



# REQUEST FOR PROPOSALS (RFP) AND CONTRACT

## RFP Number: 1-001-22-0006

ISSUE DATE: 10/07/2022

ISSUING AND USING AUTHORITY: Virginia Passenger Rail Authority (VPRA)

SERVICES PROCURED: General Planning Consultant, Passenger Rail Transportation Programs and Projects in Virginia

DESCRIPTION: As Needed General Planning Consultant Services, Program and Project Support

TERM/PERFORMANCE PERIOD: Initial contract shall be three (3) years, renewable for two (2) successive one (1) year renewals.

DUE DATE: Proposals will be received until **2:00 PM, November 7, 2022**

ACCESS TO SOLICITATION: This solicitation and any addenda are publicly posted and may be accessed at any time at: [Current RFPs - Virginia Passenger Rail Authority \(vpassengerrailauthority.org\)](https://vpassengerrailauthority.org)

SUBMIT PROPOSALS TO: [proposals@vpra.virginia.gov](mailto:proposals@vpra.virginia.gov)

**\*\*\*\*\*NOTICE\*\*\*\*\***

VPRA is requesting proposals from consultant firms to provide general planning consultant services for passenger rail transportation programs and projects in Virginia to be provided on an as-need basis. All requests for information and questions regarding this procurement should be directed to: John Kostyniuk, Director of Procurement, [john.kostyniuk@vpra.virginia.gov](mailto:john.kostyniuk@vpra.virginia.gov). Questions concerning this RFP must be received via email no later than: 10/17/2022 @ 5:00PM. All email communications shall contain "RFP 1-000-22-0006" in the subject line followed by the Offeror's name.

Proposals must be received electronically by VPRA's office of procurement on or before the date and time designated on this solicitation. Hard-copy and facsimile submissions will not be accepted in lieu of electronic submissions. Offerors are responsible for the timely delivery of their proposal. Proposals received after the official date and time will be rejected. The official date and time used in receipt of responses is the timestamp associated when emails are received at [proposals@vpra.virginia.gov](mailto:proposals@vpra.virginia.gov).

**VIRGINIA PASSENGER RAIL AUTHORITY**  
**RFP No. 1-000-22-0006**

CONSULTANT INFORMATION AND ACKNOWLEDGEMENT

**A. Contact Information**

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: (    ) \_\_\_\_\_

Fax Number: (    ) \_\_\_\_\_

DUNS NO.: \_\_\_\_\_

FEI/FIN NO.: \_\_\_\_\_

Website: \_\_\_\_\_

**B. Offeror's Point of Contact (POC)**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Phone (Work): \_\_\_\_\_

Phone (Mobile): \_\_\_\_\_

Email: \_\_\_\_\_

**C. DBE / Small, Minority & Woman Owned Business Information**

**(Please check all that apply)**

Federal Classifications:

DBE: (    ) YES (    ) NO      CERTIFICATION#: \_\_\_\_\_

ISSUING BODY: \_\_\_\_\_

Out of State firm that is certified as a DBE by their home state's Unified Certification Program: (    ) YES (    ) NO

Commonwealth of Virginia Classifications (SWaMs):

Small/Micro Business: (    ) YES (    ) NO

Women-Owned Business: (    ) YES (    ) NO

Minority-Owned Business: (    ) YES (    ) NO

Service-Disabled Veteran  
Owned Business: (    ) YES (    ) NO

DSBSD CERTIFIED: (    ) YES (    ) NO      CERTIFICATION#: \_\_\_\_\_

Other Classifications:

Certified small, disadvantaged or veteran-owned business recognized by any other local, state, or federal government entity not listed above: ( ) YES ( ) NO

CERTIFICATION#: \_\_\_\_\_

ISSUING BODY: \_\_\_\_\_

**D. Proprietary or Confidential Information**

Does your proposal contain proprietary or confidential information? ( ) YES ( ) NO

If so, *complete and attach Appendix 2 with your proposal*

**E. Addenda**

Acknowledge your receipt of any addenda that may have been issued under this solicitation.

Addendum # \_\_\_\_\_

Addendum # \_\_\_\_\_

Addendum Date \_\_\_\_/\_\_\_\_/\_\_\_\_

Addendum Date \_\_\_\_/\_\_\_\_/\_\_\_\_

Addendum # \_\_\_\_\_

Addendum # \_\_\_\_\_

Addendum Date \_\_\_\_/\_\_\_\_/\_\_\_\_

Addendum Date \_\_\_\_/\_\_\_\_/\_\_\_\_

**F. Acknowledgement**

In compliance with this RFP and all the conditions imposed herein, Consultant, through its duly authorized representative, offers and agrees to furnish these services in accordance with the proposal.

By, \_\_\_\_\_  
(signature)

\_\_\_\_\_  
(printed name)

Its, \_\_\_\_\_  
(title)

Dated: \_\_\_\_\_

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## **EXHIBITS**

EXHIBIT 1 SCOPE OF WORK

## **ATTACHMENTS**

ATTACHMENT A GENERAL TERMS AND CONDITIONS (PD 100)  
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ATTACHMENT C INSURANCE REQUIREMENTS  
ATTACHMENT D SMALL BUSINESS SUBCONTRACTING PLAN (PD 60)  
ATTACHMENT E PROOF OF AUTHORITY TO TRANSACT BUSINESS IN VIRGINIA (PD 44)  
ATTACHMENT F MONTHLY SMALL BUSINESS SUBCONTRACTING PLAN REPORT (PD 61)  
ATTACHMENT G FEE PROPOSAL (PD 70)

## **SPECIAL PROVISIONS**

SP 01 SPECIAL PROVISION INVOLVING PROPERTY AND FACILITIES OWNED, CONTROLLED OR UTILIZED BY CSX TRANSPORTATION, INC., NORFOLK SOUTHERN RAILWAY COMPANY, AND THE NATIONAL RAILROAD PASSENGER CORPORATION

## **APPENDICES**

APPENDIX 1 EXCEPTIONS TO RFP DOCUMENTS (PD 20)  
APPENDIX 2 DISCLOSURE OF PROPRIETARY/CONFIDENTIAL INFORMATION (PD 25)

## 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 planning consulting services for passenger rail transportation initiatives undertaken in connection with its Transforming Rail in Virginia program (such services 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.

## 2.0 LEGAL AUTHORITY

2.1 VPRA was created by the Virginia General Assembly on July 1, 2020, pursuant to Va. Code § 33.2-287, *et seq.*, and established as "a body corporate and political subdivision of the Commonwealth...." Pursuant to its enabling legislation, VPRA administers all capital expansion projects, infrastructure, and land acquisitions related to the Transforming Rail in Virginia Program, which will double Amtrak state-supported service and increase Virginia Railway Express (VRE) service in Virginia over the next decade.

2.2 VPRA undertakes its procurements in accordance with the *Virginia Passenger Rail Authority Procurement Rules* dated May 23, 2022 (Procurement Rules). Offerors shall read and familiarize themselves with the Procurement Rules and the submittal of a Proposal shall constitute acceptance of the Procurement Rules for purposes of this procurement.

2.3 VPRA is exempt from the requirements of the Virginia Public Procurement Act (VPPA) (Va. Code § 2.2-4300 *et seq.*) and this procurement is not subject to or otherwise governed by the VPPA. Notwithstanding the foregoing, in accordance with Va. Code § 33.2-299.1, VPRA procures professional services consistent with the terms of Va. Code §§ 2.2-4302.2, -4303.1, and -4303.2.

## 3.0 STATEMENT OF NEEDS

3.1 The Statement of Needs is detailed in the following attached exhibit and incorporated by reference and made a part of this RFP:

1. **Exhibit 1 - SCOPE OF WORK**

## 4.0 PROCUREMENT SCHEDULE

4.1 VPRA currently anticipates conducting the procurement of the Contract in accordance with the following list of milestones leading to award of the contract.

Event/Milestone	Date/Date Range
Issue Date of RFP	10/07/2022
Proposal Due Date	11/07/2022
Informal Interviews	November of 2022
Negotiations	December of 2022

Contract Award(s)	12/31/2022
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- 4.2 The foregoing schedule is subject to revision and VPRA reserves the right to modify this schedule as it finds necessary, in its sole discretion.

**5.0 VPRA’S POINT OF CONTACT; COMMUNICATIONS**

- 5.1 VPRA’s sole point of contact (POC) for matters related to the RFP shall be John Kostyniuk, Director of Procurement. VPRA’s POC is the only individual authorized to discuss this RFP with any interested parties, including Offerors. All communications with VPRA’s POC about the Project or this RFP shall be by electronic mail addressed to: [john.kostyniuk@vpra.virginia.gov](mailto:john.kostyniuk@vpra.virginia.gov).
- 5.2 VPRA disclaims the accuracy of information derived from any source other than VPRA’s POC, and the use of any such information is at the sole risk of the Offeror.
- 5.3 Written communications to VPRA’s POC from Offerors shall contain “RFP 1-000-22-0006” in the subject line followed by the Offeror’s name.

**6.0 QUESTIONS AND CLARIFICATIONS**

- 6.1 All questions and requests for clarification regarding this RFP shall be submitted to VPRA’s POC via electronic mail. No requests for additional information, clarification or any other communication should be directed to any other individual. NO ORAL REQUESTS FOR INFORMATION WILL BE ACCEPTED.
- 6.2 All questions or requests for clarification must be submitted by the due date and time set forth in the RFP. Questions or clarifications requested after such time will not be answered, unless VPRA elects, in its sole discretion, to do so.
- 6.3 VPRA will review all questions and/or requests for clarification received and respond in writing through an Addendum. If it deems appropriate, VPRA, in its sole discretion, may also modify the RFP Documents through an Addendum. Offerors shall base their Proposals on the terms and conditions of the RFP Documents included in the latest issued Addendum.
- 6.4 VPRA will not be bound by any oral communications, or written interpretations or clarifications that are not set forth in an Addendum.
- 6.5 VPRA, in its sole discretion, shall have the right to seek clarifications from any Offeror to fully understand information contained in the Proposal.

**7.0 QUALIFICATIONS; LICENSURE**

- 7.1 Certain aspects of the Scope of Work for this RFP may involve the limited performance of professional services. Each business entity (prime and sub-consultants) on the proposed team who is practicing or offering to practice professional services in Virginia, including, but not limited to, those practicing or offering to practice engineering, surveying, hydrologic and hydraulic analysis, geotechnical analysis and landscape architecture, shall be required to possess the appropriate commercial professional registration and license details for all main and branch offices proposed for this Project, as well as appropriate individual registration and license details for those professional occupations.

## 8.0 SMALL BUSINESS PARTICIPATION

- 8.1 It is the policy of VPRA to actively promote the inclusion of small businesses within its procurements and to, whenever practicable, achieve **10%** participation by such entities on each procurement.
- 8.2 In accordance with the Procurement Rules, all offerors are required to submit a Small Business Subcontracting Plan (**Form PD 60**), which shall indicate the Offeror's anticipated utilization of firms certified as a small business by the Department of Small Business and Supplier Diversity (DSBSD). For purposes of this RFP, "small business" shall include small, and any subcategory of small, small women-owned, small minority-owned, or small service-disabled veteran-owned businesses (collectively defined herein as a "SWaM").
- 8.3 Offerors are encouraged to take all necessary and reasonable steps to ensure that SWaM firms have the maximum opportunity to compete for and perform services on the Contract. A list of DSBSD certified SWaM firms is maintained on the DSBSD web site ([www.sbsd.virginia.gov](http://www.sbsd.virginia.gov)) under the DBE/SWAM Certification Directory link. VPRA recommends that Offerors contact SWaM firms to solicit their interest, capability, and qualifications.
- 8.4 No offeror or subcontractor shall be considered a small business unless certified as such by DSBSD by the due date for receipt of proposals. Offerors and Sub-offerors which are eligible for certification by DSBSD (as a small business or otherwise) but which are not able to obtain certification at time of the due date for proposals are nonetheless encouraged to pursue the appropriate credentialing as this may be of benefit to the firm(s) on future procurements.
- 8.5 Any agreement between an Offeror and a SWaM whereby the SWaM agrees not to provide quotations for performance of work to other offerors is prohibited.

## 9.0 PRE-SUBMITTAL OBLIGATIONS

- 9.1 Each Offeror shall be solely responsible for examining the RFP Documents, including any Addenda issued to such documents, and all conditions that may in any way affect its Proposal or the performance of the work on the Contract, including but not limited to:
1. examining and carefully studying the RFP Documents, including any Addenda and other information or data identified in the RFP Documents;
  2. evaluating their organizational capacity to fulfill the requirements of the RFP in a timely and professional manner;
  3. addressing all potential issues and/or impacts involving third parties and ensuring all such issues and/or impacts have been included in the Offeror's Proposal;
  4. becoming familiar with and satisfying itself as to all federal, state, and local laws and regulations that may affect the cost, progress, or performance of its work on the Contract;
  5. determining that the RFP Documents are sufficient to indicate and convey understanding of all terms and conditions for the performance of Offeror's work on the Contract; and



6. notifying VPRA in writing, in accordance with the processes set forth in Section 6.0, of all conflicts, errors, ambiguities, or discrepancies that Offeror discovers in the RFP Documents which require correction and/or clarification.

9.2 Any failure to fulfill these responsibilities is at the Offeror's sole risk and no relief will be provided by VPRA.

## 10.0 EXCEPTIONS

10.1 Offeror's seeking to list exceptions to the RFP terms must complete the Exception to RFP Documents form (**Form PD 20**) which is due at time of proposal submittal. RFP terms required by any federal or state law, regulation or ordinance are not subject to negotiation or waiver by VPRA.

## 11.0 DESIGNATION OF CONFIDENTIAL INFORMATION

11.1 All Proposals submitted to VPRA become the property of VPRA and are subject to the disclosure requirements of the Virginia Freedom of Information Act (VFOIA) (Va. Code § 2.2-3700 *et seq.*). Offerors are advised to familiarize themselves with the provisions of VFOIA to ensure that documents identified as confidential will not be subject to disclosure under VFOIA. In no event shall the Commonwealth or VPRA be liable to an Offeror for the disclosure of all or a portion of a Proposal submitted pursuant to this request.

11.2 If a responding Offeror has special concerns about information that it desires to make available to VPRA, but that it believes constitutes a trade secret, proprietary information, or other confidential information exempted from disclosure, such responding Offeror should specifically and conspicuously designate that information as such in its Proposal and state in writing why protection of that information is needed in accordance with the Disclosure of Proprietary/Confidential Information form (**Form PD 25**).

11.3 Blanket designations that do not identify the specific information shall not be acceptable and may be cause for VPRA to treat the entire Proposal as public information. Nothing contained in this provision shall modify or amend requirements and obligations imposed on VPRA by applicable law, and the applicable law(s) shall control in the event of a conflict between the procedures described above and any applicable law(s).

11.4 In the event VPRA receives a request for public disclosure of all or any portion of a Proposal identified as confidential, VPRA will attempt to notify the Offeror of the request, providing an opportunity for such Offeror to assert, in writing, claimed exemptions under the VFOIA or other Commonwealth law. VPRA will come to its own determination whether or not the requested materials are exempt from disclosure. In the event VPRA elects to disclose the requested materials, it will provide the Offeror advance notice of its intent to disclose.

## 12.0 PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS

### 12.1 *General Requirements*

1. In order to be considered for selection, Offerors must submit a complete written response to this RFP to: [proposals@vpva.virginia.gov](mailto:proposals@vpva.virginia.gov).
2. Proposals must be received by **2:00 PM, November 7, 2022**.
3. Proposals shall be signed by an authorized representative of the Offeror. All information requested should be submitted. Failure to submit all information requested may result in the VPRA requiring prompt submission of missing information and/or giving a lowered evaluation of the Proposal. Proposals, which

are substantially incomplete or lack key information, may be rejected by VPRA at its discretion.

4. Proposals should be organized in the order in which the requirements are presented in the RFP. All pages of the Proposal should be numbered. The Proposal should contain a table of contents which cross-references the RFP requirements. Information which the Offeror desires to present that does not fall within any of the requirements of the RFP should be inserted at an appropriate place or be attached at the end of the Proposal and designated as additional material. Proposals that are not organized in this manner risk elimination from consideration if the evaluators are unable to find where the RFP requirements are specifically addressed.
5. Proposals should be prepared simply and economically, providing straightforward concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content. Elaborate brochures and other representations beyond that sufficient to present a complete and effective proposal are not required and will not be utilized in the evaluation of the Proposal. VPRA wants to remind Offerors to be mindful about size limits when sending electronic Proposals to [proposals@vpra.virginia.gov](mailto:proposals@vpra.virginia.gov). VPRA can accept files up to 150 MB in size. If the response exceeds 150 MB, it is recommended that the file(s) be compressed and sent as an attachment, zip file, if possible. VPRA will only accept a downloadable link if the response cannot be compressed.
6. As used in this RFP, the terms "must", "shall", "should" and "may" identify the degree to which requirements are critical. "Must" and "shall" identify requirements whose absence will have a major negative impact on the suitability of the proposed solution. Items labelled as "should" or "may" are highly desirable, although their absence will not have a large impact and would be useful, but are not necessary. Depending on the overall response to the RFP, some individual "must" and "shall" items may not be fully satisfied, but it is the intent to satisfy most, if not all, "must" and "shall" requirements. The inability of an Offeror to satisfy a "must" or "shall" requirement does not automatically remove that Offeror from consideration; however, it may seriously affect the overall rating of the Offeror's Proposal. Once the Offeror and VPRA have entered into the Contract, the terms "must", "shall", "should" and "may" where used in those portions of the RFP incorporated into the Contract shall have their ordinary meaning.

#### 12.2 *Specific Requirements*

1. Proposals should be as thorough and detailed as possible so that VPRA may properly evaluate the Offerors capabilities to provide the required services.
2. Offerors are required to submit the following items in order for their Proposal to be considered complete:

##### **TAB 1: General (non-scoring)**

The Offeror shall include the following documents as part of their submittal requirements under this tab:

- a. **the RFP Cover Sheet, (Form PD 07)** shall be completely filled out and signed as required.
- b. **Proof of Authority to Transact Business in Virginia, (Form PD 44);**

- c. **Exceptions to RFP Documents (Form PD 20)** (if applicable)
- d. **Disclosure of Proprietary/Confidential Information, (Form PD 25)** (if applicable); and
- e. copies of all registrations and licenses for main and branch offices and copies of individual licenses for project staff as issued by the Department of Professional and Occupational Regulation and such other applicable bodies.

**TAB 2: Qualifications and Experience of Firm**

The Offeror must describe the skills and qualifications it has available to perform the various types of tasks described in **Exhibit 1**, Statement of Work. VPRA recognizes that due to the open-ended nature of the Contract that will be issued as the result of this RFP, Offerors will not be able to guarantee that all of the individuals identified in the Proposal will be available for assignment when a specific task order request is issued. The Offeror must therefore demonstrate that it has sufficient personnel with the various types of skills needed to staff the task orders when needed. The Offeror shall provide all the following information concerning its company, and Sub-offerors:

- a. expertise and experience of the firm relative to the Statement of Work.
- b. a detailed statement indicating the organizational structure under which the firm proposes to conduct business. If more than one firm is involved in this project, state the type of arrangement between the firms, the percentage of work to be performed by each, a list of previous projects in which the firms have previously collaborated.
- c. a list of the key personnel including Subofferors who could be assigned to the various tasks identified. Give the relevant experience record of each and include resumes and any certifications.
- d. a list of no more than five (5) references to include name, address, telephone number, project, and amount of project.
- e. disclosure of any professional disciplinary judgements or actions taken against the Offeror or the Offeror's principals by professional regulatory bodies.

**TAB 3: Methodology / Approach for Providing Services**

The Offeror must provide a detailed description of its understanding of the services to be provided with descriptions of the approach and procedures employed on similar projects elsewhere. Additional required elements shall include:

- a. the Offeror must describe the process it will follow to respond to a specific task order request from VPRA.
- b. a description of the firm's risk management and mitigation strategies relevant to the tasks described in the Statement of Work.
- c. a description of Offeror's quality control procedures and how they will be deployed towards the successful completion of the tasks described in the Statement of Work.

Where applicable, the Offeror may identify and describe any relevant support services that will be available to the VPRA relevant to the various types of tasks described in the Statement of Work.

**TAB 4: Organizational Capacity**

The Offeror shall describe its human and financial resources and discuss any issues which might positively or negatively impact its ability to fulfill the Statement of Work. Additional required elements shall include:

- a. disclosure of the location of Offeror’s headquarters and primary office from where the Project work will be performed.
- b. disclosure of Offeror’s current workload in Virginia.

**TAB 5: Small Business Utilization/Status**

The Offeror shall submit a Small Business Subcontracting Plan (**Form PD 60**) and indicate their planned utilization of DSBSD certified SWaM businesses under the resulting Contract. The Offeror shall indicate their status as a DSBSD certified SWaM in accordance with instructions set forth in Form PD 60.

**TAB 6: Staffing Plan and Fee Schedule**

The Offeror shall identify all proposed staff positions by person Hourly Wage Rate, Overhead Rate, and Annual Percentage Rate Increase in the Fee Schedule (**Form PD 70**) for the services described in the Statement of Work. Final pricing/rates will be addressed in the negotiation phase.

**13.0 EVALUATION CRITERIA**

13.1 Proposals will be evaluated and scored in accordance with the following criteria:

<b>Description</b>	<b>Score</b>
<i>Qualifications and Experience of Offeror (Tab 2):</i> Overall qualifications of the Offeror and the team to be assigned; prior work related to the work.	30 points
<i>Methodology/Approach for Providing Services (Tab 3):</i> Soundness of the plan and creativity of approach towards the work; demonstrated understanding of the work and the needs of VPRA.	30 points
<i>Organizational Capacity (Tab 4):</i> Offeror’s ability to timely perform the work given its current resources.	20 points
<i>Small Business Utilization (Tab 5):</i> Offeror’s plan to utilize firms certified as SWaM by DSBSD; Offeror’s status as a SWaM.	5 Points
<i>Staffing Plan and Fee Schedule (Tab 6):</i> Offeror’s ability to deliver services effectively and efficiently in relation to market rates and other Offeror’s proposals; fees are reasonable and appropriate.	10 Points

<i>Quality of Proposal:</i> Overall quality and organization of the proposal; Offeror's ability to address each RFP criteria in a clear and concise manner and in conformance with the RFP instructions and forms.	5 Points
<b>Total</b>	<b>100 points</b>

**14.0 INFORMAL INTERVIEWS**

- 14.1 Offerors may be asked to participate in informal interviews, which may be repetitive, and may include each such Offeror giving an oral presentation of its Proposal. Informal interviews are designed to provide an opportunity for two or more selected Offerors to clarify or elaborate on the corresponding proposal. This is a fact finding and explanation session only and does not include negotiation.
- 14.2 Informal interviews are optional to VPRA and may or may not be conducted. If selected for an informal interview, VPRA will provide the Offeror with the date and time they are to appear. Whenever feasible, VPRA will, in its sole discretion, accommodate any request by an Offeror to modify the date and/or time established for their informal interview.

**15.0 NEGOTIATION, AND AWARD OF THE CONTRACT**

- 15.1 After receipt and evaluation of all proposals, VPRA will conduct negotiations with the Offeror or Offerors deemed to be fully qualified and best suited among those submitting proposals, including the negotiation of any terms and conditions proposed by VPRA to which the selected Offeror objected in writing at the time it submitted its proposal. After negotiations have been conducted with each Offeror so selected, VPRA will select the Offeror which, in its opinion, has made the best proposal and provides the **Best Value (price being considered but not determinative)**, and shall award the contract to that Offeror, subject to the provisions of Section 15.4.
- 15.2 Should VPRA determine in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror.
- 15.3 The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the successful Offeror's Proposal as negotiated.
- 15.4 VPRA reserves the right to make multiple awards as a result of this solicitation. Although the Scope of Services will remain the same for each Contract, the dollar amount of each Contract may vary as between the successful Offerors and an award does not guarantee a successful Offeror a specific quantity or value of work. Assignment of task orders under the contracts shall be in the sole discretion of VPRA.
- 15.5 Notice of the award will be published on VPRA's website and remain available for public viewing for at least ten (10) days.

**16.0 CONTRACT EXECUTION/TASK ORDERS**

- 16.1 Upon award of the Contract, VPRA will deliver an executed copy of the Contract to the successful Offeror(s), who shall execute and deliver such copy to VPRA within seven (7) days of receipt.
- 16.2 VPRA shall issue written task orders to the successful Offeror(s) under the Contract(s) on an as-needed basis. The services shall be described in detail and the time frame in which service needs to be performed will be stated in the order. No minimum quantity of work is

guaranteed during the term of the Contract, and only those services which are ordered pursuant to a task order will be compensated.

- 16.3 No work shall be performed by the successful Offeror(s) under the Contract until the successful Offeror(s) has been issued a written task order by VPRA.

## 17.0 REPORTING AND DELIVERY REQUIREMENTS

- 17.1 **Meetings and Reviews.** VPRA shall hold an initial conference with the Offeror(s) at a place and time selected by VPRA for the purpose of reviewing the Offeror's schedules, procedures, methods, and to clarify any ambiguities that may then exist. The Offeror's Principal Officer and others requested by VPRA shall attend the conference. VPRA may request additional reviews during the Contract period to evaluate vendor performance and provide feedback.
- 17.2 **Progress Reports.** Offerors must meet all due dates on all tasks assigned. To provide feedback to VPRA concerning this requirement, the Offeror shall submit monthly progress reports providing detailed information on the status of the work effort on each of the various project tasks. The progress reports shall include total authorized funds and expended funds to date. It shall summarize all work efforts in the reporting period including personnel and hourly utilization. It shall also discuss any anticipated difficulties and proposed resolution.
- 17.3 **Small Business Utilization Reporting.** The Offeror shall provide to VPRA with documentation that the Offeror has utilized SWaM businesses in accordance with the Offeror's Small Business Subcontracting Plan (**Form PD 60**). Said documentation shall be provided monthly or as required by VPRA. The Offeror shall use the Monthly Small Business Subcontracting Plan Report (**Form PD 61**), or other form approved by VPRA to report amounts paid to SWaMs. Said attachment or other approved form shall be submitted with the monthly progress reports addressed above.

## 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, which provisions are incorporated herein by reference. To be eligible for reimbursement, the Offeror's and Sub-offerors 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. 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 and be sufficient to exclude unallowable cost items from Project invoicing to VPRA.

## 19.0 ORGANIZATIONAL CONFLICTS OF INTEREST

- 19.1 Matters involving real or perceived organizational conflicts of interest (OCI) will be administered in accordance with VPRA's Organizational Conflict of Interest Policy (the "OCI Policy") which is available at <https://vapassengerrailauthority.org/do-business-with-us/current-rfps>.
- 19.2 Offerors are notified that prior or existing contractual obligations between a company and a federal or state agency relative to the RFP or VPRA's programs could give rise to potential OCI. Each Offeror shall independently assess potential OCI and require its proposed team members to identify real and apparent OCI, with particular emphasis on that which provides a real or perceived unfair competitive advantage relative to this procurement. In accordance with the OCI Policy, Offerors shall promptly disclose to VPRA

all real or apparent OCI. In instances where an Offeror is unclear as to whether a particular circumstance could be considered real or apparent OCI, they must, in accordance with the OCI Policy, seek a determination from VPRA.

- 19.3 VPRA shall have sole discretion as relates to determinations involving OCI on this RFP. Any firm determined to have an OCI that cannot be neutralized, mitigated or otherwise waived (when determined to be in the public interest), shall not be allowed to participate in the procurement. Failure to abide by VPRA's determination in this matter may result in a Proposal being declared non-responsive.

## **20.0 DURATION OF PROPOSAL**

- 20.1 Unless removed in accordance with the Procurement Rules, the Proposal shall be binding upon the Offeror for ninety (90) days following the due date for proposal submittal. If not withdrawn at that time, the Proposal shall remain effective until an award is made or the solicitation is cancelled.

## **21.0 PROCUREMENT DECISION APPEALS**

- 21.1 Any Offeror who desires to file a procurement decision appeal (other than matters involving organizational conflicts of interest) must do so in accordance with sections 7.3, 7.4, and 7.5 of the Procurement Rules. Procurement decision appeals will be administered in accordance with the Procurement Rules.

## **22.0 NO ASSUMPTION OF LIABILITY**

- 22.1 VPRA assumes no obligations, responsibilities, and liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to this RFP. All of such costs shall be borne solely by each Offeror and its team members.
- 22.2 In no event shall VPRA be bound by, or liable for, any obligations with respect to the RFP until such time (if at all) a contract, in form and substance satisfactory to VPRA, has been executed and authorized by VPRA and, then, only to the extent set forth therein.

## **23.0 RESERVATION OF RIGHTS**

- 23.1 In connection with this procurement, VPRA reserves to itself all rights (which rights shall be exercisable by VPRA in its sole discretion) available to it under applicable law, including without limitation, the following, with or without cause and with or without notice:
1. The right to cancel, withdraw, postpone or extend this RFP in whole or in part at any time prior to the execution by VPRA of the Contract, without incurring any obligations or liabilities.
  2. The right to issue a new RFP.
  3. The right to reject any and all submittals, responses and Proposals received at any time.
  4. The right to modify all dates set or projected in this RFP.
  5. The right to suspend and terminate the procurement process for the Project, at any time.

6. The right to waive or permit corrections to data submitted with any response to this RFP until such time as VPRA declares in writing that a particular stage or phase of its review of the responses to this RFP has been completed and closed.
7. The right to issue addenda, supplements, and modifications to this RFP.
8. The right to permit submittal of Addenda and supplements to data previously provided with any response to this RFP until such time as VPRA declares in writing that a particular stage or phase of its review of the responses to this RFP has been completed and closed.
9. The right to hold meetings and conduct discussions and correspondence with one or more of the Offerors responding to this RFP to seek an improved understanding of the responses to this RFP.
10. The right to seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to the RFP, including the right to seek clarifications from Offerors.
11. The right to permit Offerors to add or delete firms and/or key personnel until such time as VPRA declares in writing that a particular stage or phase of its review has been completed and closed.
12. The right to add or delete Offeror responsibilities from the information contained in this RFP.
13. The right to waive deficiencies, informalities and irregularities in a Proposal, accept and review a non-conforming Proposal or seek clarifications or supplements to a Proposal.
14. The right to disqualify any Offeror that changes its submittal without VPRA approval.
15. The right to change the method of award at any time prior to submission of the proposals.
16. The right to respond to all, some, or none of the inquiries, questions and/or request for clarifications received relative to the RFP.

#### **24.0 COMPLIANCE WITH LAW IN VIRGINIA**

- 24.1 Failure to comply with the law with regard to those legal requirements in Virginia (whether federal or state) regarding the Offeror's ability to lawfully offer and perform any services proposed or related to the Project may be cause for rejection of an Offeror's Proposal, in the sole and reasonable discretion of VPRA, and in that event an Offeror's Proposal submittal may be returned without any consideration for selection of contract award.

#### **25.0 ETHICS IN PUBLIC CONTRACTING**

- 25.1 By submitting their proposals, Offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Offeror, 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.



## **26.0 REPRESENTATIONS**

26.1 The Offeror hereby represents and warrants that (1) as of the date hereof, and on and as of the date of the provision of goods or services contemplated herein, the Offeror is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization; and (2) the Offeror has the full right, power and authority and has taken all necessary action under the laws of its jurisdiction of organization to authorize it to execute and deliver a Contract, to consummate the transactions contemplated hereby and in the Contract and to perform its obligations thereunder. The Offeror hereby agrees to furnish to the VPRA any and all certificates of governmental authorities and/or officers or directors of the Offeror that the VPRA may reasonably require in order to confirm the due authorization and execution of the Proposal and the Contract and the Offeror's right, title and authority to perform its obligations under the Contract.

## **27.0 MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS**

27.1 Failure to submit a proposal on the official VPRA or state form provided for that purpose may be a cause for rejection of the Proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the Proposal; however, VPRA reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a Proposal.

## **28.0 RFP DOCUMENTS**

28.1 The documents included within this RFP shall consist of the RFP cover page, these RFP terms, as well as any attachments, exhibits, special provisions, appendices, and addenda.

28.2 Addenda to the RFP Documents, if any, will be posted on VPRA's website at [Current RFPs - Virginia Passenger Rail Authority \(vapassengerrailauthority.org\)](http://vapassengerrailauthority.org). Hard copies of the RFP Documents and Addenda on file will be available upon request. If there is any conflict between the electronic format and hard copy of any RFP Documents or addenda, the hard copy on file shall control.

\*\*\*\*END OF DOCUMENT\*\*\*\*

# EXHIBIT 1

## STATEMENT OF WORK

### 1.0 OVERVIEW

- 1.1 The Virginia Passenger Rail Authority (VPRA) is seeking Request for Proposals from consulting firms who wish to be considered to provide planning support services. The contract will be administered by VPRA.
- 1.2 The Virginia Passenger Rail Authority is responsible for promoting, sustaining, and expanding the availability of passenger and commuter rail service in the Commonwealth. VPRA will administer all capital expansion projects, infrastructure, and land acquisitions related to the Transforming Rail in Virginia Program, which will double Amtrak state-supported service and increase Virginia Railway Express (VRE) service in Virginia over the next decade. In support of this effort, the purpose and intent of this RFP is to solicit proposals for a term contract for general planning services to be provided on an "as needed" basis pursuant to project orders issued during the contract term.
- 1.3 VPRA administers engineering, operations and planning services on behalf of passenger rail in the Commonwealth of Virginia to deliver the Transforming Rail in Virginia program of projects and passenger rail capital and operations programs. VPRA also conducts rail planning and support for the Authority's passenger and commuter transit initiatives and strategies. VPRA's rail planning efforts include, but are not limited to, project development activities related to the Transforming Rail in Virginia program of projects including pre-National Environmental Policy Act (NEPA) feasibility studies, financial analysis of corridor investment studies and initiatives, real estate and right of way services, environmental analysis and support, services to support the creation of conceptual designs, Section 106-related activities and other activities that support the rail investment plan and strategy for Virginia passenger rail services and capital projects related to passenger rail.
- 1.4 The selected consultants will be managed by VPRA personnel. VPRA personnel will be available to determine policy and make decisions as appropriate. VPRA reserves the right to supplement the selected consultants or staff if it is in the best interest of VPRA.
- 1.5 The Offeror should assign a Program Manager from the team's key personnel who will be responsible for coordination of all individual task orders awarded under the term contract. The Program Manager will serve as a primary point of contact for work to be performed and will be responsible for assembling the team of qualified professionals assigned to each task order.
- 1.6 The Offeror should identify all proposed staff positions and hourly rates. General staff positions should include but not be limited to the following categories:
  - 1) Program Manager
  - 2) Project Manager
  - 3) Planner
  - 4) Environmental Scientist
  - 5) Archaeologist
  - 6) Historian
  - 7) Cultural Resources Investigator
  - 8) NEPA Specialist
  - 9) Architect
  - 10) Engineer
  - 11) CAD Technician

- 12) Rail Operations Analyst
- 13) Right-of-Way Technician
- 14) GIS Technician
- 15) Surveyor
- 16) Cost Estimator
- 17) Financial Analyst
- 18) Accountant
- 19) Public Outreach Coordinator
- 20) Editor/Technical Writer
- 21) Web Developer
- 22) Graphic Designer
- 23) Art Director
- 24) Photographer
- 25) Videographer
- 26) Production Associate
- 27) Drone Technician
- 28) Administrative Clerk

## 2.0 DETAIL

2.1 The following functions to be provided relate to the Transforming Rail in Virginia programs, projects, and initiatives. These functions include: Planning and Project Feasibility Analysis, Financial Planning and Analysis, Transportation Modeling, Environmental Analysis, Real Estate and Right of Way Activities, Evaluation and Analysis of Project Proposals, Grant Development and related support services, Economic Analysis, Public Participation, and other pre-engineering services.

2.2 Potential Services to be provided include the following:

### **2.2.1 Planning and Project Feasibility Analysis:**

- a. Conduct statewide, area-specific, corridor and regional passenger and freight rail planning and feasibility studies. Work may include site-specific plans, alternative analysis and project simulations. May include transportation and land use planning and analysis and multimodal planning
- b. Assist in the development of rail service proposals for the evaluation, negotiation and initiation of services
- c. Develop demand or market forecasts including utilizing rail transportation forecasting models
- d. Prepare project designs and layouts, design analysis, and cost estimates necessary to support planning studies
- e. Develop operating scenarios utilizing rail operational models and other tools and estimate operating costs and revenues
- f. Conduct rail corridor maintenance assessments, surveys, and lease studies
- g. Assist to update inventories of abandoned railways, at-grade and grade-separated crossings, railroad structures and buildings, and other resources
- h. Assist in development of VPRA grant programs and grant applications;

- i. Assist in review and evaluation of Commonwealth Rail Fund or other state grant fund processes and procedures, and applications, projects, and/or improvements to include the identification and evaluation of the public benefits to be achieved
- j. Collect and analyze service performance data to review commuter, passenger, and freight operations for efficiency and improvement initiatives
- k. Assist with schedule development for existing and enhanced passenger rail services
- l. Collect and analyze data and complete train performance and rail line capacity analyses

### **2.2.2 Financial Planning and Analysis**

- a. Conduct financial studies, capital cost estimates, funding strategies, profitability analysis, benefit-cost analysis, and life-cycle cost analysis for current or proposed railway capital projects and operations
- b. Develop financial planning strategies for rail service proposals
- c. Conduct operational planning including analysis of operating budgets, ridership, and revenue estimates
- d. Develop state and federal grant applications including program application processes and procedures
- e. Develop a standardized budget, schedule, and schedule of values and review such documents as submitted by grantees of rail programs
- f. Develop a project management process to track grantee progress and performance, compile data, and produce statistical reports and data summaries as identified
- g. Develop a process to inventory and track contingent interest in grantee facilities paid for by VPRA

### **2.2.3 Environmental Analysis**

- a. Conduct in whole or in part or provide oversight of environmental studies and analysis as required by the National Environmental Policy Act (NEPA) as amended (42 U.S.C. § 4321 *et seq.* and 23 C.F.R. part 771) and other related federal, state, local regulations, and/or agency needs
- b. Prepare all necessary technical reports, appendices, meeting minutes, memoranda, and required environmental permits

### **2.2.4 Evaluation and Analysis of Project Proposals**

- a. Conduct analysis of rail project proposals prepared by others
- b. Ensure the Commonwealth is receiving appropriate value for projected costs and that projected costs are reasonable for the results to be achieved

### **2.2.5 Real Estate and Right of Way Services**

- a. Assist VPRA with right of way analysis, evaluation, refinement and acquisition activities related to real estate needed for railroad right of way, capital and station improvements, and property acquisitions.
- b. Develop policies and procedures for review and approval by VPRA related to rights of entry, permits, and requests by third parties for activities which affect VPRA owned property and assets.
- c. Support the acquisition of real property rights by performing tasks that could include but are not limited to having appraisals done, making offers to owners, negotiating, etc.
- d. Provide support for eminent domain efforts undertaken by VPRA with outside counsel
- e. Assist VPRA and its design team with mitigation of impacts to affected landowners
- f. Comply with all state and federal laws and regulations pertaining to property acquisition and ensure compliance from all persons (appraisers, title examiners, negotiators) performing tasks in support of the GPC consultant's acquisition activities.

#### **2.2.6 Public Participation**

- a. Assist VPRA to establish and implement comprehensive public participation programs and outreach activities for planning studies and projects that meet the requirements of federal, state, regional and local processes
- b. Provide support for public participation and outreach activities such as coordinating and conducting public meetings, pop-up events, workshops, hearings, and coordinating with local and railroad officials
- c. Assist VPRA to develop special reports, virtual and online content, photographic and video content, presentations, or brochures including graphics, drawings, and concept visualization
- d. Assist VPRA to develop, produce, and implement research, marketing, and public relations programs associated with applicable projects/programs

#### **2.2.7 Other services**

- a. Assist in the development and/or review of VPRA's rail policy
- b. Assist in securing necessary permits including railroad rights-of-entry
- c. Develop a process for the administration and compliance of a statewide rail safety oversight program in accordance with federal requirements and assist in its implementation
- d. Assist VPRA with invoice reviews for capital expenditures, maintenance, and repairs of rail assets as needed
- e. The contractor will be required to complete other work of a nature consistent with the intent of the RFP

## **ATTACHMENT A**

### **General Terms and Conditions**

#### **1. NATURE OF RELATIONSHIP**

The Consultant shall be acting as an independent contractor. Neither the Consultant nor employees of the Consultant are employees of VPRA under the meaning or application of any federal or state unemployment or insurance laws or workers' compensation laws, or otherwise. The Consultant shall assume all liabilities or obligations imposed by any one or more of such laws with respect to employees of Consultant in the performance of this Contract. The Consultant shall not have any authority to assume or create any obligation, express or implied, on behalf of VPRA, and the Consultant shall have no authority to represent itself as an agent, employee, or in any other capacity of VPRA. Any Consultant employee who is assigned a VPRA email account shall identify the name of the firm under which they are employed in the signature block and shall clearly indicate that they are not employees of VPRA. In addition, while attending any meetings for assignments under this contract, the Consultant employee(s) shall introduce themselves as a Consultant to VPRA while also noting the name of the company they are employed with. For the avoidance of doubt, in no instance, shall the Consultant employee(s) identify themselves as employees of VPRA.

#### **2. CONSULTANT'S MANAGEMENT OF THE WORK**

The Consultant shall be responsible for completely supervising and directing the work under this Contract and all subcontractors that it may utilize with the prior written consent of VPRA, using its best skill and attention. Subcontractors who perform work under this Contract shall be responsible to the Consultant, and the Consultant agrees that it is as fully responsible for the acts and omissions of its subcontractors as it is for the acts and omissions of its own employees. The control and supervision of all phases of the services provided by the Consultant shall be under the direction of a Project/Contracts Manager. The Project/Contracts Manager shall manage the services provided under this Contract until all services have been completed.

#### **3. QUALIFICATIONS OF STAFF**

A competent staff, adequate in number and experience to perform the described services in the prescribed time, shall be assigned at all times. The Consultant shall remove or replace, or have removed or replaced, any personnel performing the work if VPRA has a reasonable objection to such person. Job duties and responsibilities of key personnel shall not be delegated to others for the duration of the Contract. If the services covered by this Contract include the practice of architecture, professional engineering, land surveying or certified landscape architecture, the Consultant or subcontractor shall have in responsible charge at each place of business a full-time resident Virginia licensed architect, professional engineer, land surveyor or certified landscape architect exercising supervision and control of the services of each profession being practiced. VPRA reserves the right to audit and refuse to process payment should there be findings associated with excessive hours to perform the required task or an excessive number of persons utilized to complete the necessary task.

#### **4. CHANGES IN STAFF**

The Consultant shall not change or substitute any key personnel including those identified in Consultant's proposal except due to voluntary or involuntary termination of employment, retirement, death, disability, incapacity, or as otherwise approved by VPRA. Unauthorized changes to the Consultant's team at any time during the Contract may result in termination of services. If extenuating circumstances as listed above require a change, the Consultant shall submit in writing to VPRA's Project Manager, who, in his/her sole discretion, will determine whether to authorize a change, with it being understood and agreed that the Consultant will provide VPRA at least thirty (30) days written notice of any request wherever practical. VPRA will have the right to review the qualifications of each individual proposed as a replacement and to approve or disapprove such individual prior to the commencement of any work by such individual. The individual proposed as a replacement shall be equally or more qualified than the key personnel that is being

replaced. The Consultant acknowledges that the discretionary reassignment of a key personnel to another project of the Consultant is not considered extenuating circumstance and will not be permitted.

## **5. OPERATING AUTHORITY AND CREDENTIALS OF VEHICLES**

Wherever and whenever during the course of performing any work under this Contract, the Consultant will ensure that all vehicles utilized to accomplish the terms of the Contract are properly titled, registered, plated and have the required operating authority and credentials in accord with the *Code of Virginia*.

## **6. INSURANCE**

The Consultant shall furnish certificates evidencing insurance as specified in the Insurance Requirements (Attachment C to RFP) to VPRA within 10 days of executing the Contract and prior to beginning any work on the project. The Consultant agrees to maintain insurance as specified in the Insurance Requirements (Attachment C to RFP) throughout the life of this Contract. In the event of a non-renewal or cancellation of such required insurance coverage, thirty (30) days written notice must be given to VPRA prior to such non-renewal or cancellation.

## **7. PLANS AND REPORTS**

Plans and reports shall be completed and delivered to VPRA according to the progress schedule or as otherwise directed, in a format acceptable to VPRA.

## **8. CORRECTION OF ERRORS**

The Consultant shall check for accuracy any reports, and the design, drafting and details of final plans prior to submission. The Consultant will be required, without additional compensation, to correct any errors, including but not limited to omissions, discrepancies and ambiguities, in any services performed in fulfillment of the obligations of this Contract, and shall also reimburse VPRA for any costs incurred. Acceptance of the plans or reports by VPRA shall not relieve the Consultant of the responsibility of subsequent correction of errors. Costs incurred by the Consultant in correcting errors in the plans or reports and reimbursing VPRA for costs incurred by VPRA as a result of such error shall be maintained in a separate account. Such account shall be clearly coded and identified, and shall be subject to audit by VPRA. Such costs shall not be billed to VPRA as a direct charge or an overhead item.

## **9. CHANGES TO THE CONTRACT**

VPRA may, at any time, by written order, make any changes in this Contract which either increase or decrease the services hereunder. If such change causes an increase or decrease in the cost of or the time required for performance of this Contract, an equitable increase or decrease in consideration may be made and this Contract shall be modified in writing between VPRA and the Consultant. Such written Contract modification shall set forth the proposed changes in services, extension of time for completion and adjustment of the compensation, including net fee, to be paid the Consultant, if any. If the Parties fail to agree upon the adjustment to be made, the Dispute shall be determined as provided in this Contract, but nothing in this section shall excuse the Consultant from promptly and diligently proceeding with the prosecution of the services so changed.

## **10. CONTINGENCY FUND**

On Contracts containing a contingency fund, the contingency fund shall not be used without written permission of VPRA. The additional services compensated by application of the contingency fund shall not begin until an agreement has been reached between the Parties with regarding the man-hours and costs required to perform such additional services. If any such additional services are provided prior to an agreement being reached between the parties regarding man-hours and costs, only those man-hours and costs determined to be necessary and reasonable by VPRA will be reimbursed.

## **11. INVOICING; PERIODIC PAYMENTS**

Invoices for services rendered or scheduled shall be submitted by the Consultant directly to [accountpayable@vpra.virginia.gov](mailto:accountpayable@vpra.virginia.gov). In the event Consultant is unable to email, invoices will be mailed to 919 E. Main Street, 24<sup>th</sup> Floor, Richmond VA 23219. All invoices shall show VPRA Contract number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations.). The Consultant may submit invoices for progress payments no more than once each month and no less than once each calendar quarter for Work performed during such period. VPRA, in its sole discretion, may reject and refuse payment on any invoice that includes charges for Work performed more than 180 days prior to the invoice date. Periodic payment of Consultant's invoices will be made within thirty days of receipt by VPRA, subject to adjustment as set forth herein.

## **12. FINAL ACCEPTANCE AND FINAL PAYMENT**

All services performed under this Contract shall be performed in accordance with the current standards, policies, and procedures of VPRA, and in the case of projects using federal funds, the federal funding partner (e.g., Federal Railroad Administration (FRA), Federal Transit Administration (FTA), etc.). All services shall be subject to the approval of VPRA through its designated representatives. Upon receipt of a written notice from the Consultant of completion of the services, VPRA will make a review to determine if all services specified in the Contract have been satisfactorily completed. If all services have been satisfactorily completed, VPRA will make final acceptance and provide written notification of same to the Consultant. If the review discloses that any services, in whole or in part, are incomplete or unacceptable, the Consultant shall immediately correct the deficiency. Upon completion or correction of the services, another review will be made that will constitute the final review. In such event, provided the services are complete and acceptable, VPRA will make the final acceptance and provide notification to the Consultant.

When final acceptance has been duly made by VPRA, the Consultant shall submit a final estimate invoice. Upon review and approval of the final estimate invoice by VPRA, the Consultant will be paid the entire sum due after previous payments are deducted and other amounts are retained or deducted under the provisions of the Contract. Final payment will become due and the final estimate paid within thirty (30) calendar days after approval of the final estimate invoice. VPRA will notify the Consultant in writing when the final payment is made. Payments shall be subject to correction at the time of the final audit.

## **13. SET-OFF RIGHTS**

VPRA shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, VPRA'S option to withhold for the purposes of set-off any moneys due to the Consultant under this contract up to any amounts due and owing to VPRA with regard to this contract, plus any amounts due and owing to the Commonwealth for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto.

## **14. AVAILABILITY OF FUNDS; APPROPRIATION**

It is understood and agreed between the Parties herein that VPRA shall be bound hereunder only to the extent of the funds available, or which may hereafter become available for the purpose of this Contract. In addition, any payments due from VPRA hereunder are subject to and dependent upon appropriation by the Virginia General Assembly.

## **15. PROMPT PAYMENT OF SUBCONTRACTORS**

The Consultant is required to pay its subcontractors performing work related to this Contract for satisfactory performance of that work no later than 30 days after the Consultant's receipt of payment for that work from VPRA. VPRA does not require retainage to be withheld by the Consultant on any subcontracts. If the Consultant elects to withhold retainage on subcontracts, the Consultant agrees to pay subcontractors all undisputed retainage payments within thirty (30) calendar days of completion of the work, regardless of whether the Consultant has received any retainage payment from the VPRA. VPRA will notify the Consultant and the subcontractor in writing when the services have been satisfactorily accepted. If the retainage is not promptly paid, the Consultant shall notify VPRA and the subcontractor in writing as to the



reasons for not making payment. Consultant shall keep all property of VPRA and such property belonging to any third party which is managed, leased or operated by VPRA, free from all liens arising from services to be furnished in connection with this Contract. VPRA may, as a condition of final payment, require Consultant to submit an affidavit stating that all subcontractors and suppliers, if any, have been paid in full for any goods and/or services provided in connection with this Contract.

## **16. TAXES**

Pursuant to Va. Code §§ 33.2-299.3, 58.1-609.1(4), VPRA is exempt from certain taxation, including retail sales and use tax. Consultant shall not include in the invoice any taxes imposed by any taxing authority of the state in which the project is located, or any political subdivision thereof, upon the sale or use of the Work covered by this Contract. Any such sales or use tax, if applicable, shall be paid by the Consultant. The Consultant shall prepay all freight and transportation charges to the F.O.B point of delivery and such freight charges shall be stated separately, as requested from the sales price of material, so as not to impose any tax upon VPRA.

## **17. TERMINATION AND SUSPENSION**

VPRA may terminate or suspend the delivery of the services contemplated hereunder without liability to the Consultant, if (a) the Consultant fails to deliver the services in conformance with the provisions of this Contract by the date contracted for by the Consultant and VPRA and such non-delivery continues for any significant period of time; (b) the Consultant breaches or otherwise fails to perform any of its other obligations under the Contract and fails to cure such nonperformance promptly after notice thereof from VPRA and after a reasonable time to cure such non-performance; (c) Consultant is or becomes insolvent or unable to pay its debts as they become due; (d) any bankruptcy or insolvency proceeding is commenced by or against Consultant; (e) application is made for appointment of a receiver or custodian for the Consultant or any of Consultant's properties, or for an assignment for the benefit of Consultant's creditors; (f) the General Assembly fails to appropriate, or the applicable oversight board (*i.e.*, the VPRA board of directors and/or the Commonwealth Transportation Board, depending on the funding source) fails to allocate, sufficient funds to continue the services, in which event the Contract will terminate upon depletion of the then currently appropriated or allocated funds. The duration of any such suspension shall continue only until such time as the aforementioned events continue to exist. Any termination or suspension by VPRA shall be without prejudice to any claims for damages or other rights of VPRA against the Consultant. In addition to the foregoing, VPRA may terminate any Contract(s) resulting from this solicitation at any time, for any reason or for no reason, upon thirty (30) days advance written notice to the Consultant(s). In the event of such termination, the Consultant(s) shall be compensated for services and work performed prior to termination.

## **18. EXAMINATION AND AUDIT; RETENTION OF RECORDS**

Consultant agrees that VPRA or its designated representative shall have the right to review, photograph, and copy any records and supporting documentation pertaining to performance of this Contract. Consultant agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Consultant agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, Consultant agrees to include a similar right of VPRA to audit records and interview staff in any subcontract related to performance of this Contract. It shall be the Consultant's responsibility to notify VPRA, in writing, of the completion of that subcontractor's portion of the services so that the records of the subcontractor can be audited within the five-year retention period. Failure to do so may result in the Consultant's liability for any costs not supported by the proper documentation for the subcontractor's phase of the services. Any overcharges determined as a result of an audit shall be set off against any future invoices of the Consultant, if work is ongoing, or invoiced to the Consultant in the event final payment has already been tendered. Invoices for overcharges shall be deemed a debt due VPRA and the Commonwealth and shall be due and payable by the Consultant within thirty (30) days of the date of the invoice.

## 19. DISPUTE RESOLUTION

Upon the occurrence of any Dispute that is not otherwise resolved by the Parties: (a) the Parties must first use all reasonable efforts to resolve the Dispute through a senior representative (b) if the Parties fail to achieve a resolution through a Senior Representative Negotiation, before either Party may institute legal action against the other in connection with the Dispute, the Parties must first attempt to resolve the Dispute by referring the matter to a Mediation. For purposes of this Section 19, "Dispute" shall be defined as "any claim, disagreement or controversy between the Parties concerning their respective rights and obligations under this Contract."

### A. *Senior Representative Negotiations*

If either Party notifies the other Party of a Dispute, senior representatives of each Party (with authority to make decisions for the respective Parties) must meet and use all reasonable efforts to resolve the Dispute ("Senior Representative Negotiations"). The Senior Representative Negotiation must commence within thirty (30) days of receipt of notification from a Party initiating a Dispute and will not exceed sixty (60) consecutive days once commenced (or such longer period agreed by the Parties, with such period of negotiation being the "Senior Representative Negotiations Period"). Statements, materials and information prepared for, made or presented at, or otherwise derived from a Senior Representative Negotiation (including any meeting of the senior representatives) are privileged and confidential and may not be used as evidence in any proceedings. If the Senior Representative Negotiation resolves the Dispute, the Parties must record the resolution in writing.

### B. *Mediation*

If the Parties are unable to come to a resolution through Senior Representative Negotiations during the Senior Representative Negotiations Period, then either Party may submit such Dispute to mediation proceedings (a "Mediation"). Mediation is intended to assist the Parties in resolving Disputes over the correct interpretation of this Contract.

1. The mediator must be selected by mutual agreement of the Parties or, if an agreement cannot be reached by the Parties within seven (7) Business Days of submission of the Dispute to Mediation, the mediator will be selected by the American Arbitration Association ("AAA") in accordance with its Commercial Industry Mediation Rules and Procedures then in effect. Any mediator selected by mutual agreement of the Parties or through the AAA selection process must have no current or ongoing relationship with either Party (or an Affiliate of either Party). The Parties agree that only one (1) mediator shall be selected as the AAA mediator.
2. Each Mediation must: (a) be administered in accordance with AAA's Commercial Industry Mediation Rules and Procedures then in effect; (b) be held in Richmond, Virginia, unless the Parties mutually agree, in writing, to the Mediation being held in a different location; (c) be concluded within sixty (60) days of the date of selection of the mediator, or within such other time period as may be agreed by the Parties (acting reasonably having regard to the nature of the Dispute). The Parties shall share the mediator's fee and any filing or administrative fees equally. No mediator will be empowered to render a binding decision as to any Dispute. Any Mediation will be nonbinding.

## 20. FORUM AND VENUE

Any and all Disputes arising out of or in connection with this Contract, or any performances made hereunder that are not otherwise resolved through Senior Representative Negotiations or Mediation, shall be brought, and any judicial proceeding shall take place, only in the Circuit Court of the City of Richmond, Virginia or the United States District Court for the Eastern District of Virginia, Richmond Division. The Consultant accepts the personal jurisdiction of such court and waives all jurisdiction and venue-related defenses to the maintenance of such actions.

## **21. GOVERNING LAW**

The validity, performance, and construction of the solicitation and this Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without reference to its choice of law provisions.

## **22. NOTICES**

Any notice required pursuant to the Contract shall be in writing and sent by registered or certified mail, return receipt requested, or by courier, express or overnight delivery, and by confirmed e-mail at the addresses of the Point of Contact designated by the Parties. In the event of notice to VPRA, a copy shall also be contemporaneously transmitted to its General Counsel. The date such notice shall be deemed to have been given shall be the Business Day of receipt if received during business hours, the first Business Day after the Business Day of receipt if received after business hours on the preceding Business Day, the first Business Day after the date sent by courier, express or overnight ("next day delivery") service, or the third Business Day after the date of the postmark on the envelope if mailed, whichever occurs first. As used herein, "Business Day" shall mean that day that is neither a Saturday, a Sunday nor a day observed as a legal holiday by the Commonwealth of Virginia or the United States Government.

## **23. COMPLIANCE WITH ALL LAWS AND REGULATIONS**

The Consultant shall comply with the applicable provisions of all federal, state, or local laws or ordinances and all related lawful orders, rules, and regulations, as well as any provisions, representations, or agreements, or contractual clauses required to be included or incorporated by reference or operation of law in the Contract. The Consultant shall keep fully informed of all federal, state, and local laws, ordinances, and regulations, and all orders, decrees, and guidance of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on this Contract, or which in any way affect the conduct of the services provided by the Consultant. If any discrepancy or inconsistency is discovered between this Contract and any such law, ordinance, regulation, order, or decree, the Consultant shall immediately report the same to the VPRA in writing. To the extent required for the Work, the Consultant shall secure and obtain any and all permits, licenses, and consents as may be necessary.

## **24. AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH**

A consultant organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with the VPRA shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provision of this section.

## **25. NON-DISCRIMINATION PROVISION**

The Consultant shall comply with the provisions of the Virginians with Disabilities Act, Sections 51.5-40 through 51.5-46 of the Code of Virginia (1950); Further, pursuant to Va. Code § 2.2-4201, in every Contract over \$10,000 the provisions in A. and B. below apply:

A. During the performance of the Contract, Consultant agrees as follows:

1. Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of Consultant. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2. Consultant, in all solicitations or advertisements for employees placed by or on behalf of Consultant, will state that Consultant is an equal opportunity employer. However, notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
3. If Consultant employs more than five employees, Consultant shall (i) provide annual training on Consultant's sexual harassment policy to all supervisors and employees providing services in the Commonwealth, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post Consultant's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth that Consultant owns or leases for business purposes and (b) Consultant's employee handbook.
4. The requirements of these provisions A. and B. are a material part of the Contract. If Consultant violates one of these provisions, VPRA may terminate the affected part of the Contract for breach, or at its option, the whole Contract. Violation of one of these provisions may also result in debarment from State contracting regardless of whether the specific contract is terminated.

B. Consultant will include the provisions of subdivisions 1-3 above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or supplier.

## **26. IMMIGRATION REFORM AND CONTROL ACT OF 1986**

By signing this Agreement, the Consultant certifies that it does not and will not during the performance of this Agreement violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.

## **27. DRUG FREE WORKPLACE**

The Consultant acknowledges and certifies that they understand that the following acts by the Consultant, its employees, and/or agents performing services on state property are prohibited: The unlawful manufacture, distribution, dispensing, possession or use of alcohol or other drugs; and any impairment or incapacitation from the use of alcohol or other drugs (except the use of drugs for legitimate medical purposes). The Consultant further acknowledges and certifies that they understand that a violation of these prohibitions constitutes breach of contract and may result in default action being taken by the VPRA in addition to any criminal penalties that may result from such conduct. During the performance of this contract, the Consultant agrees to provide a drug-free workplace for the contractor's employees.

## **28. OCCUPATIONAL SAFETY AND HEALTH STANDARDS**

The Consultant shall not require any individual employed in the performance of this Agreement to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to health or safety as determined under the Occupational Safety and Health Standards promulgated by the United States Secretary of Labor. This provision shall be made a condition of any subcontract entered into pursuant to this Agreement. In addition, the Consultant shall abide by the Virginia Occupational Safety and Health Standards adopted under Section 40.1-22 of the Code of Virginia (1950), as amended, and will fulfill the duties imposed under Section 40.1-51.1 of the Code of Virginia. Any violation of the aforementioned requirements or duties which is brought to the attention of the Consultant by any person shall be immediately abated.

## **29. CRITICAL INFRASTRUCTURE INFORMATION/SENSITIVE SECURITY INFORMATION (CII/SSI)**

The required services may involve the handling of Critical Infrastructure Information/Sensitive Security Information (CII/SSI) material. Firm(s) handling CII/SSI material will be required to sign non-disclosure agreements. Individuals with the firm(s) that handle CII/SSI material will be required to sign non-disclosure agreements. Once negotiations have been completed and prior to executing a contract, personnel handling CII/SSI material, visiting Critical Infrastructure (CI) facilities or performing bridge/tunnel inspections may be required to pass a fingerprint-based Criminal History Background Check (CHBC). An individual employee's failure to successfully pass the fingerprint-based CHBC will not negate the selection and

offerors will be allowed to replace those individuals. However, if key personnel fail the fingerprint-based CHBC, the selection may be cancelled and negotiations begun with the next ranked offeror. VPRA reserves the right to conduct fingerprint-based CHBC on all employees of the Consultant, on any employees of sub-consultants or on any proposed replacements during the term of the Contract who will be involved in this project. All costs associated with the fingerprint-based CHBC are the responsibility of the Consultant. A VPRA issued photo-identification badge is required for each employee of the Consultant or any sub-consultant who will need access to VPRA CI facilities or who will be performing bridge/tunnel inspections. Based upon the results of the fingerprint-based CHBC, VPRA reserves the right to deny issuance of a VPRA security clearance or a VPRA issued photo-identification badge.

### **30. CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION**

The Consultant assures that information and data obtained as to personal facts and circumstances related to VPRA will be collected and held confidential, during and following the term of this Contract, and unless disclosure is required pursuant to court order, subpoena or other regulatory authority, will not be divulged without the VPRA's written consent and only in accordance with federal law or the Code of Virginia. Consultants who utilize, access, or store personally identifiable information as part of the performance of a contract are required to safeguard this information and immediately notify VPRA of any breach or suspected breach in the security of such information. Consultant shall allow VPRA to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. Consultants, subconsultants and their respective employees working on this Contract may be required to sign a confidentiality statement.

### **31. INTELLECTUAL PROPERTY RIGHTS**

All rights in intellectual property developed or created pursuant to this Contract shall be the sole property of VPRA. "Intellectual property" includes all inventions subject to the U.S. Patent System (including but not limited to new processes, materials, compounds and chemicals), and all creations subject to the U.S. Copyright Act of 1976 (including but not limited to printed material, software, drawings, blueprints, and compilations such as electronic databases). All copyrightable material created pursuant to this Contract shall be considered work made for hire and shall belong exclusively to VPRA. Neither Party intends any copyrightable material created pursuant to this Contract, together with any other copyrightable material with which it may be combined or used, to be a "joint work" under the copyright laws. If the whole or any part of any such copyrightable material cannot be deemed work made for hire or is deemed a joint work, the Consultant agrees to assign, and does hereby irrevocably assign, its entire copyright interest therein to VPRA and shall execute and deliver such further documents as VPRA may reasonably request for the purpose of acknowledging or implementing such assignment. The Consultant warrants that no individual, other than regular employees of the Consultant or VPRA working within the scope of their employment, shall participate in the creation of any intellectual property pursuant to this Contract unless such individual and his or her employer, if any, have signed an intellectual property agreement satisfactory to VPRA.

### **32. COVENANT REGARDING BROKERAGE**

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

### **33. TESTIMONY**

In the event that the testimony of the Consultant is required in any legal proceeding in connection with claims brought against or prosecuted by VPRA, the Consultant agrees to appear as a witness on behalf of VPRA. Payment for appearance will be based on the approved current hourly salary rate and daily per diem rate for each eight-hour day's preparation for, or attendance in, court and one-fourth of this sum for each two hours or fraction thereof.

### **34. CONFIDENTIAL RELATIONSHIP; PUBLICITY**

The Consultant shall keep in strictest confidence, and treat as proprietary all information that may be acquired in connection with, or as a result of, this Contract. During the term of the Contract and at all times thereafter, the Consultant shall not, without the prior written consent of VPRA, publish, communicate, divulge, or use (except in the performance of the Contract itself) any such information unless it is in the public domain. Except as required by any applicable law or regulation, the Consultant shall not release any information concerning the Contract or disclose or use VPRA's name for purposes of advertising or soliciting business, including, but not limited to, press releases, social media posts, brochures, photographs, or verbal announcements without the prior written permission of VPRA.

### **35. STRICT LOYALTY**

The Consultant and its employees shall avoid all circumstances and actions that would place the Consultant in a position of divided loyalty with respect to the obligations undertaken under this Contract.

### **36. INDEMNIFICATION**

To the fullest extent permitted by law, the Consultant shall indemnify and hold harmless the Commonwealth of Virginia and VPRA together with their officers, agents, and employees and the owners of VPRA managed, leased, or operated facilities and equipment, and their respective officers, directors, members, consultants, agents, and employees, (collectively, the "VPRA Indemnitees") from and against all claims, losses, damages, liabilities, including reasonable attorneys' fees, costs, and expenses, that may arise from the Consultant's performance of, or the failure to perform, services under this Contract, except to the extent caused by the negligent acts or omissions, or breach of contract, of a VPRA Indemnitee. Acceptance of the services by VPRA shall not waive any of the rights of VPRA contained in this section nor release or absolve the Consultant from any liability, responsibility or duty contained herein.

### **37. LIMITATION OF LIABILITY**

To the extent permitted by applicable law, neither Party will be liable to the other under this Contract for any indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, equipment and/or services delivered under this Contract.

### **38. FORCE MAJEURE**

A Party shall not be in default for any failure to perform any of its obligations under the Contract if such failure arises from any cause that could not have been prevented by means reasonably available to the Party and that was beyond the control of and without the fault or negligence of the Party. Such causes include but are not limited to: acts of God or of the public enemy; acts of Government in either its sovereign, legislative or contractual capacity; fire; flood; landslide; earthquake; epidemic; quarantine restrictions; freight embargo; sabotage; or unusually severe weather. The affected Party shall, as soon as reasonably possible, give Notice to the other, including all relevant information that it has available, regarding any such actual event that is impacting or any potential event that threatens to impact the affected Party's performance of its obligations under the Contract.

### **39. ASSIGNMENT AND SUBCONTRACTING**

Any Contract awarded or any interest thereunder shall not be assigned, subcontracted, or transferred, in whole or in part, by the Consultant without the prior written consent of VPRA. The Consultant shall not assign any monies due or to become due to it, without the prior written consent of VPRA. No assignment shall relieve the Consultant from its obligations under the Contract. This Contract shall inure to the benefit of and shall be binding upon the personal representatives and legal successors of the respective Parties hereto. Nothing contained in this Contract is intended or shall be construed to inure to the benefit of any person or entity other than the Parties hereto and their legal successors.

#### **40. DUTY TO COOPERATE ON FUNDING OPPORTUNITIES**

VPRA seeks to maximize funding opportunities pertaining to its projects and the Work included in this Contract may become eligible for a grant and subject to certain requirements of a funding sponsor. Consultant agrees to work cooperatively and creatively with VPRA in connection with any grant application submittals to VPRA's funding partners. Consultant further agrees to fully comply with any terms and conditions required as a result of VPRA's participation in a grant.

#### **41. REMEDIES CUMULATIVE**

Except as otherwise expressly provided herein, all rights, powers and privileges conferred hereunder upon the Parties hereto shall be cumulative and in addition to all other rights, powers, and remedies hereunder and those available at law or in equity. All such rights, powers, and remedies may be exercised separately or at once, and no exercise of any right, power or remedy shall be construed to be an election of remedies or shall preclude future exercise of any or all other rights, powers, and remedies granted hereunder or available at law or equity, except as provided herein.

#### **42. NO WAIVER**

Except as otherwise expressly provided herein, neither the failure of either Party to exercise any power given such Party hereunder or to insist upon strict compliance by the other Party with its obligations hereunder, nor any custom or practice of the Parties at variance with the terms hereof, shall constitute a waiver of either Party's right to demand exact compliance with the terms hereof.

#### **43. ENTIRE AGREEMENT**

This Contract contains the entire agreement of the Parties hereto with respect to the subject matter hereof, and no representations, inducements, promises or agreements, oral or otherwise, between the Parties not embodied herein or incorporated herein by reference with respect to the subject matter hereof, shall be of any force or effect. Any previous agreements or understandings among the Parties regarding the subject matter hereof are merged into and superseded by this Contract.

#### **44. AMENDMENTS**

No amendment to the Contract shall be binding on the Parties hereto unless such amendment is in writing and is executed by an authorized representative of the Party against whom enforcement of such amendment is sought.

#### **45. SOVEREIGN IMMUNITY**

VPRA, specifically and the Commonwealth of Virginia generally, neither waive nor abrogate their sovereign immunity, in part or in whole, in any manner, under any theory, hereunder. Notwithstanding the foregoing, VPRA agrees and acknowledges that the Contract constitutes a legal, valid, and binding obligation of VPRA, enforceable against VPRA in accordance with its terms, except as enforceability may be limited or otherwise affected by (i) bankruptcy, insolvency, reorganization, moratorium and other laws affecting the rights of creditors generally, (ii) principles of equity, whether considered at law or in equity, and (iii) the sovereign immunity of the Commonwealth of Virginia; provided that sovereign immunity shall not bar an action to enforce a claim based on a breach of this Contract presented in accordance with the law of the Commonwealth of Virginia.

#### **46. SEVERABILITY**

The invalidity, illegality, or unenforceability of any provision of this Contract or the occurrence of any event rendering any provision of this Contract void, shall not affect the validity or enforceability of any other provision. Any such provision shall be severed from the Contract and the remainder shall be construed and enforced as if it did not contain it.

\*\*\*END OF DOCUMENT\*\*\*

## **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 it 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\*\*\*

**ATTACHMENT C**  
**INSURANCE REQUIREMENTS**

**RFP NO: 1-000-22-0006**

1. **Workers' Compensation** for all of its employees engaged in the Project as required by Chapter 8 of Title 65.2 of the *Code of Virginia* (1950), as amended.
2. **Employer's Liability Insurance** with limit of no less than \$1,000,00 per accident for bodily injury or disease.
3. **Commercial General Liability Insurance** including coverage for premises and operations, independent contractors, personal injury, and broad form contractual liability of limits of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate applicable on a per project basis. Policy must include a CG 24 17 Contractual Liability – Railroads endorsement. The Commonwealth of Virginia, Virginia Passenger Rail Authority, CSX Transportation, Inc., and National Railroad Passenger Corporation are to be named as an additional insured on a primary, non-contributory basis.
4. **Automobile Liability Insurance** with a limit of at least \$1,000,000 combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles on site or off. The Commonwealth of Virginia, Virginia Passenger Rail Authority, CSX Transportation, Inc., and National Railroad Passenger Corporation are to be named as an additional insured on a primary, non-contributory basis.
5. **Umbrella/Excess Liability Insurance** in excess of the underlying limits noted above for all the above mentioned policies in the amount of \$5,000,000 per occurrence and in the aggregate. Such policy(ies) shall apply without any gaps in the limits of coverages and be at least as broad as and follow the form of underlying primary coverages required herein. The Commonwealth of Virginia, Virginia Passenger Rail Authority, CSX Transportation, Inc., and National Railroad Passenger Corporation are to be named as an additional insured on a primary, non-contributory basis.
6. **Professional Liability Insurance** covering liability for acts, errors, or omissions arising in connection with professional services, for not less than \$2,000,000 with respect to any one claim and in the aggregate.
7. **Railroad Protective Liability Insurance** will be maintained on behalf of owners/operators of railway service within the Project limits (the "Rail Carriers") whenever requested by the Rail Carriers. The policy, which shall name the Rail Carriers as covered insureds, shall be in accordance with the form prescribed by the Rail Carriers and must comply with Federal Aid Policy Guide 23 CFR 646 subpart A. The limits of the policy will be set by the Rail Carriers.

\*\*\*\*END OF DOCUMENT\*\*\*\*

## ATTACHMENT D

### SMALL BUSINESS SUBCONTRACTING PLAN

In accordance with VPRA's Procurement Rules, all potential bidders are required to submit a Small Business Subcontracting Plan (SWaM Plan).

#### **Definitions:**

"Small business" shall have the meanings set forth in Va. Code § 2.2-1604 and includes only those firms which hold a certification as such by the Virginia Department of Small Business and Supplier Diversity (DSBSD) on the due date for proposals. This shall also include DSBSD-certified micro, women-owned, minority-owned, and service-disabled veteran-owned businesses when they also hold a DSBSD certification as a small business on the proposal due date.

#### **Certification:**

The Certification Division of DSBSD is responsible for the administration of Virginia's business certification programs. Certification applications are available through DSBSD online at: <https://www.sbsd.virginia.gov/certification-division/>

#### **Point Allocation:**

Offerors which are small businesses themselves will receive the maximum available points for the small business participation plan evaluation criterion, and do not have any further subcontracting requirements.

Offerors which are not certified small businesses will be assigned points based on proposed expenditures with DSBSD-certified small businesses for the initial contract period in relation to the overall contract budget. Points will be assigned based on each offeror's proposed subcontracting expenditures with DSBSD-certified small businesses in relation to the contract budget.

Offerors which are not certified as small businesses with DSBSD or otherwise utilizing DSBSD certified small businesses will not be eligible for points, but, to the extent applicable, are encouraged to report other certifications which demonstrate performance by small or underprivileged businesses.

#### **Instructions:**

- A. If you are certified by the DSBSD as a small business, complete only Section A of this form. This includes but is not limited to DSBSD-certified micro, women-owned, minority-owned, and service-disabled veteran-owned businesses when they have also received DSBSD small business certification.
- B. If you are not a DSBSD-certified small business, complete Section B of this form. For the offeror to receive credit for the small business subcontracting plan evaluation criteria, the offeror shall fully complete all required informational items within Section B.

**Small Business Subcontracting Plan (cont.)**

**Section A**

If your firm is certified by the DSBSD as a small business, provide your certification number and the date of certification):

Certification number: \_\_\_\_\_ Certification Date: \_\_\_\_\_

**Section B**

Populate the table below to show your firm's plans for utilization of **DSBSD-certified small businesses** in the performance of this contract for the initial contract period. Include plans to utilize small businesses as part of joint ventures, partnerships, subcontractors, suppliers, etc. It is important to note that the proposed participation will be incorporated into the subsequent contract and will be a requirement of the contract.

Failure to obtain the proposed participation percentages may result in breach of the contract.

Subcontractor Name/Address	SBSD Certification No.	Additional DSBSD Certifications, Women-owned (W), Minority-Owned (M) or Service Disabled Veteran-Owned (SDV)	Other Small, Disadvantaged, Veteran Business Certifications (can be local, state or federal) [optional] <sup>1</sup>	Subcontractor Services to be Provided	Planned Participation in Overall Contract Spend During Initial Term (%)

\*\*\*Attach additional sheets as necessary

**Offeror Name:** \_\_\_\_\_

**Preparer Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

<sup>1</sup> This information is collected for informational purposes only. Offerors are encouraged to report the participation of subcontractors which, while not qualifying as a DSBSD certified small business, hold other, related certifications which demonstrate participation by either a small, disadvantaged or veteran-owned businesses. This includes but is not limited to firms certified by DSBSD as a women-owned, minority-owned, serviced disabled veteran-owned business, disadvantaged business enterprise as well as firms so certified by any other local, state or federal bodies.

## ATTACHMENT E

### PROOF OF AUTHORITY TO TRANSACT BUSINESS IN VIRGINIA

THIS FORM MUST BE SUBMITTED WITH YOUR PROPOSAL/BID, FAILURE TO INCLUDE THIS FORM MAY RESULT IN REJECTION OF YOUR PROPOSAL/BID

Please check the appropriate line below and provide the requested information:

A. Bidder/Offeror is a Virginia business entity organized and authorized to transact business in Virginia by the State Corporation Commission (SCC) and such vendor's Identification Number issued to it by the SCC is: \_\_\_\_\_.

B. Bidder/Offeror is an out-of-state (foreign) business entity that is authorized to transact business in Virginia by the SCC and such vendor's Identification Number issued to it by the SCC is: \_\_\_\_\_.

C. Bidder/Offeror does not have an Identification Number issued to it by the SCC such vendor is not required to be authorized to transact business in Virginia by the SCC for the following reason(s):

\_\_\_\_\_  
\_\_\_\_\_

**(Please attach additional sheets if necessary.)**

D. Bidder/offeror currently have a pending application before the SCC for authority to transact business in the Commonwealth of Virginia and wish to be considered for a waiver to allow you to submit the SCC identification number after the due date for bids/proposals (VPA reserves the right to determine in its sole discretion whether to allow such waiver)

\_\_\_\_\_  
Legal Name of Bidder/Offeror (as listed on W-9)

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Print or Type Name and Title

\_\_\_\_\_  
Date

**\*\*\*RETURN THIS PAGE WITH COPIES OF DOCUMENTATION\*\*\***

## ATTACHMENT F MONTHLY SWaM PLAN REPORT

<b>Contract No.</b>		<b>Reporting Period (M/Y)</b>	
<b>Prime Contractor Name</b>		<b>Date Submitted</b>	
<b>Contact Name</b>			
<b>Title/Position</b>			
<b>Phone Number</b>			
<b>Email</b>			

Subcontractor Name	Tax ID No.	Description of Work Provided	Payments to Qualifying SWaMs (1)	Payments to DSBSD Certified Women-Owned, Minority-Owned or Service-Disabled Veteran-Owned firms (2)	Payments to other Small, Disadvantaged or Veteran- owned firms not certified by DSBSD [OPTIONAL] (3)	TOTALS

Attach additional pages if necessary

- Notes:**
- (1) Denotes firms which are DSBSD certified “small businesses,” and which are identified in the contactor’s SWaM Plan.
  - (2) Denotes firms which are not certified as a “small business,” by DSBSD but which hold other certifications from DSBSD (i.e., women-owned (W), minority-owned (M), or service-disabled veteran-owned (SDV), disadvantaged business enterprise (DBE)). Please include classification code along with payment information.
  - (3) Denotes firms which are not certified by DSBSD, but which are otherwise certified as a small, disadvantaged, or veteran owned business by another certifying body. Please include a description of the certification along with payment information.

**ATTACHMENT G**  
**FEE PROPOSAL**

The Offeror shall identify all staff positions by person, Hourly Wage Rate, Overhead Rate, Profit and Annual Percentage Rate Increase in in the Fee Proposal Excel Worksheet attached to this PDF file for the services described in the Statement of Needs. Final pricing/rates will be addressed in the negotiation phase.



11 - Attachment G -  
Fee Proposal - 1-00C

**APPENDIX 1**  
**EXCEPTIONS TO RFP DOCUMENTS**

Each Proposal submitted in response to this RFP shall list any deviation(s), exception(s), or variation(s) to or from the RFP Documents. The failure of Offeror to note a deviation, make an exception, or list a variation to the terms and conditions of these RFP Documents shall be deemed an express waiver by that Proposer of such deviation, exception, or variation.

Offeror notes the following deviations, exceptions or variations:

<b>RFP Document</b>	<b>Section, paragraph or other identifier</b>	<b>Description of deviation, exception or variation</b>

**RFP No.** \_\_\_\_\_

**Offeror Name:** \_\_\_\_\_

**Preparer Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_



## APPENDIX 2

### PROPRIETARY/CONFIDENTIAL INFORMATION IDENTIFICATION

NAME OF FIRM/OFFEROR: \_\_\_\_\_

Pursuant to Va. Code § 33.2-299.7, offerors may request VPRA to keep confidential trade secrets or confidential proprietary information, not publicly available, provided by a private person or entity pursuant to a promise of confidentiality where if such information were made public, the financial interest of the private person or entity could be adversely affected.

For such information to be excluded from disclosure requirements under the Virginia Freedom of Information Act, offerors shall make a written request to VPRA:

- (1) invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- (2) identifying the data or other materials for which protection is sought; and
- (3) stating the reasons why protection is necessary.

The written notice must specifically identify the data or materials to be protected including the section of the proposal in which it is contained and the page numbers, and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. In addition, a summary of proprietary information submitted shall be submitted on this form. The classification of an entire proposal document, line-item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable. VPRA will make the final determination of the appropriate scope and nature of the protection afforded to the requested records.

PROPOSAL SECTION/TITLE	PAGE NUMBER(S)	REASON(S) FOR WITHHOLDING FROM DISCLOSURE