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. Flag Air Carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements.

ARTICLE 17: NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS ARCHITECTURE AND STANDARDS

- 17.1** To the extent applicable, the Consultant agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by section 5206(e) of TEA-21, 23 U.S.C. § 502 note.

ARTICLE 18: SEISMIC SAFETY

18.1 To the extent applicable, the Consultant agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations, 49 C.F.R. Part 41, and will certify to compliance to the extent required by the regulations. The Consultant also agrees to ensure that all Work performed under this Contract, including Work performed by a subconsultant, is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the Project.

ARTICLE 19: SAFE OPERATION OF MOTOR VEHICLES

19.1 ***Seat Belt Use.*** The Consultant agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by:

19.1.1 Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles; and

19.1.2 Including a "Seat Belt Use" provision in each subconsultant agreement and lower tier subcontract issued under this Contract, modified only to identify the subconsultant/subcontractor that will be subject to the provisions.

19.2 ***Distracted Driving, Including Text Messaging While Driving.*** The Consultant agrees to implement Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225); U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009; and U.S. DOT Special Provision pertaining to Distracted Driving as follows:

19.2.1 The Consultant agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Consultant owns, leases, or rents, or a privately-owned vehicle when on official business in connection with this Contract or when performing any Work for or on behalf of this Contract.

19.2.2 The Consultant agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

ARTICLE 20: RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION

20.1 When applicable contracts in excess of \$175,000, and all non-procurement transaction, as defined in 2 C.F.R. §§ 180.220 and 1200.220, in excess of \$25,000 will contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where consultants violate or breach contract terms and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures. As relates to these items, Consultant is referred to the "Termination" and "Dispute Resolution" provisions of the General Terms and Conditions applicable to the Contract.

20.2 If a current or prospective legal matter that may affect the Federal Government emerges, the Consultant must promptly notify VPRA and FRA's Regional Counsel. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

ARTICLE 21: NO OBLIGATION OF FEDERAL GOVERNMENT

21.1 VPRA and Consultant acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the VPRA, the Consultant, or any other party (whether or not a party to the Contract) pertaining to any matter resulting from this Contract.

ARTICLE 22: INCLUSION IN SUBCONTRACTOR AGREEMENTS

22.1 The Consultant agrees to have the foregoing terms flow down to each subconsultant agreement and lower tier subcontract issued under this Contract, modified only to identify the subconsultant and/or subcontractor that will be subject to the provisions.

END OF DOCUMENT