

Virginia Passenger Rail Authority

VRPA Response to Requests for Clarification

No.	RFQ Section No. or Form	Question	Reserved for VPRA Response
1	1.1	In the North Package major scope items list (page 3), per item(d) it notes that “new non CSXT owned trackwork” is included in the scope. Please clarify what trackwork will be included in the scope of work for this contract. Will the 2 western tracks be installed under the PDB contract and the 2 eastern tracks be installed by CSX?	VPRA is working with CSXT to determine the precise allocation of responsibilities between the Design-Builder and CSXT. Final scope will be determined in coordination with CSXT during the Phase 1 Services.
2	1.1	Please confirm that CSX will complete all signal work, including permanent and temporary signals required during construction.	Yes, this is correct. The Design-Builder will coordinate with CSXT to prepare the Project for CSXT's signal installation and may construct necessary equipment to facilitate installation of the signals. Final scope will be determined in coordination with CSXT during the Phase 1 Services.
3	1.1 at p. 3	Project Information (d) new-non-CSXT owner trackwork. QUESTION: Please confirm that new-non-CSXT track and signal work will be the responsibility of the Design-Builder?	See response to question 1.
4	1.1 at p. 3 Exhibit A	Section 1.1 at p. 3 “As part of VPRA’s delivery of the Project, VPRA is obligated to provide certain indemnifications to CSXT and Amtrak that will be passed-through to the Design-Builder. These indemnification obligations are attached as Exhibit A.” EXHIBIT A I.INDEMNIFICATION DUTIES A. CSXT. Design-Builder shall indemnify, defend, and hold harmless CSXT Indemnitees to the same extent to which VPRA is entitled to indemnity and defense under Section [●] of the Progressive Design-Build Agreement.	The terms set forth in Exhibit A (<i>Railroad Operator Indemnification Provisions</i>) incorporate text that is required under VPRA’s contractual arrangements with Amtrak and CSXT. Thus, this text cannot be modified or deleted. VPRA understands these provisions are not standard, generally. But “no-fault” contractual liability provisions such as those set out in Exhibit A (<i>Railroad Operator Indemnification Provisions</i>) are standard within the freight and passenger railroad industries. Accordingly, teams that have performed work on, for example, Amtrak rail lines should have encountered these liability concepts on prior projects. In addition, we encourage teams to carefully

		<p>B. Amtrak. Subject to applicable law, including Va. Code § 11-4.1, Design-Builder shall indemnify and defend Amtrak for all <u>third-party</u> losses or claims arising from the <u>negligent</u> acts or omissions of Design-Builder in performing the Progressive Design-Build Agreement, whether or not Design-Builder is negligent and irrespective of any negligence or fault of Amtrak, provided that, Design-Builder’s indemnity and duty to defend shall not extend to Amtrak-Assumed Individuals and/or Amtrak-Assumed Property <u>or to the extent such losses or claims are caused by negligence of Amtrak.</u></p> <p>QUESTION:</p> <ol style="list-style-type: none"> 1. We are unable to fully evaluate the indemnification duties under A (I) without reviewing the relevant provision of the PDBA referenced in subparagraph A above. Will VPRA please provide the proposed indemnity language of the PDBA so that we can evaluate the indemnification obligations with respect to CSX? 2. The proposed indemnity obligation in paragraph (I) B of Exhibit A with respect to Amtrak includes indemnifying and defending Amtrak for its own negligence and applies irrespective of Design-Builder’s negligence. We request the indemnity obligation in Exhibit A require the Design-Builder to defend and indemnify Amtrak to the extent a loss is claimed or caused to be claimed by the negligence of Design-Builder. The negligence of the Indemnified Party should be excluded from Design-Builder’s defense and indemnity obligations. Further, without a mutual waiver of consequential damages the potential exposure for railroad-liability is uncapped and unquantifiable. 	<p>note the indemnity carveouts for the defined terms “Amtrak-Assumed Individuals” and “Amtrak-Assumed Property”, which substantially limit the application of indemnity flowing from the Design-Builder to Amtrak. Finally, while the provisions must remain unmodified, we also encourage teams to seek legal counsel with respect to any limitations the statutory or common law of Virginia may impose on the provisions of Exhibit A (<i>Railroad Operator Indemnification Provisions</i>).</p>
5	Section 1.3.1 Progressive Design-Build Process. Overview	Referenced section says for Phase 1 (Design and Preconstruction): “The Design-Builder’s Design will be subject to oversight, input, and acceptance by VPRA [...]. The Design-Builder will be required to submit a 60% design to VPRA and other stakeholders, including but not limited to CSXT, Amtrak, NPS, and DDOT, each of which will have the opportunity to provide comments on the deliverable”. Please provide more	Additional details concerning the review and approval process by third-parties will be provided in the RFP. VPRA anticipates that third-parties will have 30-60 days to provide comments on the 60% design submittal; however, this is subject to change based on further input from the relevant agencies.

		information about the required review process and durations from different agencies and stakeholders.	
6	Section 1.3.1 Overview, pg.4	Will the reviews by VPRA, CSXT, Amtrak, NPS, and DDOT and corresponding comments be made at the same time?	VPRA intends that reviews by third-parties will be concurrent with VPRA's reviews. However, if circumstances dictate, reviews may be staggered as needed.
7	1.9	We understand that unless required by the DOT, neither Phase I nor Phase II will include DBE contract goals. Should the DOT or a DOT component require a DBE contract goal, please confirm that this goal will not apply to the minimum 50% requirement for self-performed work.	In accordance with its proposed DBE Triennial Goal Methodology for FFY 2024-2026, VPRA does not intend to include a DBE contract goal with this solicitation. Notwithstanding the foregoing, Proposers will be required to submit a Comprehensive DBE Utilization Approach, which, among other things, is to include Proposer's DBE Utilization Plan for the Phase 1 Services. Proposers shall ensure that firms certified as DBEs under the Virginia Unified Certification Program have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Progressive Design Build Agreement.
8	Section 3.2 SOQ Format, pg. 13	Are graphics and/or photos with labels allowed on tabs?	Yes, provided that no text other than as necessary to label the tab is included.
9	3.2	Per RFQ requirements for SOQ Format, a standard font with a minimum of 12 points should be used. With a limited amount of space to respond to the RFQ, we request that VPRA modify the requirement to 11 points for the narrative and 10 points for the organizational chart including graphics.	VPRA will modify the requirement to 11 point font for narratives and 10 point for graphics, including the organizational chart. VPRA will implement this change in an addendum to the RFQ.
10	3.2. SOQ Format	Per Section 3.2 of the RFQ, text shall be in a minimum 12 point font. For any graphics (org charts, maps, etc.), is the Respondent permitted to use size 10 point font?	See response to question 9.
11	3.3	Are electronic signatures acceptable for the RFQ submission such as DocuSign?	Yes. Electronic signatures will be mandatory. VPRA will issue an addendum clarifying this point.
12	4.4	Reference table on Page 13, tab #4. Are the two pages associated with the project experience inclusive of one "Form H" page plus one additional page of supplemental project specific information (not formatted as Form H)?	Form H is limited to 2 pages total, including both the Form and any supplemental information.
13	4.4	In order to provide the most relevant project experience, we request the timeframe be extended to the last 15 years.	Section 4.4(a) of the RFQ states that example projects "should" highlight experience in the preceding 10 years. The 10 year period is not mandatory. Respondents may submit projects they believe represent its experience and

			qualifications for the Project, understanding that VPRA prefers projects completed in the last 10 years.
14	Section 4.4 (a) Experience of Respondents, pg. 19	Can Form H extend to multiple pages to allow for sufficient spacing to allow for project description accurately addressing RFQ requirements?	The table in Section 4 of the RFQ (Tab 4) allows Respondents to expand Form H to up to 2 pages.
15	Section 4.4 (a) Experience of Respondents, pg. 19	Certain private railroad owners do not allow use of financial information on the project sheets, will VPRA allow Form H without project cost and the Fee.	Respondents may submit the project cost and fee information as confidential and proprietary by following the process in Section 7 of the RFQ. If Respondent is subject to a non-disclosure or similar agreement and is unable to obtain permission to disclose this information by designating it as confidential, Respondent may submit the project as an example without stating the cost and fee. VPRA's evaluation of the project will account for the fact that the referenced project is missing certain details.
16	4.5	If the respondent uses the 11.5 x 17 sheets for the org chart, will the two pages described in section 4.5 still be available for describing the org chart?	Section 3.2 of the RFQ provides that Respondent shall be limited to a total of two (2) 11-inch by 17-inch pages for the entirety of the SOQ. Respondents have discretion as to how to use this two-page allowance. The remaining pages must be 8 ½" x 11". If a Respondent uses an 11" x 17" page for the organizational chart, Respondent has one remaining 11" x 17" page to use in the SOQ.
17	4.5.1	Per the RFQ requirements, several key personnel require the individual to have a professional Engineer License in the Commonwealth and Washington, D.C. Please confirm if these licenses will be required for the RFQ submission or if they will be required prior to the execution of the PDB agreement?	Licenses will be required prior to execution of the Progressive Design-Build Agreement. The licenses are not required at the time of submission of an SOQ. See Section 1.11 of the RFQ.
18	4.5.1	Can you confirm the Commonwealth and Washington, D.C. licenses are required at time of award?	See response to question 17.
19	4.5.1. Key Personnel	Per the RFQ, the IDQMD must be a registered PE in the Commonwealth and Washington, D.C. Please clarify by what date the IDQMD should be a registered PE, whether by RFP deadline or by Award of contract by VPRA.	See response to question 17.
20	4.5.1 (page 21 under CM Requirements and Preferred Qualifications)	The Construction Manager role lists CMAA Certification as a preferred qualification. We respectfully request that this certification be waived as it may be inconsistent with the 20-year experience on similar construction projects, and thereby limits the pool of qualified candidates for the position. If VPRA cannot	As stated in Section 4.5.1 of the RFQ, the CMAA Certification is a preferred and not a mandatory requirement. VPRA will take into consideration whether the proposed

		waive the requirement, we ask that the CMAA Certification requirement be deferred until prior to Notice to Proceed.	Construction Manager has a CMAA Certification when evaluating SOQs.
21	4.5.1. Key Personnel	For the Construction Manager role, we suggest making the CMAA Certification a "preferred" qualification and not a requirement. It is not an industry standard credential and industry experience provides more value to the role.	See response to question 20.
22	4.5.1	Reference is made to the Independent Design Quality Manager Director requirements and preferred qualifications (page 22). It is clear in this description that the IDQMD is required to sign and stamp RFC plans prior to submission to VPRA. Per Exhibit D of the Draft Quality Management Technical Provisions, section 2.4.3.5, it states that the IDMQ shall be responsible to sign, seal, and certify that all released for construction design submittals ... It is not normal for a PE to seal another PE's work. Can you please confirm that the IDMQ is only required to seal the work where the IDMQ performs independent calculations such as noted in the third paragraph of 2.4.3.5.	The IDQM will be required to perform the services stated in the RFQ. However, the stamp that the IDQM will apply is not the same as the stamp that the Lead Designer (or design subcontractor) will apply. The IDQM will stamp that the design documents have been reviewed and that the drawings are in conformance with the Contract Documents. VPRA will clarify this language in an addendum to the RFQ. VPRA may further update this language to reflect the above in the final version of the Technical Provisions released with the RFP.
23	4.5.1	In the description of the IDQM Director there is language referring to the Director performing reviews "to ensure conformance to. . .". Would VPRA consider replacing the phrase "to ensure conformance" to "for conformance" in this section of the RFQ? The use of the word "ensure" could inadvertently heighten the standard of care for the IDQM. That is, the IDQM will review the design with the care and skill of a similarly situated design professional operating under similar circumstances and on similar projects. However, the IDQM cannot "ensure" that the design will meet the contract requirements – that heightened standard would not be covered by the IDQM's professional liability insurance. In addition, it is the EOR for the design package who is professionally signing/sealing the package, and has the corresponding liability and responsibility therefore. That liability/ responsibility should not be shifted to the IDQM.	See response to question 22.
24	Page 21; Section 4.5.1 Key Personnel; Exhibit D; Article 2.4 Quality Management	As per Section 4.5.1, "The Quality Manager and this team of inspectors for Rail Programs are not to be associated with the Design-Builders construction production staff." Traditionally, a separate independent quality firm presents fewer potential conflicts of interest in the inspection process for the design-build work. To maintain the autonomy described in the RFQ, we recommend that the RFQ be revised to suggest that the Quality Manager is not required to be an employee of the Design-Builder and can be provided from a third-party firm with the specialized expertise required for the Contract, and with the	VPRA will not make the requested change.

		authority to stop any design or non-conforming construction operations.	
25	4.5.2. Major Subcontractors / General RFQ Inquiry	With the exception of the IDQM and Lead Designer, are design subconsultants or professional services firms that are exclusive and involved in Phase 1 and Phase 2, considered Major Subcontractors?	Major Subcontractor is a defined term within the RFQ and may include any Subcontractor that will be performing Work as part of the Phase 2 Services. This includes Major Subcontractors performing Construction Work and professional services Work. If Respondent wishes to identify a Subcontractor that will perform Work during Phase 2, then such Subcontractor must be identified as a Major Subcontractor on Form B. They are not, however, required to include any Major Subcontractors. Major Subcontractors will be evaluated as part of the Respondent team and, therefore, must perform the identified scope of work during Phase 2. VPRA may assess liquidated damages where a Major Subcontractor does not perform the Phase 2 Services for which it was identified in the SOQ. See RFQ Section 4.5.2.
26	4.5.2	In section 4.5.2, it specifies that "Major subcontractors are firms proposed to perform specified Phase 2 services". Please clarify if this includes subcontractors such as Public Relations (PR), Quality Control(QC), design subcontractors etc. If subcontractors such as PR and QC are included as major subcontractors, will they count toward the 50% maximum limitation of negotiated self-perform work?	See response to question 25. Major Subcontractors that perform professional services, rather than Construction Work, do not count toward the 50% maximum limitation on self-performed work. The self-performance limitations apply only to Construction Work.
27	4.5.3	Reference is made IDQM cannot have any contractual relationship with the lead designer or any lead designer subconsultant. The subconsultant is not a term defined in appendix 1. Please confirm that any firm working for the lead designer will be a subcontractor and not a subconsultant.	The definition of Subcontractor applies to any Subcontractor at all tiers, including those under the line of the Lead Designer. VPRA will clarify this language in an addendum to the RFQ.
28	Exhibit B: Basis of Design Report – Draft (PDF page 51)	Please provide the following Appendices as identified in the RFQ: <ul style="list-style-type: none"> – Appendix B – Permit Tracker – Appendix C – EIS BOD – Appendix D – FEIS Navigation Study – Appendix E – Section 106 Programmatic Agreement – Appendix F – DRPT-NPS Mitigation Agreement Appendix G – Project Commitments (Record of Decision) & Tracker	VPRA will make this information available by posting it on VPRA's procurement website: https://vapassengerrailauthority.org/working-with-us/procurement/ .

29	<p>Exhibit C; Scope of Work; Construction Cost Estimates, Schedule Preparation, and Negotiation; Article No. 20</p> <p>Phase I Services Schedule (Table); Submission of OPCC</p>	<p>Referenced Article No. 20 and Phase I Services Schedule (Table) are not consistent. There is a discrepancy between the 60 and 90 days requirement for the OPPC.</p> <p>Please clarify if the OPPC will be required 60 or 90 days from NTP.</p>	<p>VPRA currently intends that the OPCC will be due no later than 90 days after issuance of the Phase 1 NTP. VPRA will issue an addendum clarifying this timeline. However, the RFP will contain the final Phase 1 scope of work. Additionally, please note that one of the Phase 1 tasks will be to set a schedule with the Design-Builder for the Phase 1 Services. VPRA and the Design-Builder will be able to agree to a different submission deadline for the OPCC if warranted.</p>
30	<p>Exhibit D Article 2.4.3.4 Conclusion of Work</p>	<p>The RFP is largely focused on design of structural elements. Will the IDQM be required to “sign, seal, and certify that all Released for Construction design submittals are in conformance with the Contract Documents...” for other disciplines as well, for example - track design, drainage design.</p> <p>Is the intent that the IDQM, by “sign(ing), seal(ing), and certify(ing)” will be liable for project errors and omissions?</p>	<p>The IDQM will sign, seal, and certify that all design work conforms to the Contract Documents. VPRA does not currently intend to specify professional liability insurance requirements for the IDQM; however, Design-Builder will be responsible for ensuring that it has adequate insurance coverage for any potential liability to which Design-Builder and its Subcontractors may be exposed. Specific insurance requirements will be provided in the RFP.</p>
31	<p>Exhibit D 2.4.3.5</p>	<p>In the description of the IDQM there is language referring to the "review of all design elements to ensure they comply with the Contract Documents".</p> <p>Would VPRA consider replacing the phrase with the following revised language: "review of all design elements for compliance with the Contract Documents" in this section of the RFQ?</p> <p>The use of the word “ensure” could inadvertently heighten the standard of care for the IDQM. That is, the IDQM will review the design with the care and skill of a similarly situated design professional operating under similar circumstances and on similar projects. However, the IDQM cannot “ensure” that the design will meet the contract requirements – that heightened standard would not be covered by the IDQM’s professional liability insurance.</p>	<p>See response to question 22.</p>
32	<p>Exhibit E</p>	<p>Exhibit E. Form of Performance Bond is an Expedited Dispute Resolution (EDR) bond form. An EDR performance bond form is the not the appropriate bond form for Progressive Design Build procurements. This bond was created for P3’s as a replacement for liquid security required by the banks to deal with project delays. In PBD projects, the funding for the project comes from traditional sources. A more traditional bond, such as AIA 312,</p>	<p>The payment and performance bond forms that will be required under the Progressive Design-Build Agreement remain under evaluation and are subject to change. VPRA will consider this issue further for the RFP phase and the Phase 1 Services.</p>

		should be adequate for the pursuit. Please replace the bond form with the AIA 312.	
33	Exhibit E	<p>Exhibit E. Form of Performance Bond is an Expedited Dispute Resolution (EDR) bond form. If an EDR form is required there are a number of changes that need to be made to bring this form up to industry standards that are acceptable to Sureties.</p> <ul style="list-style-type: none"> • Surety completion options Form of Performance Bond 4 a-c – There is no option for the Owner to complete the work itself. In the repro cure option (b), there is a requirement for the Owner to sign off on the repro curement process. Both of these non-standard remedies could make it difficult for a Surty to mitigate losses. • Schedule B 6. – In the questions that the adjudicator is required to answer, there is no question of whether the owner has defaulted on its obligations. The adjudicator should be required to consider that important issue when determining if the surety is required to perform. <p>Schedule B 7. - The aspects of the adjudication process will be admissible in future proceedings are non-standard. Sureties will want all information to be admissible. However, as drafted only whether the Surety has liability will be admissible. This must be removed.</p>	The payment and performance bond forms that will be required under the Progressive Design-Build Agreement remain under evaluation and are subject to change. VPRA will consider this issue further for the RFP phase and the Phase 1 Services.
34	Exhibit E	<p>Exhibit E. Schedule B. 3. states that the Adjudication statement shall be sent no later than 10 days following the Obligee’s demand. This should be 10 days from the initiation of the Adjudication. As drafted, it cuts short the investigation period. Please amend to recognize industry standards:</p> <p>“The Adjudication statement shall set forth in detail the factual and legal issues submitted for Adjudication and shall be sent no later than 10 days following the Obligee’s Demand initiation of the Adjudication.”</p>	VPRA will implement this change in an addendum to the RFQ.
35	Exhibit E	<p>Exhibit E. Schedule B. 9 appears to contain drafting errors as immediate payment is addressed above in Item 7. Please remove the following as it does not pertain to this section:</p> <p>“Any party may request clarification of the Decision within five (5) business days after issuance, and the Adjudicator shall endeavor to respond within an additional five (5) business days, and, subject to any party’s right to commence an appeal de novo in a court of competent jurisdiction at any time in accordance with the</p>	VPRA will implement this change in an addendum to the RFQ.

		<p>terms of the Bond. any payment shall be made immediately thereafter. Unless the parties agree otherwise, the Decision shall state reasons therefore and shall be admissible in later administrative, arbitral or judicial proceedings between the parties. The parties shall comply with the Decision, unless and until subsequently vacated or modified, through the completion of the Principal's obligations under the Contract."</p>	
36	Exhibit F: Form D	<p>On questions 2 and 3 (bankruptcy acts and debarments/suspensions), Respondent respectfully requests that VPRA establish a commercially reasonable backward looking timeline (e.g., within the past 5 or 10 years) for such certifications and related disclosures like it has done for Form D question 1 and the Form C disclosures.</p> <p>The current framework does not address any requirements for time limits in Form D as is customarily provided in most similar forms so that disclosures remain current and relevant</p>	VPRA will not make the requested change.
37	Exhibit F: Form E	Form E, conflict of interest disclosure, is to be completed and submitted with the RFQ. Can this form be used prior to the RFQ submission to submit potential conflict of interest issues?	Section 1.6 of the RFQ provides that potential Respondents can seek a determination regarding a conflict of interest from VPRA prior to submission of an SOQ.
38	Exhibit F: Form G	Form G requires the proposers to provide information for projects completed within the years 2019, 2020, 2021, and 2022 where the firm was the prime contractor. Please confirm if this is required for the reference projects only or for every single project by a Major Participant over a four year period.	Form G is not limited to the reference projects identified in response to Section 4.4 of the RFQ. On Form G, Respondents shall provide the information required for all projects meeting the criteria stated on Form G.
39	General	Both the RFQ (Exhibit A) and previous Major Terms Summary (Attachment 2) include references to or via "Exhibit" excerpts from pass-thru various 3rd party railroad stakeholders. A number of these include unacceptable terms; for instance, the design-builder cannot indemnify those parties for their own fault, errors, omissions, and negligence. This is not industry standard or equitable.	See response to question 4.
40	General	There must be clear compensation for VPRA, CSX, NSRR Railroad, NPS, and other third party (Utility, Governmental Agency, etc.) caused impacts, delays, and failure to provide access, approvals, or other necessary items to advance the project. Properly scheduled access and the ability to advance the work must be available, with compensation provisions when it is not due to no fault of the Progressive Design-Builder (PDB). We understand that these may be addressed via incorporation of various "Allowance Items" into the documents, which is a fair and reasonable solution.	The Progressive Design-Build Agreement provided with the RFP will contain relief events and will include relief for third-party delay.

41	General	To avoid long drawn-out conflicts and distractions at the project level, we recommend a binding and admissible Disputes Resolution Board process be incorporated. This will help move items to closure faster to keep the project on schedule. We suggest this in addition to Executive Partnering on the project.	The Progressive Design-Build Agreement provided with the RFP will contain a process for dispute resolution during the Work.
42	General	We suggest a "mutual waiver of actual and consequential damages" is prudent for a project like this. Damages could be captured via various Liquidated Damages that are quantifiable and the sole remedy.	The Progressive Design-Build Agreement provided with the RFP will contain provisions pertaining to damages, including a mutual waiver of consequential damages. Liquidated damages will be applicable to certain events, including Design-Builder's late completion of the Project, failure of Key Personnel and Major Subcontractors to perform their role, and unpermitted track and road closures.
43	General	Based on the previous on-on-one meetings that occurred prior to the RFQ release, we assume there have been changes to the commercial terms. We request that you issue a revised draft terms sheet prior to SOQ submission.	VPRA does not anticipate releasing a revised draft of the commercial terms. The RFP will include the Progressive Design-Build Agreement that contains the governing commercial terms.
44	General	We request that RFP scoring criteria be shared with prospective responders, including the point allocation in the major categories and sub-categories; and how do the carryover scores from the RFQ contribute to the selection?	VPRA does not intend to release the detailed scoring criteria until issuance of the RFP to the shortlist. At this time, VPRA anticipates that the firm experience and key personnel/organization from the SOQ will constitute 35% of the proposal score. VPRA also anticipates that price will constitute 15% of the proposal score. The remainder is anticipated to consist of approach to the work, quality, project management, and Comprehensive DBE Utilization Approach.
45	General	We request a confidential one-on-one prior to SOQ submission in order to facilitate the most complete and accurate SOQ responses. The intent of the confidential discussions would be to gain clarity on the intent of specific requirements and terms and conditions.	VPRA will not accommodate this request. One-on-one meetings will be available to the shortlist after issuance of the RFP.
46	General	Will respondents to the RFQ be required to include a Table of Contents? If so, will it count as one of the total pages already defined in the RFQ?	No table of contents is required.
47	General	Please provide editable forms in Word so that we have the flexibility to edit the field spacing to provide the information requested.	VPRA will not provide editable forms.
48	General	Will the VPRA provide all forms in a fillable format in order to maintain the required document font size and formatting?	VPRA will not make this change.