



# **LONG BRIDGE PROJECT NORTH PACKAGE**

## **PROGRESSIVE DESIGN-BUILD REQUEST FOR QUALIFICATIONS**

**RFQ No.: 1-001-23-0001**

**(Addendum 1)**



## Table of Contents

1. INTRODUCTION.....	1
1.1. Project Information .....	1
1.2. Project Goals.....	4
1.3. Progressive Design-Build Process.....	4
1.4. Single Point of Contact.....	7
1.5. Rules of Contact .....	7
1.6. Conflict of Interest.....	8
1.7. Legal Authority .....	9
1.8. Federal Funding and Requirements .....	10
1.9. Disadvantaged Business Enterprises .....	10
1.10. Respondent Composition.....	10
1.11. Licensing Requirements .....	11
1.12. Quality Management .....	11
2. PROCUREMENT PROCESS .....	11
2.1. Procurement Schedule.....	12
2.2. Requests for Clarification.....	12
2.3. RFQ Addenda.....	13
2.4. Respondents Responsible for All Costs .....	13
3. SOQ SUBMISSION INSTRUCTIONS.....	13
3.1. SOQ Deadline and Instructions.....	13
3.2. SOQ Format.....	13
3.3. Additional Requirements.....	14
4. CONTENTS OF STATEMENT OF QUALIFICATIONS .....	15
4.1. Cover Letter and Form A .....	16
4.2. Legal, Financial, Safety, and DBE Information .....	16
4.3. Executive Summary.....	19
4.4. Experience of Respondent .....	19
4.5. Key Personnel and Organization .....	20
4.6. Quality Management .....	29
4.7. Understanding of Project and Progressive Design-Build.....	30
4.8. Additional Forms.....	30
5. EVALUATION CRITERIA.....	31
5.1. SOQ Evaluation .....	31
5.2. Shortlisting.....	34

5.3. Debriefings .....	34
6. PROCUREMENT DECISION APPEALS .....	34
7. VIRGINIA FREEDOM OF INFORMATION ACT .....	34
8. RESERVED RIGHTS .....	35
9. COMPLIANCE WITH LAW IN VIRGINIA .....	36
10. ETHICS IN PUBLIC CONTRACTING .....	36
11. REPRESENTATIONS .....	36
12. NO ASSUMPTION OF LIABILITY .....	37
13. APPLICABLE COST PRINCIPLES; ACCOUNTING REQUIREMENTS .....	37

## Exhibits

- A: Railroad Operator Indemnification Provisions
- B: Project Information
- C: Draft Phase 1 Services Scope of Work
- D: Draft Quality Management Technical Provisions
- E: Performance and Payment Bonds
- F: Forms

Form ID	Form
A	Acknowledgement of Receipt of RFQ, Addenda, and Responses to Questions
B	Respondent's Organization Information
C	Legal and Disputes History
D	Principal Participant and Lead Designer Certification
E	Conflict of Interest Disclosure
F	Safety Questionnaire
G	Record of DBE Performance
H	Project Experience Description
I	Key Personnel
J	Subcontractor Information
K	Affidavit of Non-Collusion
L	Lobbying Certificate
M	Respondent's Clarification Request
N	Proprietary/Confidential Information Identification

## Appendix

- 1: Definitions
- 2: List of Representative Material Changes

## 1. INTRODUCTION

The Virginia Passenger Rail Authority (“VPRA”) is issuing this Request for Qualifications (“RFQ”) to obtain Statements of Qualification (“SOQs”) from firms interested in serving as the Design-Builder under a Progressive Design-Build Agreement (“PDBA”) for the North Package of the Long Bridge project. The procurement process for this Project will consist of two steps: (1) a RFQ step to identify a Shortlist of qualified firms; and (2) a Request for Proposals (“RFP”) step during which the Shortlisted firms will each be invited to submit a Proposal to serve as the Design-Builder. The overall process will identify the firm with the best qualifications, approach, and Evaluative Price Components (defined below) to collaborate with VPRA to design and construct the Project.

In the first step of this procurement process, interested firms will submit SOQs detailing the firm’s relevant project experience, Key Personnel, and summary approach to the Project and quality management. In the second step of the process, firms named to the Shortlist will be invited to submit Proposals containing a detailed approach to the Work, including approach to the Phase 1 and Phase 2 Services, risk management, quality management, and approach to negotiating a Construction Price for the Phase 2 Services. Additionally, VPRA anticipates that Proposals will contain a price component consisting of (i) the Proposer’s not-to-exceed price to perform the Phase 1 Services and (ii) the Proposer’s proposed markup for profit and home office overhead to perform the Construction Work ((i) and (ii) collectively the “Evaluative Price Components”). The RFP will contain the Contract Documents, including the PDBA, that will provide the terms and conditions for the Work.

SOQs must meet all requirements established by this RFQ. Requirements of this RFQ generally will use the words “shall”, “will”, or “must” (or equivalent terms) to identify a required item that must be submitted with the SOQ. Failure to meet a RFQ requirement may render a SOQ non-responsive, while the extent to which a Respondent meets or exceeds evaluation criteria will be rated by the VPRA Evaluation Team and be reflective of the VPRA Evaluation Team’s scoring (in its sole discretion) of SOQs.

### 1.1. Project Information

The Long Bridge corridor is a vital link connecting the local, regional, and national transportation networks, and the project is critical to ensuring that the Long Bridge corridor can meet future rail needs. Current service along the corridor does not provide sufficient capacity and redundancy to meet projected future demand for railroad services in the region. The overall Long Bridge project will add capacity to a busy rail travel corridor through construction of a modern rail bridge from Washington, D.C. into Virginia.

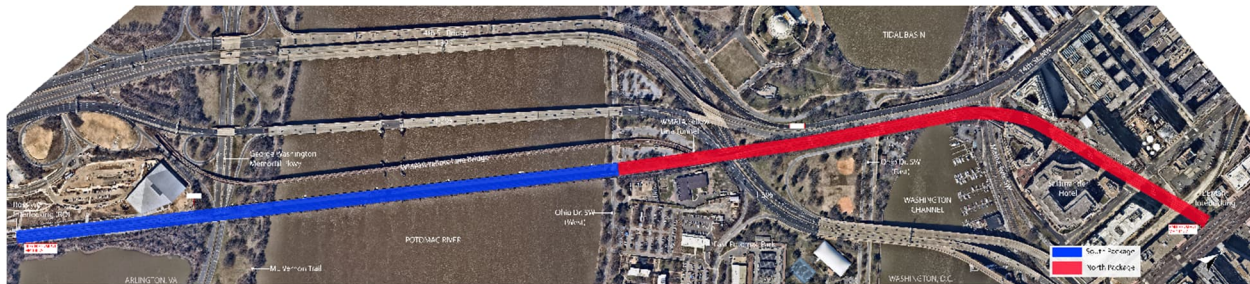
The corridor is a 1.8-mile railroad corridor between Rosslyn (RO) interlocking in Arlington, Virginia and L’Enfant (LE) Interlocking near 10<sup>th</sup> Street SW in the District of Columbia. The primary component of the Long Bridge project is a new two-track bridge upstream of the existing Long Bridge. The existing bridge will be retained to create a four-track crossing. The Long Bridge project additionally consists of environmental mitigation measures including a new bike-pedestrian shared use path across the George Washington Memorial Parkway and the Potomac River.

The Long Bridge project will allow for the separation of passenger and freight traffic while maintaining interoperability of passenger and freight rail for all four tracks. The existing eastern pair of tracks will be used primarily for CSX Transportation, Inc. (“CSXT”) freight rail, while the western pair of tracks will be used primarily for passenger rail, including the National Railroad Passenger Corporation (“Amtrak”) and Virginia Railway Express (“VRE”).

At the southern end of the project in Virginia, a new two-track railroad bridge will be constructed over the George Washington Memorial Parkway, Mount Vernon Trail, Potomac River, and Ohio Drive SW (West) to the west of the existing Long Bridge. The project will continue through East Potomac Park, crossing over the portal to the Washington Metropolitan Area Transit Authority (“WMATA”) Yellow Line tunnel and I-395 with a new two-track bridge, while retaining the existing I-395 rail bridge. After crossing I-395, the project will continue with four-track bridges, replacing the existing two-track bridges at Ohio Drive SW (East), the Washington Channel, and Maine Avenue SW.

The four tracks will continue underneath the Maryland Avenue SW overbuild, travel along the existing corridor underneath 12th Street SW and the 12th Street Expressway and tie into the four tracks proposed at L’Enfant Interlocking under a separate project led by VRE. Construction will occur within the Potomac River and Washington Channel. The project scope will require the Design-Builder to perform the work necessary for CSXT to design and install signal and communication systems. The project will also include potential early works packages for utility relocations and soil improvements.

The overall Long Bridge project consists of two primary construction packages, referred to as the North Package and South Package. The Project that is the subject of this RFQ is the North Package shown in red in the graphic below (the South Package is shown in blue).



The North Package Project Limits include:

- (a) Northern terminus: south end of L’Enfant Interlocking (the interlocking is not included in this package); and
- (b) Southern terminus: New Long Bridge northern abutment (the northern abutment is not included in this package).

The North Package will consist of the following major scope items:

- (a) early and enabling work (i.e., demolition, sitework, soil improvements, utility relocations, etc.);
- (b) phased construction of railroad embankment fills;

- (c) geotechnical ground improvements;
- (d) new non-CSXT-owned trackwork<sup>1</sup>;
- (e) new rail bridge over the WMATA Portal/I-395;
- (f) replacement of the existing two-track Ohio Drive SW Rail Bridge with a four-track bridge;
- (g) replacement of the existing two-track Washington Channel Rail Bridge with a four-track bridge;
- (h) replacement of the existing two-track Maine Avenue SW Rail Bridge with a four-track bridge;
- (i) replacement of the Maine Avenue SW Pedestrian Bridge;
- (j) new retaining walls and associated embankments and ground improvements;
- (k) landscaping;
- (l) railroad crashwalls;
- (m) Stormwater Management Facilities;
- (n) erosion and sediment control;
- (o) maintenance of traffic and roadway work;
- (p) utility coordination and adjustment work;
- (q) Right-of-Way coordination that includes providing VPRA with information VPRA will use to acquire right-of-way<sup>2</sup>;
- (r) coordination with regulatory agencies and property owners;
- (s) securing of applicable permits;
- (t) public and stakeholder outreach; and
- (u) coordination with adjacent projects and owners.

VPRA is delivering the Project in partnership with CSXT, Amtrak, VRE, District Department of Transportation (“DDOT”), National Park Service (“NPS”), and other local agencies with jurisdiction over the Project area. VPRA and the Design-Builder will work closely with these agencies to coordinate the Work and ensure that design and construction conform to applicable specifications and requirements. CSXT and Amtrak will participate in the design review process and will have approval authority over design packages that impact certain portions of the Project. Other agencies may also participate and have approval authority over certain aspects of the Design. 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.

---

<sup>1</sup> CSXT track and signals work will be performed by CSXT.

<sup>2</sup> VPRA anticipates that it will obtain all necessary right-of-way, including right-of-way for permanent incorporation into the Project and temporary construction easements.

The Project received a Final Environmental Impact Statement and Record of Decision (“ROD”) from the Federal Railroad Administration (“FRA”) on August 12, 2020. The ROD outlines FRA’s reviews and approval of the Preferred Alternative and the bike-pedestrian crossing. The environmental documents are available for review here:

<https://vapassengerrailauthority.org/longbridgeproject/#doc-library>.

Additional information and details about the Project are included in Exhibit B.

## **1.2. Project Goals**

VPRA’s goals for the Project are as follows:

- (a) commencement of the Phase 2 Services at time of award of FTA’s Full Funding Grant Agreement (FFGA), projected to be the first quarter of 2025;
- (b) substantial completion of Construction Work before or during 2030;
- (c) managing costs and completing the Project within budget;
- (d) maximizing the innovation potential and collaboration of the progressive design-build method;
- (e) safe construction of the Project, including ensuring worker safety and the safety of the traveling public in a congested, urban area;
- (f) maximizing community engagement and the use of Disadvantaged Business Enterprise (“DBE”) firms;
- (g) minimizing the impacts of construction to the public, stakeholders, CSXT, VRE, Amtrak, Authorities Having Jurisdiction (“AHJs”), and government agencies; and
- (h) enhancement of access to rail services in Virginia by creating an efficient gateway between Washington, D.C. and Virginia.

## **1.3. Progressive Design-Build Process**

### **1.3.1. Overview**

VPRA will deliver the Project using the Progressive Design-Build (“PDB”) method, which consists of the following two Phases:

#### Phase 1 (Design and Preconstruction):

During Phase 1, the Design-Builder will prepare the Design of the Project using information provided by VPRA, including a 30% design prepared prior to this procurement. The Design-Builder’s Design will be subject to oversight, input, and acceptance by VPRA. In addition to preparation of the Design, the Design-Builder will provide other preconstruction services identified in Exhibit C. 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.



At intervals to be specified in the PDBA, the Design-Builder will submit estimates of the cost to construct the Project and a Construction Schedule for completion of the Work. VPRA and the Design-Builder, on an Open Book basis, will participate in Construction Price Negotiations consisting of workshops to reconcile price differences with the goal of negotiating a Construction Price. As part of the Construction Price Negotiations, Design-Builder may perform further design or other activities and update its Binding Construction Price Proposal.

In addition, during Phase 1, VPRA and the Design-Builder will have the opportunity to identify Early Work that can be separately negotiated and performed by the Design-Builder. The Design-Builder's performance of Early Work does not guarantee that the Design-Builder will perform the entirety of the remaining Construction Work.

If VPRA and the Design-Builder cannot agree on a Construction Price or VPRA otherwise decides in its sole discretion not to execute a Phase 2 Amendment with the Design-Builder, VPRA may terminate the Design-Builder's services, take possession of all Work Product, and seek bids from other contractors to perform the Construction Work. VPRA may also contract separately with the Lead Designer to complete the in-process design, pursuant to the Tri-Party Agreement.

If VPRA terminates the Design-Builder's services without execution of a Phase 2 Amendment, neither the Design-Builder nor any Principal Participant thereof may bid or propose in any subsequent procurement for the Construction Work. In the event of termination, if Design-Builder is performing Early Work, Design-Builder shall continue such Early Work in accordance with the negotiated terms thereof, which shall be subject to VPRA's right to terminate the Early Work for convenience.

#### Phase 2 (Final Design and Construction):

If VPRA and the Design-Builder agree to a Construction Price and Construction Schedule, VPRA and the Design-Builder will execute a Phase 2 Amendment to the PDBA. Phase 2 (Final Design and Construction) contemplates that the Design-Builder will complete the Released for Construction Plans ("RFC"), achieve Final Acceptance, and perform all design, construction, and other obligations required under the Contract Documents. If VPRA and the Design-Builder agree to a Construction Price, VPRA and the Design-Builder will execute a Phase 2 Amendment to the PDBA. For the avoidance of doubt, the Design-Builder's performance of the Phase 2 Services is expressly contingent upon VPRA and the Design-Builder agreeing upon and executing a Phase 2 Amendment.

### **1.3.2. Construction Price Negotiations**

The Construction Price Negotiations are a critical component of the Phase 1 Services. The Design-Builder will submit an Opinion of Probable Construction Cost ("OPCC") within 90 days of commencing the Phase 1 Services based primarily on the 30% design provided by VPRA. The OPCC is a non-binding estimate that will aid VPRA and the Design-Builder in evaluating design parameters and, as needed, to clarify the final scope of construction. Thereafter, following the resolution of comments (including comments from CSXT, Amtrak, NPS, DDOT, and other stakeholders) on the Design-Builder's 60% design submittal, the Design-Builder will submit a Binding Construction Price Proposal for VPRA's consideration.

VPRA will use an Independent Cost Estimator ("ICE") to prepare independent cost estimates of the Construction Work to assist VPRA with the evaluation of whether to accept the Design-Builder's Binding Construction Price Proposal. The Design-Builder, ICE, and VPRA will

participate in workshops to reconcile differences between the Design-Builder's Binding Construction Price Proposal and the ICE's estimate. To facilitate reconciliation, the Design-Builder shall provide all cost estimates to perform the Phase 2 Services on an Open Book basis, which entails providing all assumptions and substantiation to build the Construction Cost Estimates. The Design-Builder shall work collaboratively with VPRA to reconcile price differences and to ensure that VPRA is receiving a fair and reasonable price for the Construction Work.

VPRA will not execute a Phase 2 Amendment with the Design-Builder if the Design-Builder's estimated Construction Price exceeds the ICE's estimate by 10% or more. If the Design-Builder submits a Binding Construction Price Proposal that exceeds the ICE's estimate by 10%, VPRA and the Design-Builder will work through the price reconciliation process with the goal of reaching the acceptable price threshold. Design-Builder may continue to advance all or portions of the Design during this process. VPRA may elect to terminate the Construction Cost Negotiations if it appears that the Construction Price will not be within 10% of the ICE's estimate or if the Design-Builder's Binding Construction Price Proposal is not reasonable, balanced, or aligned with the Phase 2 Services.

As part of the Construction Price Negotiations, VPRA and the ICE will also evaluate whether the Construction Schedule submitted by Design-Builder aligns with the Construction Price and will result in on-time completion of the Work. If VPRA agrees to a Binding Construction Price Proposal submission, including after any adjustments made during the Construction Price Negotiations, Design-Builder shall submit a Final Construction Price Proposal containing the Construction Price and terms of the Phase 2 Amendment, which will include the baseline Construction Schedule.

If specific Project risks are preventing the Design-Builder and VPRA from successfully concluding Construction Price Negotiations, then VPRA reserves the right (but not the duty) to employ Allowances.

### **1.3.3. Self-Performance**

The Design-Builder and Major Subcontractors will be required to self-perform Construction Work comprising at least 50% of the value of the Construction Work with its own employees and forces. The Construction Work comprising the 50% minimum requirement shall be negotiated between VPRA and the Design-Builder and will not be subject to competitive bidding requirements. Work to be performed by Major Subcontractors must be included in, and shall be counted towards, the 50% limitation on self-performed work not subject to competitive bidding requirements. For the sake of clarity, this means that Major Subcontractors must perform the scope of work for which they are identified in the SOQ and that scope of work must be part of the self-performed work for which the price is negotiated and is not subject to competitive bidding.

VPRA will permit the Design-Builder to self-perform up to 70% of the value of Construction Work, however, the self-performed portion in excess of 50% (up to the limit of 70%) will be subject to competitive bidding requirements. Major Subcontractors may perform additional Construction Work beyond the scope identified in the SOQ and the 50% threshold on self-performed work not subject to competitive bidding requirements, provided that such additional scope is subject to competitive bidding.

All other Construction Work not self-performed by the Design-Builder will be subject to competitive bidding. The competitive bidding process will generally require that the Design-Builder select the price offered by the lowest responsive bidder for incorporation into the Construction Price, with the exception that VPRA may permit the Design-Builder to deviate from the lowest responsive bid

requirement for certain scopes of work that may be performed by DBE firms. Other than the requirements that the Design-Builder self-perform no less than 50% of the value of the Construction Work, that Major Subcontractors perform the work for which they are identified in the SOQ, and DBEs perform allocated scope, the self-performance and competitive bidding requirements apply only to the price negotiations. If VPRA and the Design-Builder agree to the Construction Price and execute a Phase 2 Amendment, the Design-Builder is not required to use the lowest responsive bid in the performance of the Construction Work. For specific scopes of work that the Design-Builder negotiates to have performed by DBEs, the Design-Builder will be required to use the DBEs whose bids are incorporated into the Construction Price.

For purposes of calculating the value of the self-performed work, the direct cost of materials will be excluded. All other costs to perform the Construction Work will be included in calculating the value of self-performed work, including markup and construction costs not allocable to specific activities (i.e., general conditions costs, field indirect costs, etc.). The remaining services included in the Construction Price that are not Construction Work will be excluded from the calculation of self-performed work, including design, engineering, and other professional services.

#### **1.4. Single Point of Contact**

VPRA's single point of contact ("Point of Contact") for matters relating to this procurement shall be:

John Kostyniuk, Director of Procurement  
919 E. Main Street, Suite 2400  
Richmond, VA 23219  
(804) 339-2604  
[procurement@vpra.virginia.gov](mailto:procurement@vpra.virginia.gov)

All communications regarding the procurement shall be directed to the Point of Contact. Only written communications received from the Point of Contact may be relied on throughout this procurement, subject to any limitations under the PDBA regarding reliance on certain materials provided. VPRA is not responsible for oral communications or other communications that occur outside the communications protocol established by this RFQ.

#### **1.5. Rules of Contact**

As of the date of issuance of this RFQ, no Respondent shall contact any employee or representative of VPRA concerning this RFQ or the Project, including members of VPRA's Board of Directors, except for the Point of Contact as specifically permitted in this RFQ. This prohibition does not apply to discussions with VPRA not related to this RFQ or the Project.

The following entities are considered "representatives" of VPRA during this procurement and may not be contacted by any means whatsoever concerning this RFQ or the Project:

- (a) WSP USA Inc.
- (b) Vanase Hangen Brustlin, Inc.
- (c) Kimley-Horn and Associates, Inc.
- (d) Rummel, Klepper, and Kahl, LLP
- (e) Modjeski & Masters, Inc.
- (f) Michael Baker International

- (g) Gannett Fleming, Inc.
- (h) Mott MacDonald, Inc.
- (i) Hardesty & Hanover, LLC
- (j) Jacobs Solutions, Inc.

In addition, Respondents are prohibited from contact with the following stakeholders concerning this RFQ or the Project:

- (a) CSXT
- (b) Amtrak
- (c) VRE
- (d) DDOT
- (e) NPS
- (f) Utility owners
- (g) Other governmental agencies with jurisdiction
- (h) Adjacent landowners
- (i) Business owners in the vicinity of the Project

Further, no Respondent, or any constituent entity or personnel thereof may communicate with another Respondent or members thereof with regards to this RFQ or the Project. However, notwithstanding the foregoing, Respondents may communicate with Subcontractors that have been identified as part of multiple Respondents (where membership on multiple Respondents is not prohibited under the terms of this RFQ), provided that Respondents establish a protocol to ensure that the prospective Subcontractor will not impermissibly share information between Respondents or otherwise allow for collusion or the appearance thereof. It is incumbent on Respondents to verify whether a potential Subcontractor is participating with another Respondent and whether such potential Subcontractor may belong to more than one Respondent.

These rules of contact shall apply until the earliest of the following:

- (a) amendment to the rules of contact by VPRA, or superseding of these rules in the RFP;
- (b) the execution of the PDBA and the expiration of any applicable protest period or resolution of any protest then pending; or
- (c) notification by VPRA of cancellation of the procurement.

Any communication prohibited by these rules may be grounds for a firm's disqualification from further participation in the procurement. VPRA may disqualify any Person for violation of these rules in its sole discretion.

### **1.6. Conflict of Interest**

VPRA's procurement of the Project is governed by VPRA's Organizational Conflict of Interest Policy, available at: [https://vapassengerrailauthority.org/wp-content/uploads/2022/09/VPRA-Organizational-Conflict-of-Interest-Policy\\_Executed-FINAL\\_Effective-08\\_24\\_2022\\_V1.pdf](https://vapassengerrailauthority.org/wp-content/uploads/2022/09/VPRA-Organizational-Conflict-of-Interest-Policy_Executed-FINAL_Effective-08_24_2022_V1.pdf). Prior to submission of a SOQ, a Respondent may request that VPRA determine whether a specific conflict of interest exists by following the process in VPRA's Organizational Conflict of Interest Policy.

Respondents are required to provide information concerning potential organizational conflicts of interest in their SOQs. Respondents must state how their interests, or those of their Principal Participants, Affiliates, chief executives, directors, Key Personnel, or any proposed consultant,

contractor or Subcontractor may result, or could be viewed as, an organizational conflict of interest. The information shall be submitted on Form E.

VPRA will review the information submitted and make a written determination of whether the Respondent's interests create an actual or apparent organizational conflict of interest. VPRA may award the PDBA to a Respondent where an organizational conflict of interest is determined to exist, provided that VPRA determines that the conflict can be avoided, neutralized, or mitigated.

If, after award of the PDBA, an organizational conflict of interest is discovered, the Design-Builder must make an immediate and full written disclosure to VPRA, including a description of the action taken to avoid, neutralize or mitigate the conflict. If it is determined that the Design-Builder was aware, or should have been aware, of an organizational conflict of interest prior to award of the PDBA and did not disclose the conflict to VPRA, VPRA may terminate the contract for default and/or exercise any other remedies available.

If the selected Design-Builder (or a constituent entity of the Design-Builder) intends to pursue work on the South Package, whether individually, as part of a joint venture, as a subcontractor, or otherwise, they must evaluate any real or apparent conflict of interest that could arise as a result of the engagement, and where appropriate, seek a conflict of interest determination from VPRA in accordance with the Organizational Conflict of Interest Policy. Any significant potential organizational conflict of interest that cannot be effectively neutralized or mitigated, will result in the Design-Builder (or a constituent entity) being deemed ineligible from participating in the South Package procurement.

#### **1.6.1. Ineligible Firms**

The following Persons assisted with the development of the Project, including preliminary engineering, preparation of technical specifications, Project scope of work, and consultation in the development of the qualifications and evaluation criteria for the SOQs and Proposals:

- (a) WSP USA Inc.
- (b) Vanasse Hangen Brustlin, Inc.
- (c) Kimley-Horn and Associates, Inc.
- (d) Rummel, Klepper, and Kahl, LLP
- (e) Modjeski & Masters, Inc.
- (f) Michael Baker International
- (g) Gannett Fleming, Inc.
- (h) Mott MacDonald, Inc.
- (i) Hardesty & Hanover, LLC
- (j) Jacobs Solutions, Inc

These Persons are not eligible to participate in this procurement on any Respondent team in any capacity. VPRA made this determination in accordance with its Organizational Conflict of Interest Policy. If any firm listed above desires to appeal this determination of its ineligibility, such appeal must be made accordance with the procedures set forth in Section 8.4 of the Organizational Conflict of Interest Policy.

#### **1.7. Legal Authority**

VPRA is conducting this procurement in accordance with the Procurement Rules adopted by VPRA pursuant to Va. Code § 33.2-299.1 and intends to execute the PDBA pursuant to its powers

granted under Va. Code § 33.2-292. This procurement is not subject to the Virginia Public Procurement Act (Va. Code § 2.2-4300 *et seq.*) or any of its companion acts (e.g., Chapter 43.1 of Title 2 of the Code of Virginia, “Construction Management and Design-Build Contracting”).

### **1.8. Federal Funding and Requirements**

VPRA anticipates receiving financial assistance from the U.S. Department of Transportation (“DOT”) in the form of grant(s) and/or cooperative agreement(s) through a DOT Component, including the Federal Transit Administration (“FTA”) and the Federal Railroad Administration (“FRA”). Accordingly, this procurement and the PDBA shall be subject to all requirements associated with DOT federal financial assistance provided by a DOT Component. Additional details concerning federal requirements will be specified in the RFP and PDBA documents.

### **1.9. Disadvantaged Business Enterprises**

In accordance with 49 C.F.R. Part 26, VPRA seeks to maximize opportunities for the participation of DBE firms on the Project. To facilitate the use of DBE firms, the RFP will require Proposers to submit a plan to utilize DBE firms during the Phase 1 Services, which will be part of the overall RFP scoring. As part of the Phase 1 Services, the Design-Builder will prepare and submit for VPRA’s approval a DBE utilization plan for the Phase 2 Services. Design-Builder will implement the approved DBE utilization plan as part of the Phase 2 Services. Unless otherwise mandated by the DOT or a DOT Component, neither Phase 1 nor Phase 2 will include DBE contract goals.

To qualify as a DBE for the Phase 1 Services, a firm must be certified as such by the Department of Small Business and Supplier Diversity (“DSBSD”) or the Metropolitan Washington Airports Authority (“MWA”) at the time Respondent submits its Proposal. To qualify as a DBE for the Phase 2 Services, a firm must be certified as such by the foregoing entities prior to commencement of the proposed DBE’s work. A list of certified DBE firms is maintained on the DSBSD website ([www.sbsd.virginia.gov](http://www.sbsd.virginia.gov)) under the DBE/SWAM Certification Directory link.

VPRA is in the process of obtaining FTA approval of its DBE Program Plan and related items. The use of DBE firms during the Work will be subject to the DBE Program Plan once approved by the FTA.

### **1.10. Respondent Composition**

Principal Participants, Major Subcontractors, the Lead Designer, Independent Design Quality Manager (“IDQM”) firms, and Key Personnel identified in the SOQ may not be removed, replaced, or added without written approval from VPRA, except that Respondents may add IDQM firms after notification of the Shortlist without obtaining VPRA’s approval. A written request from a Respondent to change Respondent’s organization must document the proposed change, identify good cause for the change, and demonstrate that the change will be equal to or better than the Principal Participant, Major Subcontractor, Lead Designer, IDQM, or Key Personnel submitted in the SOQ. If Respondent requests to change a Principal Participant, Major Subcontractor, the Lead Designer, IDQM, or Key Personnel after notification of the Shortlist, and VPRA approves the change, VPRA will re-assess and re-score the qualifications of the Respondent and determine whether the substitution affects eligibility to be named to the Shortlist. Notwithstanding the

foregoing, VPRA will not re-assess and re-score the Respondent's qualifications if the Respondent adds IDQM firms after notification of the Shortlist.

If VPRA determines that the approved, amended organization remains qualified to be named to the Shortlist, VPRA's re-assessed SOQ score for the Respondent organization will be the score carried forward to the RFP phase. If VPRA determines that the new Respondent organization is not qualified for the Shortlist, VPRA may remove the Respondent from the Shortlist.

Requests to change Respondent's organization must be accompanied by all forms required to be submitted by the RFQ with the new organization's information.

Additionally, VPRA may disqualify a Respondent if any of its Principal Participants, Lead Designer, or Major Subcontractor(s) belongs to more than one Respondent organization, or if any Affiliate of Respondent or any of its Principal Participants, Lead Designer, or Major Subcontractor(s) is a member of another Respondent organization.

#### **1.11. Licensing Requirements**

Respondents are advised that the Project may involve the multi-jurisdictional practice of professional services (Virginia and the District of Columbia). It is incumbent upon each Respondent to investigate all applicable licensure requirements and possess such qualifications as may be required for the performance of the Work. Failure to comply with applicable law with regard to any registration or licensure requirements, whether business, individual, or professional in nature may result in VPRA declining to execute the PDDBA, in the sole and reasonable discretion of VPRA.

Respondents shall be required to have all required licenses at the time of execution of the PDDBA and will be required to submit evidence that Key Personnel and other specified individuals have all required licenses as a pre-condition to execution of the PDDBA.

#### **1.12. Quality Management**

Quality is a key priority for the Project. For the Design, VPRA anticipates that quality management will be performed by having the Design-Builder perform Quality Control and Quality Assurance (through the IDQM), while VPRA will perform Independent Quality Assurance ("IQA"). For the Construction Work, the Design-Builder will perform Quality Control and VPRA will perform Quality Assurance. A draft of the Technical Provision section concerning quality management is attached to this RFQ as Exhibit D. VPRA encourages Respondents to consider Exhibit D in forming their organization and approach to quality management.

#### **1.13. Co-Location**

VPRA does not anticipate that it will require the selected Design-Builder to co-locate full time with VPRA during the Phase 1 Services. However, VPRA expects that the Design-Builder will be available for in-person meetings on a regular basis and otherwise available as needed to meet the needs of the Work. VPRA will host such in-person meetings at its branch office in Northern Virginia, and it will be the duty of Design-Builder to ensure all appropriate Design-Builder team members attend such meetings in person.

VPRA may require that certain members of the Design-Builder’s workforce be co-located during the Phase 2 Services. Co-location during the Phase 2 Services will be addressed as part of the negotiations for the Phase 2 Services.

**2. PROCUREMENT PROCESS**

**2.1. Procurement Schedule**

Below is VPRA’s planned schedule for this procurement. VPRA reserves the right to amend these dates in its sole discretion.

<b>Event</b>	<b>Date</b>
Request for Letters of Interest Issued	November 17, 2022
Due date for Letters of Interest	December 31, 2022
Industry Forum	February 24, 2023
Release of RFQ	March 24, 2023
Request for Clarifications Due	April 10, 2023
SOQ Due Date	May 5, 2023
Shortlist Announced	June 21, 2023
Release of RFP	July 7, 2023
Proposals Due	September 15, 2023
Announcement of Preferred Proposer	October 20, 2023
Execution of Progressive Design-Build Agreement	December 2023
NTP for Phase 1 Services	December 2023
Start of Construction (other than Early Work)	Q1 2025
Substantial Completion of Construction	2030

**2.2. Requests for Clarification**

Respondents may submit questions to VPRA pertaining to the RFQ. Questions must be submitted via e-mail to the Point of Contact by the deadline in the Procurement Schedule. All questions must contain the following information, to the extent applicable, and shall be on Form M, which Respondents shall submit in Microsoft Word format:

- (a) RFQ Section Number or Form Number;
- (b) Question; and
- (c) Space for VPRA Response (to be added by VPRA).

Respondents submitting a question that contains proprietary or other confidential information may identify the question as confidential by submitting Form N with the question(s). VPRA will review questions marked confidential and if it concurs that the question contains confidential information, will not make the question or response public. If VPRA disagrees that the question contains confidential information, VPRA will notify the Respondent submitting the question and provide the



option to withdraw the question, amend the question, or allow the question to remain submitted without confidentiality protection.

Except for questions containing proprietary or confidential information, VPRA will post all questions received and VPRA's responses on the VPRA Website.

### **2.3. RFQ Addenda**

VPRA may amend the RFQ from time to time in its sole discretion. Any such amendments shall be incorporated into the RFQ through an addendum that will be published on the VPRA Website. Upon submission of a SOQ, Respondents will be required to affirm receipt of all issued addenda using Form A.

### **2.4. Respondents Responsible for All Costs**

Respondents shall be responsible for all costs associated with participation in this procurement process, including but not limited to the preparation of SOQs and Proposals, submission of questions, participation in public forums or other meetings established pursuant to the procurement process, and any other efforts or costs arising from or related to this procurement.

## **3. SOQ SUBMISSION INSTRUCTIONS**

### **3.1. SOQ Deadline and Instructions**

SOQs must be submitted to VPRA on or before **May 5, 2023 at 2:00 p.m. Eastern Time**. VPRA will not accept a late SOQ for any reason. Respondents shall submit their SOQ by e-mail to [proposals@vpra.virginia.gov](mailto:proposals@vpra.virginia.gov). VPRA will respond with a confirmation of receipt. All SOQs shall be submitted in searchable (i.e., not scanned) portable document format (.pdf). The file name for the SOQ shall be: [Respondent Name/LB NP SOQ/Date].

VPRA's e-mail system can receive file sizes up to 150 MB. If a Respondent must submit multiple e-mails to accommodate file size limitations, the transmission e-mail shall state the number of e-mails that Respondent will send to complete the SOQ package. Additionally, each file shall state, after the information required by the paragraph above, the file number out of the total number submitted (i.e., 1 of 2, 2 of 3, etc.).

Respondents may submit financial statements and confidential or proprietary information using a password-protected file. If Respondent sends information in a password-protected file, Respondent must state as such in the transmission e-mail. Respondent shall send the password in a separate e-mail. Respondents may not password protect their entire SOQ and may only do so for financial statements or other information identified on Form N.

### **3.2. SOQ Format**

Each Respondent shall organize its SOQ as stated in Section 4. The information that must be contained in each Tab, in addition to the page limit (if any) for each Tab or portion thereof, is further described in Section 4.

Text shall be in English in a standard font, a minimum of 11 points, single-spaced, except that graphics, including the organizational chart, may be no smaller than 10-point font. Pages shall

be 8 ½-inch x 11-inch, with lettered/numbered dividers between each Tab. Graphic presentations may be submitted on 11-inch x 17-inch pages. Respondents shall be limited to a total of 2 (two) 11-inch by 17-inch pages for the entirety of the SOQ, each of which shall count as a single page. Pages must be numbered consecutively and include the Tab number in which the page is included (i.e., 1-1, 1-2; 2-1, 2-2, etc.).

### **3.3. Additional Requirements**

SOQs shall be signed by an authorized representative of the Respondent. If the Respondent is a Joint Venture, partnership, or other form of consortium, the SOQ must be signed by authorized representatives of each Principal Participant. Signatures shall be applied using a program that applies electronic signatures.

All information requested must be submitted. Failure to submit all information requested may result in VPRA requiring prompt submission of missing information and/or giving a lowered evaluation of the SOQ. SOQs that are substantially incomplete or lack key information may be rejected as non-responsive by VPRA at its sole discretion.

#### 4. CONTENTS OF STATEMENT OF QUALIFICATIONS

The SOQ shall be organized as shown in the table below. The information required under each tab is described in further detail in this [Section 4](#).

Tab Number	Content	Required Submissions/ Page Limits
1	Section 4.1: Cover Letter	<ul style="list-style-type: none"> <li>• Cover letter (2 Pages)</li> <li>• Form A (Acknowledgement and Receipt of RFQ, Addenda, and Responses to Questions)</li> </ul>
2	Section 4.2: Legal, Financial, Safety, and DBE information	<ul style="list-style-type: none"> <li>• Form B (Respondent's Organization Information)</li> <li>• Organizational agreement or material terms</li> <li>• Form C (Legal and Disputes History)</li> <li>• Form D (Principal Participant and Lead Designer Certification)</li> <li>• Form E: (Conflict of Interest Disclosure)</li> <li>• Financial statements</li> <li>• Surety Letter</li> <li>• Material change disclosure</li> <li>• Form F (Safety Questionnaire) plus required documents</li> <li>• Form G (Record of DBE Performance)</li> </ul>
3	Section 4.3: Executive Summary	<ul style="list-style-type: none"> <li>• 2 Pages</li> </ul>
4	Section 4.4: Respondent Experience	<ul style="list-style-type: none"> <li>• Form H (Project Experience Description) (2 pages each)</li> <li>• Narrative (2 pages)</li> </ul>
5	Section 4.5: Key Personnel and Organization	<ul style="list-style-type: none"> <li>• Form I (Key Personnel)</li> <li>• Key Personnel resumes (2 pages each)</li> <li>• Form J (Subcontractor Information)</li> <li>• Subcontractor description (1 page)</li> <li>• Organizational Chart and description (2 pages)</li> </ul>
6	Section 4.6: Quality Management	<ul style="list-style-type: none"> <li>• Narrative (3 pages)</li> </ul>
7	Section 4.7: Understanding of Project and Progressive Design-Build	<ul style="list-style-type: none"> <li>• Narrative (3 pages)</li> </ul>
8	Additional Forms	<ul style="list-style-type: none"> <li>• Form K (Affidavit of Non-Collusion)</li> <li>• Form L (Lobbying Certificate)</li> <li>• Form N (Proprietary / Confidential Information Designation), if needed</li> </ul>

#### **4.1. Cover Letter and Form A**

Respondent shall provide a cover letter stating its desire to be considered for the Project and stating the official names and roles of all Principal Participants, the Lead Designer (if not a Principal Participant), IDQM firm(s), and Major Subcontractors. Respondents shall be comprised only of teams or organizations that are capable of designing and constructing the Project in its entirety. Individual firms or potential Subcontractors that are not capable of performing the entirety of the Work shall not be eligible to submit a SOQ. Additionally, except for the Lead Designer (if not a Principal Participant), Major Subcontractors, and IDQM firms, Respondents may not identify any Subcontractors to perform work during the Phase 2 Services. Respondents may, however, identify Subcontractors that will perform work during the Phase 1 Services.

In the cover letter, Respondent shall identify a single point of contact for the Respondent (the "Designated Contact") and the e-mail address, physical address, and telephone number where questions may be directed. The letter shall be signed by authorized representatives of the Respondent's organization. If Respondent is a Joint Venture, partnership, or other consortium, the letter shall be signed by authorized representatives of each member.

In addition, Respondent shall submit Form A.

#### **4.2. Legal, Financial, Safety, and DBE Information**

##### **4.2.1. Legal Information**

##### **4.2.1.1. Legal Structure**

- (a) Using Form B, identify Respondent's legal name, legal structure, and relevant state(s) of organization. Provide the legal structure and state of organization for each Principal Participant, the Lead Designer (if not a Principal Participant), IDQM firm(s), and Major Subcontractors, and the % of equity interest of each Principal Participant. For Major Subcontractors, provide the scope of work that the Major Subcontractor will perform, and for IDQM firm(s), state the technical discipline in which the IDQM firm will provide specialized expertise, if applicable.
- (b) If Respondent is a Joint Venture, partnership, or other consortium, provide a copy of the agreement between the constituent entities. If such agreement has not yet been executed, provide a copy of the anticipated key terms of the agreement. The agreement or the key terms must include, at a minimum, the percentages of ownership of each constituent entity, roles of the various entities, a stated commitment to execute an agreement prior to submission of a Proposal, and the provisions concerning joint and several liability stated in part (c) below.
- (c) If the Respondent is a Joint Venture, partnership, or other consortium, each constituent entity of the Respondent must agree to be jointly and severally liable for the Respondent's obligations with respect to the Project.

##### **4.2.1.2. Legal/Disputes History**

- (a) Submit Form C for the Respondent, Principal Participants, Major Subcontractors, and

Lead Designer, as applicable, in accordance with the instructions on the Form.

- (b) Provide Form D for each Principal Participant and the Lead Designer (if not a Principal Participant).
- (c) Using Form E, provide the conflict of interest disclosure discussed in Section 1.6. If there is no conflict of interest, affirmatively state as such on Form E.

#### **4.2.2. Financial Information**

Submit the following information:

##### **(a) Financial Statements**

Financial statements for the Principal Participant(s) for the three (3) most recently completed fiscal years. Financial Statements must include:

- (i) Opinion Letter (Auditor's Report)
- (ii) Balance Sheet
- (iii) Income Statement
- (iv) Statement of Changes in Cash Flow; and
- (v) Footnotes

In addition, financial statements must meet the following requirements:

##### GAAP or IFRS Compliant

Financial statements must be prepared in accordance with U.S. Generally Accepted Accounting Principles ("U.S. GAAP") or International Financial Reporting Standards ("IFRS"). If financial statements are prepared in accordance with principles other than U.S. GAAP or IFRS, a letter must be provided from a certified public accountant identifying and discussing the areas of the financial statements that would be affected by a conversion to U.S. GAAP or IFRS. A restatement of the financial information in accordance with U.S. GAAP or IFRS is not required.

##### U.S. Dollars

Financial statements shall be provided in U.S. dollars, if available. If financial statements are not available in U.S. dollars, the Respondent must include summaries of the income statements, statements of cash flow, and balance sheets for the applicable time periods converted to U.S. dollars, within one month of the SOQ due date, by a certified public accountant.

##### Audited

Financial statements must be audited by an independent party qualified to render audit opinions (e.g., a certified public accountant). If audited financials are not available for an entity, the Respondent shall include unaudited financial statements for such entity, certified as true, correct, and accurate by the chief executive officer, chief financial officer, or treasurer (or by such equivalent position or role) of the entity.

##### English

Financial statement information must be prepared in English. If audited financial statements are prepared in a language other than English, translations of all financial statement information must be provided with the original financial statement information.

### SEC Filings

If the Respondent or any other entity for whom financial information is submitted in the SOQ files reports with the Securities and Exchange Commission, then such financial statements shall be provided by including the entity's most recent Form 10-K. For all subsequent quarters, provide a copy of any report filed on Form 10-Q or Form 8-K that has been filed since the latest filed 10-K.

### **(b) Bonding Capacity and Eligibility**

Provide a letter from a surety or insurance company stating that the Respondent is capable of obtaining Performance and Payment Bonds in the amount of \$700,000,000. The surety or insurance company submitting such letter must be rated AA-/Aa3 by two nationally recognized rating agencies or at least A-VII by A.M. Best and Company, be listed on Treasury Department Circular 570, and be on the list of companies approved by the Commonwealth. The letter should recognize the Respondent's backlog and work-in-progress in relation to its bonding capacity. **Letters indicating "unlimited" bonding/security capability are not acceptable.**

VPRA's proposed forms for the Performance and Payment Bonds are attached hereto as Exhibit E for the benefit of Respondents.

### **(c) Material Changes in Financial Condition**

Respondent shall provide information regarding any material changes in financial condition for each Principal Participant, and, if applicable, each Guarantor for the past three fiscal years and anticipated for the next fiscal year. For the avoidance of doubt, if any of the foregoing entities is a Joint Venture, partnership, or other consortium, Respondent shall provide this information for all members. If no material change has occurred and none is pending, each of these entities shall provide a letter from their respective chief executive officer, chief financial officer, or treasurer (or equivalent position or role) so certifying.

In instances where a material change has occurred, or is anticipated, the affected entity shall provide a statement describing each material change in detail, the likelihood that the factors underlying the change will continue during the period of performance of the Project, and the projected full extent of the changes likely to be experienced in the periods ahead. Estimates of the impact on revenues, expenses, and the change in equity shall be provided separately for each material change certified by the chief executive officer, chief financial officer, or treasurer (or equivalent position or role). References to the notes in the financial statements are not sufficient to address the requirement to discuss the impact of material changes.

Where a material change will have a negative financial impact, the affected entity shall additionally provide a discussion of measures that it will undertake to insulate the Project from such negative material changes, and those currently in progress or reasonably anticipated in the future. If the financial statements indicate that expenses and losses exceed income in each of the three completed fiscal years (even if there has not been a material change), the affected entity shall

provide a discussion of measures that will be undertaken to make the entity profitable in the future and an estimate of when the entity will be profitable.

Set forth at Appendix 2 is a representative list of events intended to provide examples of a material change in financial condition. This list is intended to be indicative only and is not exhaustive.

At the sole discretion of VPRA, any failure to disclose a prior or pending material change may result in disqualification from further participation in the selection process.

#### **(d) Guarantor**

VPRA may in its discretion, based upon the review of the financial information provided, specify that an acceptable Guarantor is required as a condition of shortlisting and award of the PDBA. If VPRA requires a Guarantor, VPRA will require Respondent to provide the Guarantor's financial statements for the preceding three (3) years by a time specified in VPRA's notice to a Respondent that a Guarantor is required.

If a Guarantor is required, Respondent must comply with all other requirements in the RFQ for the submission of financial information. VPRA reserves the right to review a proposed Guarantor's financial capacity and reject the proposed Guarantor if there is a material risk that it would be unable to fulfill its obligations. VPRA additionally reserves the right to permit the Design-Builder to perform the Phase 1 Services without a Guarantor, but require a Guarantor as a condition to execution of a Phase 2 Amendment.

#### **4.2.3. Safety Record**

Submit Form F, Safety Questionnaire, for each Principal Participant, in addition to the documentation specified in Form F. If the Lead Designer is a Principal Participant, the Lead Designer is not required to submit Form F.

#### **4.2.4 DBE Participation Record**

Submit Form G, Record of DBE Performance, for each Principal Participant reflecting the record of DBE participation in their contracts for the past three (3) years. If the Lead Designer is a Principal Participant, the Lead Designer is not required to submit Form G.

#### **4.3. Executive Summary**

Respondent shall submit an executive summary that provides an overview of the information presented in the SOQ. The purpose of the executive summary is to familiarize reviewers with the content of the SOQ in plain language and to provide an introduction to the SOQ.

#### **4.4. Experience of Respondent**

Respondent shall identify projects performed by the Principal Participants, the Lead Designer (if not a Principal Participant), Major Subcontractors, and IDQM firms demonstrating that they have the experience, knowledge, and capability to execute the Project successfully. Respondents should identify projects using alternative delivery methods (progressive design-build, design-build, Construction Manager/General Contractor ("CM/GC"), or methods with early contractor involvement) with a similar scope of work, risks, third-party considerations, and that have collaborative approaches to design, construction, and successful price negotiation similar to that

anticipated for the PDB method to be used on this Project. Respondents shall provide the following information to demonstrate its experience:

- (a) Using Form H, Project Experience Description, provide at least two (2) projects, but no more than three (3) projects, for each (i) Principal Participant and (ii) the Lead Designer (if not a Principal Participant). Additionally, for each Major Subcontractor identified, provide one (1) representative project and for each IDQM firm, at least one (1) representative project. All project descriptions should highlight experience in the last ten (10) years relevant to the Project and comply with the following:
  - (i) for the projects submitted for the Principal Participants, the projects must have reached final acceptance as defined by the requirements of the submitted projects, except that for each Principal Participant, Respondent may identify no more than one (1) project that has not reached final acceptance provided that at least 50% of the value of the construction work has been completed;
  - (ii) for the projects submitted for the Lead Designer and IDQM, design on the project must be complete such that all final design plans have been submitted and accepted by the owner and all design packages have been released for construction. A project may be considered complete even if the Lead Designer continues to perform ancillary design services, such as responding to requests for information, preparing notices of design change, and similar services; and
  - (iii) for the projects submitted for the Major Subcontractor(s), the projects must have reached final acceptance as defined by the requirements of the submitted projects.
- (b) Provide a narrative explaining how Respondent's project experience identified in Section 4.4(a) qualifies it to perform the work on the Project, with an emphasis on how Respondent's experience equips it to collaborate with VPRA during Phase 1 and to construct the Project during Phase 2. Explain how Respondent's project experience will help it address the Project's risks and challenges and to complete the Project on time or early. Discuss whether the members of Respondent's organization have previously worked together and how this experience will benefit the Project.

## **4.5. Key Personnel and Organization**

### **4.5.1. Key Personnel**

Respondent shall identify Key Personnel with the qualifications and experience to create a collaborative environment that maximizes use of the PDB delivery method and will result in a high quality Project. Respondent shall submit Form I containing the identity of individuals proposed to fill the Key Personnel positions identified in the table below. Additionally, Respondent shall submit a resume for each Key Personnel. Each resume shall highlight the following information:

- (a) Proposed role on Project and experience in area of responsibility;
- (b) History of employment;
- (c) Experience on projects with a scope similar as the Project; and
- (d) Work on the Projects identified in response to Section 4.4.



VPRA may request that the Design-Builder commit additional resources and personnel to the Project as a condition to executing a Phase 2 Amendment. Such positions shall be the subject of the Construction Price Negotiations.

Respondents may not substitute identified Key Personnel without VPRA’s written consent. If a Respondent requests substitution of a Key Personnel position at any time prior to execution of the PDBA, Respondent shall submit a request in writing. Such request must identify a substitute. VPRA may re-assess the qualifications of the Respondent and determine whether the substitution affects eligibility to be named to the Shortlist and submit a Proposal. Substitutions of Key Personnel after execution of the PDBA will be subject to the terms therein, and in certain circumstances may be subject to the assessment of liquidated damages.

Key Personnel	Requirements and Preferred Qualifications	Time Commitment
Project Manager	<p>The Project Manager will manage the overall Project for the Design-Builder, including both the Phase 1 and Phase 2 Work. This person will be the main point of communication for the Design-Builder and VPRA’s primary point of contact. The Project Manager will be responsible to ensure adequate personnel and other resources are made available for the Project, will handle contractual matters, and will be responsible for quality and timeliness of the team performance.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> <li>• 20 years managing similar projects</li> <li>• Experience with alternative delivery methods or projects with early contractor involvement, including progressive design-build, CM/GC or design-build for example</li> </ul>	<p>Phase 1: 100%</p> <p>Phase 2: 100%</p>
Design Manager	<p>The Design Manager is responsible for coordinating all aspects of the Design, including coordinating between the design disciplines. The Design Manager will be responsible for ensuring that the overall Project Design is completed in accordance with the Contract Documents.</p> <p>The Design Manager must be an employee of the Lead Designer and must be a registered Professional Engineer in the Commonwealth and Washington, D.C.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> <li>• 20 years managing or performing design for similar projects</li> </ul>	<p>Phase 1: 100%</p> <p>Phase 2: 100% until final RFC by VPRA of the last set of plans; thereafter as needed to resolve design matters</p>

	<ul style="list-style-type: none"> <li>Managing and/or preparing designs for alternative delivery projects or delivery methods with early contractor involvement, including, for example, progressive design-build, CM/GC, and design-build</li> </ul>	
Construction Manager	<p>During Phase 1, the Construction Manager will lead constructability reviews and provide input on the Design to ensure that the Design is constructible within the constraints of the Construction Work. During Phase 2 and any Early Work, the Construction Manager is responsible for coordinating and overseeing all aspects of Construction Work.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> <li>20 years managing construction of similar projects</li> <li>Providing constructability reviews of designs</li> <li>CMAA Certification</li> <li>Experience with alternative delivery methods or projects with early contractor involvement, including progressive design-build, CM/GC or design-build for example</li> </ul>	<p>Phase 1: 50%</p> <p>Phase 2: 100%</p>
Quality Manager	<p>The Quality Manager will be in charge of the Design-Builder's quality program. During Phase 1, the Quality Manager will be responsible for development of the Design-Builder's quality program and Quality Plan and provide inputs to the Design where appropriate to address quality-related concerns. During Phase 2, the Quality Manager will oversee that the Project is built in conformance with the approved Quality Plan and the Contract Documents. The Quality Manager will be the primary liaison with VPRA's Design IQA and Construction Quality Acceptance program. The Quality Manager must work for the Design-Builder under the direct supervision of an executive officer above the level of and under a line of authority independent of the Project Manager. The individual must have the ability to stop design or construction at any time and in the individual's sole discretion.</p>	<p>Phase 1: 100%</p> <p>Phase 2: 100%</p>

	<p>Preferred Qualifications:</p> <ul style="list-style-type: none"> <li>• 20 years of quality management experience for similar projects</li> <li>• Licensed Professional Engineer in the Commonwealth and Washington, D.C.</li> </ul>	
<p>Independent Design Quality Manager Director</p>	<p>The Independent Design Quality Manager Director (“IDQMD”) shall be an employee of one of the IDQM firm(s) identified as part of Respondent’s organization. During Phase 1, the IDQMD shall perform reviews of Design-BUILDER’s Design for conformance to the Contract Documents, environmental commitments, permit conditions, and conformance with the Design Quality Plan. During Phase 2, the IDQMD shall review each set of RFC plans submitted by Design-BUILDER for conformance to the Technical Provisions. The IDQMD shall oversee and supervise the reconciliation and resolution of comments between the IDQM and Design-BUILDER. After review of the Design and resolution of comments, the IDQMD shall cause the RFC plans to be signed and stamped by a qualified member of the IDQM before submission to VPRA. The stamp shall attest that, under the supervision of the IDQMD, the RFC plans have been reviewed and inspected, conform to the Technical Provisions and the Design Quality Plan, and represent good industry practice.</p> <p>The IDQMD must be a registered Professional Engineer in the Commonwealth and Washington, D.C.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> <li>• Twenty (20) years of experience in the analysis and design of rail systems and bridge structures. Emphasize experience with rail design, bridges, retaining structures, drainage structures, and projects of similar size and type of work.</li> </ul>	<p>Phase 1: 100%</p> <p>Phase 2: 100% until final RFC by VPRA of last set of plans; thereafter as needed to resolve design matters</p>

<p>Structures Design Manager</p>	<p>The Structures Design Manager (“SDM”) will be in charge of all structural design work on the Project and ensuring that the structural design is prepared in conformance with the Contract Documents. THE SDM will be responsible for the design of all structures on the Project.</p> <p>The SDM must be a registered Professional Engineer in the Commonwealth and Washington, D.C.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> <li>• 20 years of demonstrated experience in bridge engineering, design and analysis, including projects of similar size, type of work, and complexity as the Project.</li> <li>• Experience with alternative delivery methods or projects with early contractor involvement, including progressive design-build, CM/GC or design-build for example</li> </ul>	<p>Phase 1: 100%</p> <p>Phase 2: 100% until final RFC by VPRA of the last set of plans; thereafter as needed to resolve design matters</p>
<p>Geotechnical Design Manager</p>	<p>The Geotechnical Design Manager (“GDM”) will be in charge of all geotechnical design work on the Project and ensuring that the geotechnical design is prepared in conformance with the Contract Documents. The GDM will be responsible for geotechnical design of the retaining walls, foundations, cut and fill slopes, embankment materials and construction, geotechnical instrumentation, and pavement subgrade and structure.</p> <p>The GDM must be a registered Professional Engineer in the Commonwealth and Washington, D.C.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> <li>• 20 years of experience including planning and overseeing subsurface exploration programs for bridge structures and roadways, including</li> </ul>	<p>Phase 1: 100%</p> <p>Phase 2: 100% until final RFC by VPRA of the last set of plans; thereafter as needed to resolve design matters</p>

	<p>projects of similar size, type of work, and complexity as this Project.</p> <ul style="list-style-type: none"> <li>• Experience with alternative delivery methods or projects with early contractor involvement, including progressive design-build, CM/GC or design-build for example</li> </ul>	
Environmental Compliance Manager	<p>The Environmental Compliance Manager is responsible for ensuring that all Work complies with all environmental laws and environmental requirements specific to the Project. During Phase 1, the Environmental Compliance Manager may review designs to ensure compliance with environmental requirements. During Phase 2, the Environmental Compliance Manager will oversee construction operations to ensure compliance with environmental requirements.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> <li>• 10 years of overseeing environmental compliance for similar projects</li> </ul>	<p>Phase 1: As needed</p> <p>Phase 2: 100%</p>
Lead Cost Estimator	<p>The Lead Cost Estimator is responsible for the cost estimating process during Phase 1. This person shall be a construction cost estimator with experience assessing price and risk and must be capable of clearly articulating the assumptions used to prepare a Construction Cost Estimate. The Lead Cost Estimator will be charged with maintaining and ensuring that the Design-Builder provides its Construction Cost Estimates on an Open Book basis.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> <li>• 10 years of preparing construction cost estimates for similar projects</li> <li>• Experience with alternative delivery methods or projects with early contractor involvement, including progressive design-build, CM/GC or design-build for example</li> </ul>	<p>Phase 1: 100%</p> <p>Phase 2: As needed</p>
Lead Scheduler	<p>The Lead Scheduler is responsible for preparing the proposed Construction</p>	<p>Phase 1: 50%</p>

	<p>Schedule for Phase 2, accounting for applicable constraints on the Construction Work. The schedule prepared by the Lead Scheduler will be the schedule on which the Construction Cost Estimates are based.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> <li>• 10 years of preparing construction schedules for similar projects</li> <li>• Experience with alternative delivery methods or projects with early contractor involvement, including progressive design-build, CM/GC or design-build for example</li> </ul>	<p>Phase 2: As needed</p>
<p>Utility Coordinator</p>	<p>The Utility Coordinator is responsible for coordinating with impacted Utility Owners, negotiating the terms of utility agreements, resolving utility conflicts, and managing the utility relocation process. During Phase 1, the Utility Coordinator will hold meetings with impacted Utility owners to develop relocation plans and ensure that such plans are incorporated into the Project's design and the Construction Schedule. During Phase 2, the Utility Coordinator will ensure compliance with the terms of utility agreements, coordinate utility relocation work, and manage the progress of utility work.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> <li>• 15 years of managing utility work for similar projects</li> <li>• Experience with alternative delivery methods or projects with early contractor involvement, including progressive design-build, CM/GC or design-build for example</li> </ul>	<p>Phase 1: 100%</p> <p>Phase 2: 100%</p>
<p>Third-Party Coordinator</p>	<p>The Third-Party Coordinator is responsible for engaging with third-parties and stakeholders as needed to manage construction and other Project operations. During Phase 1, this Person will meet with third-parties to understand and manage concerns, establish schedules, and serve as point person for the Design-Builder. During Phase 2, this Person will communicate</p>	<p>Phase 1: 100%</p> <p>Phase 2: 100%</p>

	<p>progress with third-parties and manage the resolution of conflicts.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> <li>• 10 years of experience with third-party coordination for similar projects</li> <li>• Experience with alternative delivery methods or projects with early contractor involvement, including progressive design-build, CM/GC or design-build for example</li> </ul>	
<p>Public Information Coordinator</p>	<p>The Public Information Coordinator is responsible for coordinating and managing information provided to stakeholders and the public. During Phase 1, the Public Information Coordinator will engage with the public, obtain feedback, and provide such information to the Design-Builder and VPRA. During Phase 1 and Phase 2, the Public Information Coordinator will work with VPRA to ensure that information about the Project is consistent and accurate. During Phase 2, the Public Information Coordinator will act as the Design-Builder's liaison to the public and with stakeholders.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> <li>• 10 years of experience with public information management for similar projects</li> </ul>	<p>Phase 1: 50%</p> <p>Phase 2: 50%</p>
<p>Safety Manager</p>	<p>The Safety Manager shall oversee and be responsible for safety on the Project site. During Phase 1, the Safety Manager shall be responsible for preparation of Design-Builder's Safety Management Plan and may assist with constructability review to verify that construction can be performed safely. During Phase 2, the Safety Manager shall ensure that all Construction Work is performed safely and in compliance with the Contract Documents and Design-Builder's Safety Management Plan. The Safety Manager must be on site during all major construction operations.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> <li>• 15 years of managing safety for similar types of construction work,</li> </ul>	<p>Phase 1: 25%</p> <p>Phase 2: 100%</p>

	with an emphasis on rail construction and construction in a dense, urban environment	
Additional Value Personnel*(see note below)		

\*Additional Value Personnel: Respondent may name up to two (2) other individuals that the Respondent considers as key to the success of the Project. Their resumes shall describe their anticipated role, relevant experience, registration(s), education, and other elements of qualification applicable to this Project, as well as how much time they will dedicate to the Project.

**4.5.2. Major Subcontractors**

Respondents may include Major Subcontractors as part of their Respondent organization that Respondent believes would enhance their qualifications. Major Subcontractors are firms proposed to perform specified Phase 2 Services and, together with the Lead Designer and IDQM firms, are the only Subcontractors that may be identified in the SOQ that will perform a portion of the Phase 2 Services. If identifying a Major Subcontractor, Respondent shall identify the type of work that the Major Subcontractor will perform in sufficient detail to enable an understanding of the Major Subcontractor’s expertise (e.g., excavation, roadway, geotechnical). Additionally, to the extent possible, Respondent shall identify the work items on which the Major Subcontractor will perform its work. This information shall be provided where indicated on Form B and may be discussed further in the narrative provided in response to Section 4.5.4.

Major Subcontractors may only be identified as part of a single Respondent organization. Additionally, Major Subcontractors may not be removed from the Respondent, a Proposer, or the Design-Builder, except as otherwise provided herein and the PDBA.

If the Design-Builder identifies Major Subcontractor(s) as part of its organization, the Major Subcontractor must perform the scope of work for which it was identified in the SOQ. The scope of work to be performed by a Major Subcontractor shall not be subject to competitive bidding and shall be included in the negotiated scope of work included in the Construction Price. The value of negotiated work to be performed by Major Subcontractor(s) shall count toward the 50% maximum limitation on negotiated (i.e., not competitively bid) self-performed work. Design-Builder will be subject to liquidated damages under the PDBA due to the failure of a Major Subcontractor to perform the work for which it is identified in the SOQ.

Subcontractors may be identified to perform Phase 1 Work and shall not be considered Major Subcontractors or subject to these conditions, unless such Subcontractor is also a Major Subcontractor.

**4.5.3. Independent Design Quality Manager**

Respondents shall identify the IDQM firm(s) in their SOQ. The IDQM firm(s) shall be retained by the Design-Builder but have no contractual relationship with the Lead Designer or be a Subcontractor at any tier under the Lead Designer.

The IDQM shall have the responsibilities identified in Exhibit D, which shall be to provide independent design reviews and certification that the submitted RFC plans comply with the



Contract Documents, the Design-Builder's Quality Plan, and represent good industry practice. The IDQM's review shall be in addition to the Design-Builder's internal Quality Control and assurance procedures and shall not replace the Design-Builder's Quality Control responsibilities. The IDQM firm signing and certifying compliance of designs with the Contract Documents must hold the same professional licensure and applicable certifications as those required for the Lead Designer. Prior to submission of a RFC design package to VPRA, Design-Builder shall obtain signed certification from the IDQM. Respondents may identify multiple firms to serve in the IDQM role if Respondent believes that specialized expertise in different technical disciplines will benefit the Project.

The IDQM firm(s) may not be removed after submission of the SOQ, except as otherwise provided herein and the PDBA. Work performed by the IDQM firm(s) is not subject to the competitive bidding process for the Phase 2 Services, nor does the work performed by IDQM firm(s) count toward the 50% limitation on negotiated self-performed work. IDQM Firms are not required to be exclusive to a single Respondent.

#### **4.5.4. Organization**

Provide the following information about Respondent's organization:

- (a) Using Form J, except for the Lead Designer, IDQM, and Major Subcontractors, identify Subcontractors the Respondent plans to use for the Phase 1 Services. Respondent may not identify proposed Subcontractors for the Phase 2 Services other than Major Subcontractors, the Lead Designer, and IDQM firms (which are not required to be identified on Form J).
- (b) Submit a summary describing the Subcontractors identified in Form J.
- (c) Provide an organizational chart identifying Key Personnel and participating firms responsible for major functions to be performed in designing, constructing, and providing quality management services for the Respondent's organization. All Key Personnel, Principal Participants, the Lead Designer (if not a Principal Participant), Major Subcontractors, IDQM firms, and known Phase 1 Subcontractors must be identified on the chart. Provide a brief description of the significant functional relationships among these firms.

#### **4.6. Quality Management**

Respondent shall demonstrate its approach to ensure that the design and construction work is prepared and performed with a focus on quality. Respondent shall provide a narrative of its approach to quality management and how Respondent intends to interact with VPRA's Design IQA and Construction Quality Acceptance programs. Respondent shall address Quality Control for both design and construction and specify the key processes it will employ in its Quality Plan, including the role to be played by the IDQM firm(s) for design Quality Assurance. Respondent shall discuss such issues as the use of independent checks, stop work authority, resolution of nonconformance reports, and other critical quality issues. Respondent shall identify past

successes with its approach to quality management, as well as key lessons learned from its experience.

Note that the RFP will require Proposers to submit an in-depth discussion of quality management and a draft of the Quality Plan.

#### **4.7. Understanding of Project and Progressive Design-Build**

Respondent shall demonstrate its preliminary understanding of the Project, key risks and challenges, and how it will use the PDB delivery method to improve the Project and mitigate risk. Respondent shall describe the following:

- (a) Respondent's understanding of the Project, VPRA's goals, and Respondent's preliminary approach to completing the Project on time and within budget;
- (b) Respondent's preliminary approach to using the PDB delivery method;
- (c) Respondent's preliminary approach to coordinating with and receiving Design acceptance from VPRA's partners, including CSXT and Amtrak;
- (d) How Respondent's identified experience demonstrates its ability to use the PDB method to benefit the Project;
- (e) Respondent's method to identify and perform Early Work and the benefit that Early Work will bring to the overall Project;
- (f) Preliminary major risks and challenges associated with the Project and how the Respondent would plan to mitigate those risks and overcome those challenges, including how Respondent would use the PDB method to mitigate risk; and
- (g) Respondent's understanding of the Project's significant technical challenges, approach to their resolution, and how Respondent's experience demonstrates its capability to achieve such resolution.

#### **4.8. Additional Forms**

Submit the following forms:

- (a) Form K: Affidavit of Non-Collusion;
- (b) Form L: Lobbying Certificate; and
- (c) Form N: Proprietary/Confidential Information Designation (if applicable).

## 5. EVALUATION CRITERIA

### 5.1. SOQ Evaluation

SOQs will be evaluated in two steps:

- (a) Pass/Fail Review; and
- (b) Qualitative Review.

VPRA will first conduct a Pass/Fail review of all SOQs received. SOQs that receive a “Pass” for all categories of the Pass/Fail criteria will proceed to the qualitative review and be scored. SOQs that receive a “Fail” in any category of the Pass/Fail criteria will be removed from further consideration. VPRA will notify Respondents whose SOQ receive a “Fail.”

#### 5.1.1. Pass/Fail Review

The pass/fail review consists of the following:

- (a) **Responsiveness:** The SOQ complies with the following:
  - (i) the SOQ conforms to the RFQ instructions regarding organization and format and Respondent has submitted all required information,
  - (ii) the Respondent’s qualifications and other information provided are responsive to the requirements set forth in the RFQ, and
  - (iii) the SOQ does not contain any material misrepresentations.

In performing the responsiveness review, VPRA reserves the right to waive minor informalities, irregularities, and apparent clerical mistakes that are unrelated to the substantive content of the SOQ.

- (b) **Legal:** The SOQ complies with and meets or exceeds the minimum requirements listed in Section 4.2.1 and there are no identified issues presenting a material risk that the Respondent is unable to complete the Phase 1 or Phase 2 Services.
- (c) **Financial Capacity:** The SOQ complies with and meets or exceeds the minimum requirements listed in Section 4.2.2 and there are no identified issues presenting a material risk that the Respondent is unable to complete the Phase 1 or Phase 2 Services.
- (d) **Safety:** Respondent possesses a comprehensive safety program, performs regular safety training for employees, and, through its responses on Form F, demonstrates a commitment to a safety culture within the organization as evidenced by its processes, procedures, and outcomes. In addition, there are no identified issues presenting a material risk that the Respondent would not be able to perform the Phase 1 and Phase 2 Services safely and with due regard for the health and safety of its employees, VPRA, and the general public.
- (e) **DBE Participation:** The Respondent demonstrates a history of successful compliance with DBE requirements and does not present a material risk of failing to use DBE firms in the Work.

### 5.1.2. Qualitative Review

SOQs will be evaluated and scored as follows:

Category	Total Points Possible
Experience of Respondent	30
Key Personnel and Organization	40
Quality Management	15
Understanding of Project and Progressive Design-Build	15
<b>Total</b>	<b>100</b>

Respondents are advised that a Respondent’s “Experience of Respondent” and “Key Personnel and Organization” qualifications scores will be carried forward to the RFP step and considered as part of the Proposal scoring of shortlisted Proposers. Respondent organizations that receive written approval from VPRA to change compositions will have their qualifications re-evaluated as stated in [Section 1.10](#).

VPRA will conduct the SOQ evaluations based on the following criteria:

Category	Evaluation Criteria
Experience of Respondent	The extent to which the Respondent’s organization shows that it has successfully performed similar prior work that demonstrates its qualifications and ability to design and build the Project. This includes the Respondent’s prior successes at maximizing services similar to both the Phase 1 and Phase 2 Services by creating a collaborative environment with project owners and maximizing the value of alternative delivery approaches that include early contractor involvement.
Key Personnel and Organization	The extent to which Respondent’s Key Personnel and organization have the background and experience to be successful at delivering a quality Project that meets VPRA’s goals, as demonstrated by the prior successes of the Key Personnel and Respondent’s organization.
Quality Management	The extent to which Respondent demonstrates a thorough commitment to quality, evidenced by the presence of a robust quality control process that incorporates production staff, contains procedures to identify and correct nonconforming work, vests quality staff with sufficient authority to stop work, uses the IDQM to make the design review process as efficient as possible, and will interact with VPRA’s design IQA and construction Quality Acceptance program in a manner that facilitates cooperation and improves the overall quality of the Work.
Understanding of Project and Progressive Design-Build	The extent to which Respondent demonstrates an approach that: maximizes the value of the PDB delivery

	method, understands key risks and mitigation strategies, proposes a logical and innovative methodology for the Work, understands VPRA's Project goals, and has demonstrated that its prior work provides the experience for a successful Project outcome.
--	---

### 5.1.3. Evaluation Methodology

The Evaluation Team will evaluate each of the four categories in Section 5.1.2 using the following adjectival ratings: Exceptional, Good, Acceptable, Weak, and Unacceptable. The Evaluation Team may differentiate within each adjectival rating by adding a plus (+) or minus (-) to the rating, except that (Exceptional +) and (Weak -) shall not be available ratings. To rank the SOQs, the Evaluation Team will reach a consensus adjectival rating for each of the four categories. The consensus adjectival ratings will be converted to the numerical scale identified in Section 5.1.2 to assign a score to each SOQ. The adjectival ratings will be assigned on the following basis:

Adjectival Rating	Rating Description
Exceptional (E)	The SOQ offers universally better than acceptable quality and the greatest likelihood of successful results for the Work. There are essentially no weaknesses or deficiencies requiring correction.
Good (G)	The SOQ offers generally better than acceptable quality and a high likelihood of successful results for the Work. Deficiencies and/or weaknesses in the SOQ are minor and correctable.
Acceptable (A)	The SOQ offers an acceptable level of quality and a reasonable likelihood of successful results for the Work. Deficiencies and/or weaknesses in the SOQ are generally correctable with minor to some significant changes.
Weak (W)	The SOQ minimally complies with stated criteria and offers a low likelihood of successful results for the Work. The SOQ includes deficiencies and/or weaknesses that are not correctable without significant changes.
Unacceptable (U)	The SOQ does not meet the stated criteria and has significant weaknesses, deficiencies, and/or unacceptable quality. Essential information is not provided or is conflicting and/or unproductive. Deficiencies and weaknesses are so major and/or extensive that a major revision to the SOQ would be necessary to meet the objectives of the Project.

A Respondent that receives a consensus adjectival rating of "Unacceptable" in any of the categories identified in Section 5.1.2 may, in VPRA's sole discretion, be eliminated from further consideration.

## 5.2. Shortlisting

Respondents shall be ranked from highest to lowest in order of their SOQ scores. VPRA intends to name no more than four (4) Respondents to the Shortlist in order to ensure adequate competition. Upon shortlisting by the Evaluation Team, only those Respondents named to the Shortlist shall remain eligible for participation in the RFP step. Neither the overall scoring nor the ranking of the Respondents on the Shortlist will be disclosed to Respondents until the procurement process is complete and a PDBA is executed.

## 5.3. Debriefings

All Respondents submitting SOQs will be notified in writing of the Shortlist. Respondents not named to the Shortlist may request a debriefing. If requested, debriefings shall be provided at the earliest feasible time after announcement of the Shortlist, subject to applicable law. The debriefing shall be conducted by VPRA's Point of Contact or designee, who may be accompanied by other VPRA officials familiar with the rationale for the selection decision.

Debriefings shall:

- (a) be limited to discussion of the unsuccessful Respondent's SOQ and will not include specific discussion of a competing SOQ;
- (b) be factual and consistent with the evaluation of the unsuccessful Respondent's SOQ; and
- (c) provide information on areas in which the unsuccessful Respondent's SOQ had weaknesses or deficiencies.

Debriefing will not include discussion or dissemination of the identities, thoughts, or notes of individual members of the Evaluation Team, but may include a summary of the rationale for the selection decision.

## 6. PROCUREMENT DECISION APPEALS

Any Respondent 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.

## 7. VIRGINIA FREEDOM OF INFORMATION ACT

All SOQs 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.*). Respondents 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 a Respondent for the disclosure of all or a portion of an SOQ submitted pursuant to this request.

If a Respondent has special concerns about information that it desires to make available to VPRA (including information submitted in a SOQ), but that it believes constitutes a trade secret, proprietary information, or other confidential information exempted from disclosure, such Respondent should specifically and conspicuously designate that information as such in its

SOQ and state in writing why protection of that information is needed in accordance with Form N (Proprietary/Confidential Information Identification), and submit Form N in Tab 8 of the SOQ.

Blanket designations that do not identify the specific information are not acceptable and may be cause for VPRA to treat the entire SOQ 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).

In the event VPRA receives a request for public disclosure of all or any portion of a SOQ identified as confidential, VPRA will attempt to notify the Respondent of the request, providing an opportunity for such Respondent to assert, in writing, claimed exemptions under the VFOIA or other Commonwealth law. VPRA will come to its own determination whether the requested materials are exempt from disclosure.

## **8. RESERVED RIGHTS**

In connection with this procurement, VPRA reserves to itself all rights (which rights shall be exercised 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:

- (a) the right to cancel, withdraw, postpone, or extend this RFQ in whole or in part at any time prior to the execution by VPRA of the PDBA, without incurring any obligations or liabilities;
- (b) the right to issue a new RFQ or RFP;
- (c) the right to reject any and all submittals, responses, and SOQs received at any time;
- (d) the right to modify all dates set or projected in this RFQ;
- (e) the right to suspend and terminate the procurement process for the Project, at any time;
- (f) the right to waive or permit corrections to data submitted with any response to this RFQ until such time as VPRA declares in writing that a particular stage or phase of its review of the responses to this RFQ has been completed and closed;
- (g) the right to issue addenda, supplements, and modifications to this RFQ;
- (h) the right to permit submittal of addenda and supplements to data previously provided with any response to this RFQ until such time as VPRA declares in writing that a particular stage or phase of its review of the responses to this RFQ has been completed and closed;
- (i) the right to hold meetings and conduct discussions and correspondence with one or more of the Respondents responding to this RFQ to seek an improved understanding of the responses to this RFQ;
- (j) 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 RFQ, including the right to seek clarifications from Respondents;

- (k) the right to permit Respondents 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;
- (l) the right to add or delete Respondent responsibilities from the information contained in this RFQ;
- (m) the right to waive deficiencies, informalities, and irregularities in a SOQ, accept and review a non-conforming SOQ or seek clarifications or supplements to a SOQ;
- (n) the right to disqualify any Respondent that changes its submittal without VPRA approval;
- (o) the right to change the method of award at any time prior to submission of the Proposals; and
- (p) the right to respond to all, some, or none of the inquiries, questions and/or request for clarifications received relative to the RFQ.

## **9. COMPLIANCE WITH LAW IN VIRGINIA**

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

## **10. ETHICS IN PUBLIC CONTRACTING**

By submitting their SOQs and Proposals, Respondents certify that their submissions are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Respondent, supplier, manufacturer or subcontractor in connection with their submissions, 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.

## **11. REPRESENTATIONS**

Respondent 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 Respondent (or where applicable, its Principal Participants) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization; and (2) the Respondent 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 the PDBA, to consummate the transactions contemplated hereby and in the PDBA and to perform its obligations thereunder. Respondent hereby agrees to furnish to VPRA any and all certificates of governmental authorities and/or officers or directors of Respondent (or where applicable, its Principal Participants) that VPRA may reasonably require in order to confirm the due authorization and execution of the SOQ, Proposal, and the PDBA and Respondent's right, title, and authority to perform its obligations thereunder.



## **12. NO ASSUMPTION OF LIABILITY**

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 RFQ. All of such costs shall be borne solely by each Respondent and its team members. In no event shall VPRA be bound by, or liable for, any obligations with respect to the RFQ 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.

## **13. APPLICABLE COST PRINCIPLES; ACCOUNTING REQUIREMENTS**

The PDBA 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 were adopted by DOT at 2 C.F.R. Part 1201 and are incorporated herein by reference. To be eligible for reimbursement, Respondent's costs must comply with cost principles set forth in 2 C.F.R. Part 200. All Respondents submitting SOQs and Proposals 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.

Where applicable, certain costs and reimbursement under the PDBA must also comply with 48 C.F.R. Part 31 ("FAR Part 31"). All Respondents submitting SOQs and Proposals must have internal control systems in place that meet federal requirements for accounting. These systems must comply with requirements of FAR Part 31 and be sufficient to exclude unallowable cost items from Project invoicing to VPRA.

**EXHIBIT A**

**Railroad Operator Indemnification Provisions**

## **EXHIBIT B**

### **Project Information**

**\*The information included in this Exhibit B is preliminary and subject to change. These materials have been submitted to VPRA's project delivery partners for comment and may be amended based on those and other comments. VPRA will provide additional information as the procurement progresses and once the Design-Builder is selected and work begins.**

## **EXHIBIT C**

**\*This is a draft Phase 1 scope of work that is subject to modification. The final Phase 1 scope of work will be provided to the Shortlist with the RFP.**

### **Phase 1 Scope of Work**

The below describes the Phase 1 Services. Approximate timelines for submission of required deliverables and workshop participation are provided at the end of this Statement of Work. Timelines and schedule for the Phase 1 Services shall be subject to negotiation with the Design-Builder.

#### **Design Services**

- 1) Design-Builder shall develop a Work Breakdown Structure (“WBS”) for the Construction Work. The Design shall conform to the WBS.
- 2) Design-Builder shall develop design packages that break down the Design into discrete construction packages. The design packages shall be consistent with the WBS and ultimately enable VPRA to release discrete design packages for construction. Design-Builder shall submit the design package breakdown to VPRA for approval prior to submitting design packages to VPRA for review and comment.
- 3) Design-Builder shall prepare the Design of the Project. Design-Builder shall start with the 30% design and other materials provided by VPRA as a basis for the Design and advance the Design toward completion. The Design shall not deviate from the Minimum Requirements. Design-Builder shall perform constructability reviews and ensure that the Design is constructible.
- 4) Design-Builder shall submit designs to VPRA for review, comment, and acceptance by VPRA and all other third-parties with the right to review, comment, and accept designs. Design-Builder must receive VPRA’s approval of the Design Quality Plan prior to submitting designs for VPRA’s review.
- 5) Design-Builder shall incorporate approved value engineering concepts into the Design.
- 6) Design-Builder shall coordinate with and align the scope of design work with the Design-Build team selected for the South Project.

#### **Collaborative Sessions**

- 7) Design-Builder shall participate in a kickoff workshop with VPRA. During the kickoff workshop, the Parties will finalize the Phase 1 Services schedule, schedule future workshops, develop a Phase 1 partnering process and the partnering process for the Construction Work, develop a framework for the Design Quality Plan, and agree on other administrative milestones.
- 8) Design-Builder and VPRA shall hold a design packaging workshop. Design-Builder shall present concepts for design packages to VPRA for feedback. Design-Builder shall incorporate feedback from VPRA before submitting the design packages for VPRA’s approval.
- 9) Design-Builder and VPRA shall hold constructability workshops. During the workshops, Design-Builder shall present its assessment of constructability of the design packages, including any challenges it anticipates and how to address such challenges.

- 10) Design-Builder shall participate in a scoping workshop to consider scope items to add or delete from the Construction Work following Design-Builder's submission of the OPCC.
- 11) Design-Builder shall participate in a general task force meeting on a monthly basis to discuss Project issues.
- 12) Design-Builder shall participate in discipline specific workshops, including structures, drainage, rail, systems, interface, Maintenance of Traffic, civil works, and other disciplines that warrant such workshops.
- 13) Design-Builder shall attend a design concept meeting with VPRA on a weekly basis starting upon issuance of the Phase 1 Services NTP. During the design concept workshops, the Parties shall discuss various design concepts for incorporation into the Design, including value engineering concepts that can reduce costs, reduce the duration of the Baseline Schedule, and mitigate risks. Any Party may propose a design concept for discussion.
- 14) Design-Builder shall participate in workshops to discuss the progression of the Technical Provisions. These meetings will coordinate drafting of various sections, review submitted drafts, and discuss issues for resolution.
- 15) Design-Builder shall participate in monthly risk workshops with VPRA, starting within 30 days of VPRA's issuance of the Phase 1 Services NTP and ending when VPRA issues a Phase 2 Services NTP or terminates the PDBA in accordance with Section ## therein. VPRA will maintain the master risk register that will be discussed during the workshops and provide access to Design-Builder for input prior to and after the workshops. The risk register will continue to be maintained and updated during the Phase 2 Services.
- 16) Design-Builder shall evaluate the amount of the Allowance. The Allowance amount shall be a component of the Construction Cost Estimates.

### **Construction Cost Estimates, Schedule Preparation, and Negotiation**

- 17) Design-Builder shall perform continuous cost estimating of the cost to perform the Phase 2 Services. When requested by VPRA, Design-Builder shall provide its cost estimates to VPRA and participate in Price Reconciliation workshops to discuss the estimates.
- 18) Design-Builder shall prepare Construction Cost Estimates of the design concepts considered during the design concept meetings described in Paragraph 13. Design-Builder shall also evaluate the impact of such concepts on the Baseline Schedule and provide such analyses to VPRA.
- 19) Design-Builder shall prepare the Baseline Schedule for performance of the Phase 2 Services. Design-Builder shall submit the proposed Baseline Schedule with each Construction Cost Estimate milestone submission. The Baseline Schedule shall be consistent with the requirements of Section ## of the Technical Provisions. The Baseline Schedule with the Final Construction Price Proposal and incorporated into the Phase 2 Amendment will become the Baseline Schedule for the Phase 2 Services, which shall be updated in accordance with the Technical Provisions.
- 20) Design-Builder shall prepare and submit to VPRA an Opinion of Probable Construction Cost ("OPCC") within 90 days of Design-Builder's receipt of the Phase 1 Services NTP. The OPCC shall be consistent with Section ## of the PDBA.
- 21) Design-Builder shall prepare and submit a 60% design package for review and Acceptance by VPRA and approval by CSXT and Amtrak. Design-Builder shall resolve all comments on the 60% design submittal sufficient to receive the required acceptance.
- 22) Design-Builder shall prepare and submit the Binding Construction Price Proposal after Acceptance by VPRA and approval by CSXT and Amtrak of the 60% design submittal.

The Binding Construction Price Proposal shall be consistent with Section ## of the PDDBA. Design-Builder shall submit the Binding Construction Price Proposal to VPRA on or before the date stated in the Phase 1 Schedule.

- 23) Design-Builder shall participate in Price Reconciliation workshops with VPRA and the ICE to discuss Design-Builder's Construction Cost Estimates. Design-Builder shall be prepared to reconcile differences between the ICE's estimate and the Design-Builder's Construction Cost Estimates, as well as to explain all assumptions that Design-Builder used to develop the estimates for the Phase 2 Services on an Open Book basis.
- 24) If requested by VPRA, or if Design-Builder's Binding Construction Price Proposal is not within the threshold specified in Section ## of the PDDBA, Design-Builder shall update the Binding Construction Price Proposal based on discussions, workshops, and the Price Reconciliation meetings with VPRA and the ICE. Design-Builder may continue to update the Binding Construction Price Proposal based on progression of the Design. Design-Builder shall update the Binding Construction Price Proposal until (i) VPRA accepts the Binding Construction Price Proposal and requests submission of a Final Construction Price Proposal, or (ii) VPRA terminates the PDDBA in accordance with Section ## therein.
- 25) Design-Builder shall submit a Final Construction Price Proposal consistent with Section ## of the PDDBA.

### **Third-Party Coordination and Design Review**

- 26) Design-Builder shall coordinate with all Third-Parties (including Utility Owners, AHJs, Governmental Persons, CSXT, Amtrak, VRE, and others) to obtain all required approvals and permits necessary to perform the Work. Third-Party coordination includes submission of the Design to Third-Parties for their review and comment, and receiving approval of the Design from such Third-Parties consistent with VPRA's commitments to applicable Third-Parties.
- 27) Design-Builder shall assist VPRA with its efforts to coordinate with Third-Parties. Such assistance shall include preparing presentations of the Design; providing and presenting constructability reviews and construction options; and presenting means and methods, staging, phasing, and other elements of performing the Construction Work in any locations that require Third-Party Approval.

### **Subcontracting and Competitive Bidding**

- 28) Design-Builder shall meet with VPRA to discuss its plan for soliciting Subcontractor bids for incorporation into the Construction Cost Estimates.
- 29) Design-Builder shall perform Subcontractor outreach as necessary to obtain prices for performance of subcontracted Construction Work for use in the Construction Cost Estimates. Design-Builder shall submit all documents and other materials used to perform such outreach and submitted by potential Subcontractors to VPRA for review.
- 30) Design-Builder shall prepare a DBE Utilization Plan for the Phase 2 Services consistent with Section ## of the Technical Provisions.

### **Early Work Packages**

- 31) Design-Builder shall identify discrete aspects of the Construction Work that can be performed prior to execution of a Phase 2 Amendment. Design-Builder shall attempt to identify Construction Work that can be performed on its own and without dependence on performance of any other Construction Work. Design-Builder shall identify potential Early

Work Packages that mitigate risk and enable timely completion of the remaining Phase 2 Services.

- 32) For each Early Work Package identified, Design-Builder shall present the following to VPRA:
  - a. Design work necessary for construction
  - b. Construction Cost Estimate of the Early Work Package, consistent with Section ## of the PDBA.
- 33) Design-Builder shall participate in Price Reconciliation meetings with VPRA and the ICE to discuss and negotiate the Construction Cost Estimate for the Early Work Packages.
- 34) Design-Builder shall obtain all required Design approvals necessary to perform Early Work, including acceptance by VPRA and any applicable third-parties.

### **Other Deliverables**

- 35) Design-Builder shall perform all necessary activities to fulfill the commitments in the Final Environmental Impact Statement and Record of Decision.
- 36) Design-Builder shall evaluate the Materials needed to complete the Work. Design-Builder shall prepare a memo identifying potential items (including long-lead items) for which early procurement may benefit the Project. Upon VPRA's approval, Design-Builder shall procure such long-lead Materials. Payment for Materials procured during the Phase 1 Services shall be as provided in Section ## of the PDBA.
- 37) Design-Builder shall prepare the Technical Provisions for the Phase 2 Services and shall incorporate comments from VPRA and other third-parties into the Technical Provisions. The Technical Provisions shall incorporate the Minimum Requirements provided in the RFP and be the contractual requirements for the Final Design and performance of the Construction Work. Design-Builder shall draft sections of the Technical Provisions to be consistent with the Accepted Design and to incorporate all Third-Party requirements and Approvals. The final Technical Provisions shall be incorporated into the Phase 2 Amendment (if executed) and become binding on Design-Builder.
- 38) Design-Builder shall prepare the following for VPRA's approval:
  - a. Project Management Plan
  - b. Quality Plan, consisting of:
    - i. Design Quality Plan
    - ii. Construction Quality Plan
  - c. Safety Management Plan
  - d. Environmental Management Plan
  - e. Maintenance of Traffic Plan
  - f. Construction Staging Plan

### **Optional Services**

The following services are not included in the Phase 1 Services Fee submitted with the Proposal. VPRA may request that Design-Builder perform the following at an agreed-upon price to be paid on a time and materials basis:

- 39) Geotechnical investigation
- 40) Utility location
- 41) Test piles
- 42) Site preparation

- 43) Survey
- 44) Other Site investigation tasks to support completion of the design and risk mitigation
- 45) Public Information
- 46) Right-of-way acquisition assistance

**Phase 1 Services Schedule**

<b>Event/Milestone/Workshop</b>	<b>Day</b>
Phase 1 Services NTP	0
Kickoff Workshop	1
Initial design concept workshop (Recurring weekly)	1
Design packaging workshop	7
Technical Provisions Workshop (Recurring – Schedule to be set)	7
Constructability Workshops (recurring)	14
Initial Monthly Risk Workshop	30
Task Force Meetings (Recurring)	30
Discipline Specific Workshops (Recurring – Schedule to be set)	30
Submission of OPCC	90
Submission of Management Plans (Paragraph 35)	100
Cost Reconciliation for OPCC	105
Post-OPCC Scoping Workshop (Recurring as needed)	105
Submission of 60% Design	150
Comments on 60% Design returned from CSXT and Amtrak	210
Resolution of 60% Design Comments	230
<b>Submission of Binding Construction Price Proposal</b>	<b>250</b>
Reconciliation workshops/ Proposed Binding Construction Price Revisions	270
Final Proposed Binding Construction Price submission	370
Issuance of Phase 2 Services NTP (contingent)	400



## **EXHIBIT D**

### **Draft Quality Management Technical Provisions**

**\*This is a draft Quality Management scope of work that is subject to modification and is provided at this stage of the procurement for informational purposes only. The final Quality Management scope of work will be provided to the Shortlist with the RFP.**

## **2.4 Quality Management**

### **2.4.1 General**

#### **2.4.1.1 Design-Builder Responsibility**

Design-Builder shall develop, implement, and maintain a Quality Program (“QP”) meeting the requirements of this Section 2.4 of the Technical Provisions. The QP shall be comprised of Design-Builder’s quality policy, quality objectives, design and construction quality plans, environmental compliance, quality procedures, and systems.

Design-Builder shall be responsible for the quality management of all design and construction Work to ensure compliance with the Project’s scope of work, Minimum Requirements, and QP.

Design-Builder’s executive management shall define and document its policy for quality management, including objectives for quality and its commitment to quality.

#### **2.4.1.2 Overview of VPRA’s Role**

VPRA will undertake a design oversight role during Phase 1 and for Final Design in Phase 2. During the Construction Work, VPRA will perform all Materials sampling and testing, and inspection for Acceptance of the Work in accordance with the Minimum Frequency of Sampling and Testing, and Inspection Guide.

VPRA’s role in the quality program will be incorporated into Design-Builder’s Quality Plan and will include the following:

- Perform Independent Quality Assurance design reviews on the design (drawings, calculations, specifications, special provisions, studies, reports, and other design outputs).
- Perform construction inspection and Material sampling and testing, for the Acceptance of all Work.
- Perform Materials sampling and testing, and inspection at off-site facilities for Acceptance.
- Perform auditing on the implementation of Design-Builder’s Quality Plan. These audits will be systematic and independent examinations to determine whether quality activities and related results comply with the Quality Plan and whether they are implemented effectively and are suitable to achieving the Quality Management goals. VPRA will review and Accept modifications to the Quality Plan resulting from any shortcomings in the Quality Plan discovered in the audit process.
- Perform additional inspections and Materials samples and tests to investigate possible Nonconforming work.

#### **2.4.1.3 Quality Management Goals**

##### **2.4.1.3.1 Integrated Program**

Design-Builder shall develop, implement, and maintain a Quality Program that:

- Establishes comprehensive quality management processes and procedures.
- Integrates the quality goals of both the design and construction elements of the Project.
- Defines the minimum standards and procedures for quality management.
- Assigns the responsibilities for specific quality management functions.

---

#### **2.4.1.3.2 Continuous Improvement**

Design-Builder shall implement improvements to the Quality Plan throughout the delivery of the Project. Design-Builder shall incorporate such improvements based on lessons learned, efficiencies discovered, problems identified, or as Design-Builder discovers new methods of improving quality. Design-Builder shall involve its entire staff and partner with VPRA to ensure overall Project satisfaction.

#### **2.4.2 Design-Builder's Quality Approach**

##### **2.4.2.1 General**

The overall quality approach defined herein requires Design-Builder to develop, implement, and maintain a Quality Program that encompasses the design and construction quality aspects, as well as documentation requirements for the Project.

Design-Builder shall perform Quality Control and Quality Assurance (IDQM) activities for the design of the Project in accordance with the policies and procedures defined in the Quality Plan described in Section 2.4.2.3 of the Technical Provisions. VPRA's design-related oversight role will include reviews of design packages for Acceptance and audits of the design aspects of the Quality Program.

Design-Builder shall perform Quality Control activities, defined in the Quality Plan, for the construction of the Project, including testing and inspection activities to ensure that Materials and the constructed Work meet the requirements of the Contract Documents.

Design-Builder shall document quality activities and maintain quality data in accordance with the policies and procedures defined in the Quality Plan. VPRA will provide the SharePoint system to store and record all documents generated to fulfill Design-Builder's obligations under the Contract Documents. Design-Builder shall submit all Project documents, including documentation of quality activities, tests, inspections, design submittals, Shop/Working drawings, reports, correspondence, and any other Project submittals/transmittals through SharePoint.

##### **2.4.2.2 Quality Organizational Requirements**

In addition to the requirements stated in Exhibit ## to the PDBA, Design-Builder's Quality Manager shall:

- Have overall responsibility for Design Builder's Quality Program.
- Be responsible for the preparation, implementation, and updating of the Quality Plan.
- Not be responsible for the production of the Work.
- Verify and provide documentation that the Work meets the requirements of the Contract Documents.
- Attend the weekly progress meetings and quality meetings and any such other meetings as VPRA may request, including individual meetings between the Quality Manager and VPRA staff.
- Be the primary point of contact to VPRA for all issues relating to Design-Builder's Quality Plan and to resolve Nonconforming Work and Project quality issues with VPRA.
- Be independent of Design-Builder's Quality Control staff and Project Manager.
- Have the authority to stop Work at any time in their sole discretion.

In the Quality Plan, Design-Builder shall also identify additional staff with the authority to stop Work, and ensure they understand the processes to implement their authority.

All Design-Builder personnel performing quality management roles on the Project shall be independent from the personnel performing the Work and shall have no responsibilities for performance of the Work. Notwithstanding the foregoing, Design-Builder's production staff shall be aware of their obligation to produce quality work and the general procedures in the Quality Plan.

None of Design-Builder's quality staff has the ability to deviate from the requirements of the Contract Documents or to interpret Project specifications. Their role is solely to ensure the finished Work meets the requirements of the Contract Documents.

### **2.4.2.3 Quality Plan**

#### **2.4.2.3.1 Quality Plan – General**

Design-Builder shall prepare and submit to VPRA for review and Approval a written Quality Plan that encompasses all requirements of the Contract Documents with regard to design, construction, environmental compliance, and documentation for all quality processes. The Quality Plan shall identify Design-Builder's overall framework for implementation of its Quality Control and Quality Assurance programs across all aspects of the Project.

The Quality Plan shall:

- Include a Design Quality Plan ("DQP") and a Construction Quality Plan ("CQP").
- Include an organizational chart showing all key roles and persons, and lines of communication and authority between Design-Builder and VPRA teams, and with other organizations involved.
- Define a process consistent with the draft Quality Plan presented in Design-Builder's Technical Proposal.
- Be approved and endorsed by Design-Builder's executive management committee.
- Be in effect until all requirements of the Contract Documents have been fulfilled and VPRA issues Notice of Final Acceptance.
- Describe the Quality Manager's accountability for ensuring the effective implementation and maintenance of the Quality Plan.
- Describe all verification resources, such as design verifiers, checkers, inspectors, and testers that Design-Builder will use.
- Depict how Design-Builder's design technical experts are incorporated into the construction phase of the Project.
- Detail how Design-Builder will provide quality management for design and construction, including any supporting administrative activities associated with the Project.
- Detail how Design-Builder will ensure compliance with all environmental requirements and permit conditions.
- Detail the quality management for both design and construction elements to be completed by a Subcontractor, Supplier, vendor, agent, or other entity with contractual obligations to complete the Work.
- Describe procedures for identifying training needs and provide for the training of all personnel performing activities affecting quality.
- Describe the process for performing internal quality audits.

Design-Builder shall submit the Design Quality Plan for VPRA's Approval within the time period stated in Exhibit B to the Progressive Design-Build Agreement. Design-Builder must receive VPRA's

Approval of the Design Quality Control Plan prior to submission of design submittals to VPRA during the Phase 1 Services. Design-Builder shall submit the Construction Quality Plan for VPRA's Approval within the time period stated in Exhibit B to the Progressive Design-Build Agreement. VPRA's Approval of the overall Quality Plan shall be a condition precedent to execution of a Phase 2 Amendment and issuance of the Phase 2 NTP.

Design-Builder shall revise its Quality Plan and its implementation to reflect current conditions or when either Design-Builder or VPRA identifies a systemic problem. These revisions must be Approved by VPRA prior to implementation. Design-Builder shall submit a conformed copy of the updated Quality Plan with revisions redlined and highlighted.

The structure of the documents describing the Quality Plan shall be: Quality policy (for the entire Quality Program), quality objectives, policies (for each element of the Quality Plan), and procedures.

All written procedures shall clearly describe the purpose of the process, overview of the process, responsibilities, steps of the process, and records resulting from the process.

#### **2.4.2.3.2 Management Review**

Design-Builder's executive management committee shall review the performance of the Quality Plan at least quarterly to ensure its continuing suitability in satisfying the requirements of the Contract Documents and Design-Builder's stated quality policy and objectives. The management reviews shall, at a minimum, review the results of internal audits, VPRA audit results, corrective actions taken, trends in Nonconforming Work, and time to resolution.

VPRA may, in its sole discretion, participate in the management reviews and may request data from the management reviews.

The findings of management reviews shall be incorporated into the Quality Plan and documented in an appendix to the plan.

#### **2.4.2.3.3 Internal Quality Audits**

Design-Builder shall establish and maintain documented procedures for planning and implementing internal quality audits to verify whether quality activities and related results comply with planned arrangements and to determine the effectiveness of the quality system.

Internal quality audits shall be conducted at least every quarter and in accordance with sound auditing principles. Audits shall be initiated early enough in the life of a Project to assure effective Quality Control during all phases. The audits shall include Project management as well as technical work activities.

Internal quality audits shall be carried out by personnel independent of those having direct responsibility for the activity being audited.

The internal quality audit program shall provide verification that the quality system is operating and being implemented as planned. Audits shall be conducted on a planned and scheduled basis, consistent with the importance of the activities being performed.

The results of the audits shall be recorded and brought to the attention of the personnel having responsibility in the area audited. The management personnel responsible for the area shall take timely corrective action on deficiencies found during the audit. VPRA shall have the right to request and review the audit results.

---

Follow-up audit activities shall verify and record the implementation and effectiveness of the corrective action taken.

### **2.4.3 Design Quality Assurance/Quality Control**

#### **2.4.3.1 Design Quality Plan**

The DQP must be a complete and clear plan to achieve a quality design for all elements and disciplines by all team members, including Subcontractors. All design shall meet the requirements of Design-Builder's Quality Plan and the Contract Documents.

At a minimum, the DQP shall:

- Present the overall organizational plan for design Quality Control and Quality Assurance.
- Define design Quality Control and Quality Assurance review processes to ensure design is in conformance with the Contract Documents.
- Include an organizational structure and reporting requirements demonstrating that Quality Control personnel have sufficient independence to allow them to be primarily concerned with quality, as opposed to the schedule and budget.
- Include quality procedures related to the preparation and checking of calculations, plans and specifications, design coordination procedures, construction coordination procedures, and document control.
- Include Independent Design Quality Management ("IDQM") firm's procedures and process for review and approval of Design-Builder submittals. The DQP shall also include procedures related to coordination between Design-Builder and the IDQM firm(s).
- Include details as to the level of involvement of VPRA, IDQM, CSXT, Amtrak, local agencies, and regulatory agencies in the design development and design review process. Design-Builder is encouraged to involve VPRA in all design development processes.
- Include procedures for review of engineering computations, technical accuracy, form, and content.
- Describe the coordination of the design with construction, including constructability reviews.
- Include quality measures and encourage continuous improvement of the design deliverable products.
- Describe how changes to design are identified, reviewed, and approved by authorized personnel prior to their implementation.

#### **2.4.3.2 Responsibility of Design-Builder**

Design-Builder shall be responsible for performing and documenting a complete check of all designs, calculations, plans, and specifications prepared by Design-Builder for the Project prior to review by the IDQM firm(s). Design-Builder's design check shall include both the overall design concept and various design element coordination checks and the detail check of the calculations for each plan and specification.

Design-Builder's design check shall be performed by experienced design professionals licensed in the Commonwealth of Virginia and District of Columbia (as applicable) that have not participated in preparing any of the design prior to the checking process. This review process shall be documented and included in Design-Builder's DQP process.

For structures constructed using conventional construction methods and materials, the accepted DQP procedure may be performed by Design-Builder's own personnel, including members of the Lead Designer. The following types of structures are considered to utilize conventional construction methods and materials:

- Rolled steel beams
- Plate Girders
- Prestressed AASHTO beams, Concrete Slab Panels, or modified bulb-Ts
- Spliced Prestressed AASHTO beams or modified bulb-Ts

### **2.4.3.3 Design Certification**

Design-Builder shall include the following design certifications in their DQP:

#### **2.4.3.3.1 Design Conformance**

Within 30 days after the Phase 1 NTP, the corporate officer responsible for quality for Design-Builder and the corporate officer responsible for quality for the Lead Designer shall certify, in writing, that the calculations, plans, specifications, and other technical documents for which they are responsible shall be prepared in conformance with the Contract Documents and the DQP.

#### **2.4.3.3.2 Checker**

Within 30 days after the Phase 1 NTP, the corporate officer responsible for quality for Design-Builder and the corporate officer(s) responsible for all firm(s) that will check the design and calculations shall certify, in writing, that the design check shall be performed in conformance with the Contract Documents and the DQP.

#### **2.4.3.3.3 Transmittals**

On the transmittal for each submittal of calculations, plans, specifications, shop drawings, as-builts and other technical documents, Design-Builder, the Lead Designer, and the checker shall certify that the documents were prepared and checked in conformance with the Contract Documents and the DQP. All submittals shall be written in the English language.

#### **2.4.3.3.4 Conclusion of Work**

At the conclusion of the Work and with the transmittal of the Record Documents to VPRA, Design-Builder shall sign, seal, and certify in writing that all calculations, plans, specifications, and technical documents for which they were responsible were prepared in conformance with the Contract Documents and the DQP.

### **2.4.3.4 Professional Seals**

All calculations, plans, specifications, and other technical documents transmitted to VPRA shall be signed and sealed by the Professional Engineer(s) licensed in the Commonwealth of Virginia and District of Columbia (as applicable) who are responsible for the design and by the Professional Engineer(s) licensed in the Commonwealth of Virginia and District of Columbia (as applicable) who are responsible for the checking of that document. Landscape plans shall be prepared, signed, and sealed by a Landscape Architect licensed in the Commonwealth of Virginia and District of Columbia (as applicable). The certifications at the start and conclusion of the Work shall also be sealed by a Professional Engineer licensed in the Commonwealth of Virginia or the District of Columbia and signed by Design-Builder.

---

### **2.4.3.5 Independent Design Quality Management**

Design-Builder shall utilize the services of the IDQM firm(s) to review all design elements for compliance with the Contract Documents, Good Industry Practice, environmental commitments, and permit conditions, and that Design-Builder has complied with the requirements of the DQP.

Major structural components, including girders, floorbeams, stringers, abutments, piers, foundations, and retaining walls of multi-girder steel, multi-beam concrete or segmental concrete type bridges shall be reviewed by the IDQM for compliance with the DQP by a qualified engineer having a minimum of 15-years' experience designing similar size and type of structures as proposed.

The IDQM shall check, utilizing independent calculations, for the following foundation and/or structure designs, types and/or detailing:

- Post tensioned concrete girders,
- Spliced concrete girders,
- Segmental concrete superstructures,
- Connection details between precast concrete elements,
- Spans with centerline of bearing to centerline of bearing lengths greater than or equal to 200 feet,
- Highly skewed, curved, and/or splayed girder and/or span arrangements,
- Precast concrete deck designs, and
- Any foundation and/or structure designs, types, and/or detailing modified from the Basis of Design

The independent calculations check shall be performed by a qualified engineer having a minimum of 15 years' experience designing similar size and type of structures. The independent calculations shall be sealed and stamped by the IDQM and submitted to VPRA.

The IDQMD shall be responsible to sign, seal, and certify that all Released for Construction design submittals are in conformance with the Contract Documents, environmental commitments, and permit conditions prior to submission to VPRA for VPRA's review and comment. This is in addition to the certifications and seals required of the Lead Designer. The IDQMD's stamp for this purpose shall read: "I hereby certify that these drawings were reviewed by me or persons under my supervision pursuant to the Design Quality Plan and, in this capacity, it is my professional opinion that the drawings are in conformance with the Contract Documents."

The quality management provided by the IDQM firm(s) is in addition to the quality management performed by Design-Builder as part of their DQP. The IDQM certifying compliance with the Contract Documents and the DQP must hold similar Professional Licensure as required by the Section 2.4.3.4 of the Technical Provisions. Design-Builder shall develop its Design Quality Control Plan (DQP) for review and approval by the IDQM firm(s). The approved DQP shall be submitted in the final Quality Plan to VPRA for concurrence.

### **2.4.3.7.1 Independent Quality Assurance Audit**

Upon submission of an IDQM certified Released for Construction design package from Design-Builder to VPRA via SharePoint, VPRA will perform further reviews as determined necessary to ensure the design package is in conformance with the Contract Documents. VPRA will perform an Independent Quality Assurance audit review and provide comments identifying noncompliance with



the Contract Documents within 14 Days, such period beginning the day after receipt of the submittal. Additionally, any submittal sent within 7 Days before or after the Memorial Day, July 4th, Labor Day, Thanksgiving or Christmas holiday shall require 7 Day additional review period for VPRA and all other reviewers. Design-Builder shall be solely responsible for the schedule impacts and costs of revisions or re-work arising from VPRA's review of the drawings, specifications, other design submittals for consistency with the requirements of the Contract Documents.

#### **2.4.4 Construction Quality Control and Quality Assurance**

##### **2.4.4.1 General**

Design-Builder is responsible for performing Quality Control of the Construction Work. This includes performing the Work in accordance with the Contract documents. Quality Control duties include: making sure staff are qualified and trained, performing work in accordance with the RFC plans and specifications, verifying that the Materials delivered to the Site are in compliance with the requirements of the Contract Documents, managing work performed by Subcontractors and at off-site facilities, developing Construction Work plans and conducting pre-activity meetings, coordinating Work activities with VPRA inspections and testing, conformance with Hold Points, and issuing NCRs for Nonconforming work and developing corrective actions.

VPRA staff will be responsible for Accepting the Work. VPRA staff will perform inspection in accordance with the Inspection & Test Plans, perform Materials sampling and testing in accordance with the Frequency Guide for Materials Sampling and Testing, Approve Materials that are not on the pre-approved Materials list, approve off-site facilities, perform QA inspection at off-site facilities, approve Materials to be shipped to the site, and issue NCRs non-conformance reports for Nonconforming Work.

##### **2.4.4.2 Construction Quality Plan**

Design-Builder shall develop a CQP that accomplishes the following:

- Clearly addresses Quality Control procedures to ensure that the Construction Work meets the requirements of the Contract Documents. This includes, at a minimum, procedures for Materials handling and construction quality; inspection, sampling, testing, and acceptance/rejection of Materials, plants, production and construction; Material certifications; calibration and maintenance of Equipment; production process control; and maintaining environmental compliance.
- Provides quality measures and encourages continuous improvement of the Construction Work.
- Educates all construction staff of their role in the Quality Program and ensures they understand that their role is to build the Work in accordance with the Released for Construction Documents and the requirements of the Contract Documents.
- Ensures all construction quality staff understand that their role is to determine whether the Work meets the requirements of the Contract Documents.
- Addresses all construction elements, including those to be completed by a Subcontractor, supplier, vendor, agent, or other entity with contractual obligations to complete the Work.
- Involves VPRA throughout the entire construction process.
- Describes how Design-Builder plans to identify Nonconforming Work, track Nonconforming Work, resolve Nonconforming Work, and prevent similar Nonconforming Work from occurring.

---

#### **2.4.4.3 Inspection and Testing**

Design-Builder shall establish and maintain documented procedures for inspection and testing activities. The required inspection and testing, and the records to be established, shall be detailed in the Construction Quality Plan.

QC inspection and testing shall be performed in accordance with written procedures developed by Design-Builder, or the proper issue of test procedures issued by industry, government, and/or code bodies available to test personnel.

Quality Check Points and Hold Points (Work that must be inspected and approved by VPRA before Work can proceed), shall be clearly established and identified on the Construction Work Plans. QC inspection procedures, logistics, and reporting of results shall be clearly defined, developed, and implemented.

VPRA will perform inspection of work and sampling and testing of Materials in accordance with the Inspection and Test Plans (“ITP”) and Minimum Frequency of Material Testing.

#### **2.4.4.4 Material Certifications**

During the Phase 1 Services, and to the extent information is known, Design-Builder shall provide to VPRA the sources of supply and item Material types that will be used in the Work. For Materials not initially identified or changes to the initial source provided, the source of supply shall be provided sufficiently in advance of their use. Fabricated structural steel, other metal fabricated structural members, and prestressed/pre-cast structural members can have long lead times for fabrication. The fabricator for these items shall be presented to the VPRA as soon as known. Copies of documentation for all sources of supply shall be provided as soon as known, but shall be provided to the VPRA no less than 30 days prior to delivery of such Materials to the Project.

VPRA maintains a list of qualified manufacturers, producers, and fabricators. Design-Builder is not restricted to use these sources if the Quality Plan details Quality Control procedures and methods for ensuring that Materials meet specifications, including inspection and quality control measures at the manufacturer or fabrication site.

When Design-Builder purchases Materials from suppliers shown on the VPRA’s approved Materials or source list, Design-Builder will be provided a Materials Certification (Certificate of Delivery, Certificate of Analysis, or Certificate of Compliance, as required) from the supplier covering the materials and/or the source.

Documentary evidence that Materials and Equipment conform to the procurement requirements shall be made available by Design-Builder at the Site no less than 24 hours prior to installation or use of such Materials and Equipment. This documentary evidence shall be retained at the Site, stored in VPRA’s SharePoint site, and shall be sufficient to identify that the specific requirements, such as Working Plans, codes, standards, or Specifications, are fulfilled by the purchased Materials and Equipment. Substitution of specified Materials shall not occur without prior approval by Design Builder’s Design Manager, IDQM, and VPRA. Failure to acquire prior substitution approval will result in the issuance of a nonconformance report. Additionally, a copy of all documentary evidence that Materials and Equipment conform to the procurement requirements shall be provided to the VPRA, or its representative, at the same time Design-Builder receives such documentary evidence.

At the completion of the Project, Design-Builder shall submit with the final payment application a certificate of compliance signed by Design-Builder’s Project Manager and Quality Manager indicating that all Materials incorporated in the Project conform to the Contract requirements.

---

#### **2.4.4.5 Incoming Product Inspection**

Design-Builder shall ensure that incoming product is not accepted, used or processed until it has been inspected or otherwise verified as conforming to specified requirements. Verification of the specified requirements shall be in accordance with the Quality Plan and/or documented procedures.

The Quality Plan shall include incoming product inspection that shall include but not be limited to:

- Documentation review.
- Physical inspection of materials and/or equipment.
- Identify items per the purchase order and shipping list, tag number or marking.
- Verification of quantity and size.
- Dimensional checks, when applicable.
- Verification of protective coatings if applicable; and
- Examination of item(s) for condition and shipping damage.

#### **2.4.4.6 Handling and Storage of Material**

Design-Builder shall establish and maintain documented procedures for transporting, handling and storage of material delivered to the Project.

Material shall be transported, handled and stored in a manner that will minimize segregation, avoid contamination, prevent bending stresses, distortion, cracking, spalling, surface damage and/or prevent any other condition that may result the material to be considered unsuitable for use on the project.

Design-Builder shall use designated storage areas to prevent damage or deterioration of product, pending use. Items requiring protection shall be identified and protected as necessary to prevent loss, damage deterioration or loss of identification. To detect deterioration, the condition of product in stock shall be assessed at appropriate intervals.

#### **2.4.4.7 Construction Work Plans**

Design-Builder shall prepare Construction Work Plans ("CWP") for individual Work elements. The CWPs shall be discussed at the Pre-activity Meetings. The CWP shall be transmitted to VPRA prior to scheduling the pre-activity meeting.

At a minimum, CWPs shall address:

- Description of the Work and applicable Contract specification section.
- Include actions that are defined as "special events" in that the Work may constitute exposing the general public to danger, inconvenience or risk.
- List of required submittals to complete the Work activity.
- Individual(s) and position(s) responsible for supervision of the Work.
- Planned start date of the Work, progress rate expected, and extended Work hours required.
- Prerequisite activities required.
- Include a hazard analysis for the scope of Work.
- Safety issues.
- Inspection and/or tests to be accomplished.

- Inspection Hold Points.
- Critical lifts

#### **2.4.4.8 Pre-Activity Meetings**

Design-Builder shall conduct pre-activity meetings with VPRA and Design-Builder's appropriate staff to review Design-Builder's approach to Work at least seven days prior to start of construction of new elements of Work. Design-Builder shall discuss the CWP at these pre-activity meetings.

#### **2.4.4.9 Quality Checkpoints**

Quality Check Points ("QCPs") have been established at stages of the construction progress that ensures Work is performed in accordance with Design Builder's Quality Plan and in compliance with the Contract Documents. As QCP's arise, Design Builder's Quality Manager and responsible QC staff shall meet with VPRA's authorized representative to review documentation and procedures for Quality Control, including Material certifications, daily inspection records, Material testing results, survey results, permits, and Material placement records. Design Builder's QC staff shall coordinate group members to ensure that QCPs are accomplished promptly so Design Builder is not delayed. When an identified QCP is accomplished and when notified by the QC staff, VPRA's representative will respond within four working hours to verify whether Work has been completed for the checkpoint. In conjunction with Design-Builder, VPRA may add or delete QCPs during Phase 2 construction.

QCPs will be established at the following stages of construction:

- A) Environmental
  - 1) After establishment of erosion and sediment control measures for defined earth disturbance area; and
  - 2) At the end of each month to review weekly and post storm inspections.
- B) Embankments
  - 1) After completion of drainage and utility installations and prior to backfill.
  - 2) After clearing, grubbing and excavation to check subgrade.
  - 3) Per specifications for lift requirements and at intervals of embankment construction.
  - 4) After completion of MSE wall panel placement; and
  - 5) At completion of embankment placement to establish the settlement monitoring baseline.
- C) Structures
  - 1) At the completion of placement for bridge deck reinforcement and prior to placement of concrete.
  - 2) At the completion of placement for abutment wall reinforcement and prior to placement of concrete.
  - 3) After completion of pile driving at each structure support, including pile driving results and records.
  - 4) At the completion of placement for footing reinforcement steel and prior to placement of concrete.

- 5) At the completion of excavation for drilled shaft foundations and prior to concrete placement.
  - 6) After setting rails for screed machine and prior to placing concrete overlays.
  - 7) After completion of the first component to receive specified aesthetic wall treatment/form liner and prior to proceeding with construction of subsequent components.
  - 8) After completion of every 500 feet of noise wall posts and panels.
- D) Utilities
- 1) After installation of direct burial ductbanks and prior to backfill operations.
  - 2) For concrete encased ductbanks, after installation of conduits and prior to placement of concrete.
- E) Paving, and Sidewalks
- 1) Before placement of each course above subgrade on permanent roadway components.
  - 2) Before placement of each lift of asphalt or Portland Cement concrete.
  - 3) Prior to placement of concrete for sidewalks.

#### **2.4.4.10 Access and Testing**

Representatives of agencies of the federal government and representatives of other agencies of Commonwealth of Virginia and District of Columbia shall have the right to oversight inspections of the Work to the same extent provided for VPRA and as required by Law.

Design-Builder shall provide safe access to the Work, its organization, and all Subcontractor and Supplier organizations to allow VPRA to carry out inspection and oversight activities. This will include the taking of samples for the purposes of testing, the examination of records, and interviews with personnel from Design-Builder's organization and all Subcontractor and Supplier organizations.

Design-Builder shall not use the results of oversight activities carried out by parties other than itself to be used as a substitute for its own quality activities.

#### **2.4.4.11 Control of Nonconforming Product**

##### **2.4.4.11.1 General**

Design-Builder shall establish and maintain documented procedures to ensure that product that does not conform to specified requirements is prevented from unintended use or installation. This control shall provide for identification, documentation, evaluation, segregation (when practical), and disposition of nonconforming product, and for notification to the functions concerned.

##### **2.2.2.11.2 Review and Disposition of Nonconforming Product**

Design-Builder shall define the responsibility for review and authority for the disposition of nonconforming product.

A nonconformance shall be defined as any condition in Equipment, Materials, or processes that does not comply with required plans, specifications, codes, standards, documentation, records, procedures, or the requirements of the Contract Documents that causes the Equipment, Materials, or processes to be unacceptable or indeterminate.

---

Nonconforming product shall be reviewed in accordance with documented procedures. It may be:

- Reworked to meet the specified requirements; or
- Rejected.

The procedures shall also address the disposition of nonconforming items and the steps necessary to verify that the nonconformances have been adequately addressed and that the item then be characterized as conforming. Repaired and/or reworked product shall be re-inspected in accordance with the Quality Plan and/or documented procedures.

#### **2.4.4.11.3 Corrective and Preventive Action**

Design-Builder shall establish and maintain documented procedures for implementing corrective and preventive action.

#### **2.4.4.12 Final Inspection and Testing**

Design-Builder shall jointly conduct all final inspection and testing with VPRA in accordance with the Contract Documents and the Quality Plan and/or documented procedures to complete the evidence of conformance of the finished Project to the Contract Documents. Design-Builder shall have documented procedures to ensure that the final observation and testing where applicable have been completed.

Records of final inspection and testing are required to verify that compliance with the Contract Documents has been achieved.

The Quality Plan and/or documented procedures for final inspection and testing shall require that all specified inspection and tests, including those specified either on receipt of product or in-process, have been carried out and that the results meet specified requirements.

**EXHIBIT E**

**Performance and Payment Bonds**

## FORM OF PERFORMANCE BOND

BOND NO. \_\_\_\_\_

PENAL SUM: \$[●]

### **KNOW ALL MEN BY THESE PRESENTS, THAT:**

**WHEREAS**, the Virginia Passenger Rail Authority (“Owner”) has awarded to [●], a [●] duly organized and existing under the laws of the State of [●] (“Design-Builder”) a contract (“Contract”) for the [●] (“Project”) dated [●]; and

**WHEREAS**, one of the conditions of the Contract is that Design-Builder provide this duly executed instrument (“Bond”).

**NOW THEREFORE**, We, the undersigned Design-Builder and [●], a corporation duly organized and existing under and by virtue of the laws of the State of [●] and authorized to transact business as a surety within the Commonwealth of Virginia (“Surety”), are held and firmly bound unto Owner, as obligee, and its successors and assigns in the sum of [●], lawful money of the United States of America, for the payment of which, well and truly be made to Owner, Design-Builder and Surety bind themselves and each of their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents. Any reference to the “Surety” in this Bond shall be read as a reference to the Co-Sureties and each of them on the basis of such joint and several liability.

### **THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT:**

1. The Contract is hereby incorporated by reference herein as if said Contract were fully set forth herein. Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the Contract.

2. If Design-Builder shall at all times promptly, and faithfully perform the Contract and any alteration in or addition to the obligations of Design-Builder arising thereunder in strict accordance with the terms and conditions of the Contract, including the matter or infringement, if any, of patents or other proprietary rights, and all guarantees and warranties, including the guarantee and warranty periods, established by the Contract, and comply with all of the covenants therein contained, in the manner and within the times provided in the Contract, and shall fully indemnify and save harmless Owner from all costs and damages which it may suffer by reason or failure so to do, and shall fully reimburse and repay Owner all outlay and expenses which it may incur in making good any default, and reasonable counsel fees incurred in the prosecution of or defense of any action arising out of or in connection with any such default, then Surety’s obligations under this Bond shall be void; otherwise such obligations shall remain in full force and effect.



3. This Bond shall cover the cost to perform all the obligations of Design-Builder arising out of or required under the Contract, and the obligations covered by this Bond specifically include Design-Builder's liability for liquidated damages as specified in the Contract.

4. Whenever Design-Builder shall be, and is declared by Owner to be in default under the Contract, the Surety shall within thirty (30) days of receipt of a letter from Owner in the form set forth in Schedule A:

- (a) remedy such default; or
- (b) submit to Owner a proposed plan to procure a new contractor using a delivery method and process acceptable to Owner, and thereafter tender to Owner a proposed contract procured using the Owner-accepted procurement process for completion of the Contract by a contractor acceptable to Owner, secured by performance and payment bonds issued by a qualified surety, combined with payment to Owner of the amount of damages in excess of the remaining Contract balance incurred by Owner as a result of the default, including costs of completion; or
- (c) waive the Surety's right to remedy such default or submit to Owner a proposed plan to procure a new contractor and with reasonable promptness under the circumstances, make payment of the full penal sum of the bond to Owner.

5. In the event that Surety disputes its liability under this Bond, which includes any allegations of fraud, such dispute shall be determined in the first instance in accordance with the dispute resolution process ("DRP") attached hereto as Schedule B. If Surety fails to make an election within the thirty (30) days set forth in paragraph 4 of this Bond, then the claim shall be deemed to be in dispute for purposes of this paragraph. A Decision, as defined in Schedule B, shall be rendered within thirty (30) days of the Adjudication Commencement Date, or as otherwise extended pursuant to the DRP. The Decision shall be binding on the Surety, Design-Builder, and Owner as to their respective rights and obligations under this Bond but subject to each party's right to commence a de novo appeal of the Decision to a court of competent jurisdiction at any time. The parties shall immediately begin to comply with the Decision and the terms of this Bond until the Final Completion Date under the Contract notwithstanding of, and during, any appeal de novo of the Decision and unless or until such time as a court of competent jurisdiction issues a final order or ruling vacating or modifying the Decision, either in whole or in part, at the conclusion of any de novo appeal of the Decision (the "Obligation to Comply with the Decision"). Surety's costs to fulfill its Obligation to Comply with the Decision is limited to the penal sum of the Bond.

6. The parties acknowledge that the Obligation to Comply with the Decision is of the essence of the Bond, and the parties agree that Surety's failure to fulfill its Obligation to Comply with the Decision will cause irreparable harm to Owner and Design-Builder. Accordingly, Surety waives and releases any right it may have to initiate any action in court seeking a stay of its obligations arising pursuant to the Decision or seeking a stay of enforcement of the Decision. Surety's only recourse to court processes in connection with the Decision is to file for a de novo appeal of the Decision while continuing to fulfill its Obligation to Comply with the Decision. In

any such de novo appeal or in any action seeking enforcement of the Decision, the Surety (a) waives any right to file for an interim stay of its obligations arising pursuant to the Decision or to seek a stay of enforcement of the Decision, (b) waives any right to object to or contest an action brought to enforce specific performance of Surety's obligations arising pursuant to the Decision and waives all defenses in such an action, and (c) consents to an order or ruling directing and requiring Surety to perform its obligations arising pursuant to the Decision, and that an action for such an order or ruling may be sought on an expedited (emergency) basis under the rules of the court. The parties' Obligation to Comply with the Decision does not alter any party's right to pursue a de novo appeal of the Decision in a court of competent jurisdiction.

7. On the day following the Final Completion Date ("Step-Down Date"), the Penal Sum of [●] shall automatically be reduced to [●], with the understanding that such reduced Penal Sum shall be the aggregate liability of the surety and shall only be applicable to any claims submitted, or suits, or actions brought, after the Step-Down Date. For the avoidance of doubt, the entire Penal Sum of [●] is subject to any claims submitted, or suits or actions brought, against the Bond prior to the Step-Down Date; *provided, however*, that notwithstanding anything to the contrary herein, Surety's aggregate liability hereunder shall in no event exceed the Penal Sum of [●].

8. Surety, for value received, hereby stipulates and agrees that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Contract, or in the Work to be performed with respect to the Project, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the Contract, or any rescission or attempted rescission by Design-Builder of the Contract, or this Bond, shall in any way affect its obligations on this Bond, and Surety does hereby waive notice of such changes, extension of time, alterations, additions, omissions or other modifications.

9. Correspondence or claims relating to this Bond shall be sent to Surety at the following address: [●]

10. Schedules A and B are an integral part of this Bond and are specifically incorporated herein as if set out in full in the body of this Bond.

11. If any provision of this Bond is found to be unenforceable as a matter of law, all other provisions shall remain in full force and effect.

12. Any provision in this Bond which conflicts with applicable laws, regulations, and ordinances, shall be deemed modified to conform to applicable laws, regulations, and ordinances. This Bond shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without regard for conflicts of laws principles, and any action seeking enforcement of the Bond will be litigated exclusively in the courts of the Commonwealth of Virginia.

13. ***[Note: Use in case of multiple sureties ("Co-Sureties") or, otherwise, delete; If Co-Sureties are used, modify the preceding language accordingly to reflect this]*** The Co-Sureties agree to empower and designate a single "Lead Surety" with authority to act on behalf of all of the

Co-Sureties with respect to this Bond, so that Owner will have no obligation to deal with multiple sureties hereunder. All correspondence from Owner to the Co-Sureties and all claims under this Bond shall be sent to the Lead Surety and shall be deemed served upon all Co-sureties. The Lead Surety may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to Owner designating a new Lead Surety, signed by all of the Co-Sureties. The initial Lead Surety is [●].

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, We have hereunto set our hands and seals on this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

**DESIGN-BUILDER** (full legal name):

Address:

By: \_\_\_\_\_

Title:

Contact Name:

Phone: (    )

**SURETY** (full legal name):

Address:

By: \_\_\_\_\_

Title:

Contact Name:

Phone: (    )

[Note: Date of this Bond must not be prior to date of Contract.]

[Note: If more than one surety, then add appropriate number of lines to signature block.]

[Note: A copy of a certificate that the Surety (or Co-Sureties) is (are) authorized to transact business in Virginia must be attached.]

[Note: The Bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (*e.g.*, an attorney-in-fact), but are not a members of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority including the appropriate power of attorney documentation must be attached.]

**SCHEDULE A  
FORM OF DEMAND**

Date

Re: Performance Bond No.: [\_\_\_\_] (the "Bond")

Principal: [\_\_\_\_\_] (the "Principal")

Obligees: Virginia Passenger Rail Authority (the "Obligee")

Contract: The Design-Build Contract, dated [\_\_\_\_\_] between the Principal as Design-Builder and the Virginia Passenger Rail Authority for the [●] Project (the "Contract")

Dear Sir:

Pursuant to the Bond, the Obligee hereby certifies that:

1. the Principal is and continues to be in default of the Principal's obligations under the Contract;
2. the Obligee has issued a notice of default to the Principal in accordance with the provisions of the Contract; and
3. the Obligee has honored and will continue to honor and perform in all material respects its obligations under the Contract.

We hereby demand that the Surety honor its obligations under the Bond forthwith.

The Obligee acknowledges that if the Surety intends to dispute its liability pursuant to the Bond, then the parties shall proceed immediately with the DRP set forth in Schedule B.

Yours truly,

Virginia Passenger Rail Authority

By: \_\_\_\_\_

Name:

Title:

## **SCHEDULE B DISPUTE RESOLUTION PROCESS**

Given the on default nature of the Bond, the Principal, the Surety and the Obligee acknowledge that they may not agree whether the Surety is liable to perform or make payment pursuant to the Bond. To ensure that such disputes are determined quickly so as to allow for the orderly and timely completion of the Contract, the Principal, the Surety and the Obligee agree to submit such disputes to the dispute resolution process set out below. Terms not defined herein shall have the meaning ascribed to them in the body of the Bond. The parties acknowledge that any decision rendered in the dispute resolution process (an “Award”) will be binding, but subject to appeal de novo by any party at any time to a court of competent jurisdiction.

1. “Dispute” means a disagreement as to the Surety’s liability pursuant to the Bond following an Obligee’s Demand.
2. Disputes arising out of or in connection with the Bond shall be submitted for binding resolution to adjudication (the “Adjudication”) administered by JAMS – The Resolution Experts! (“JAMS”) in accordance with the procedure set out below. The JAMS’ Dispute Resolution Rules for Surety Bond Disputes, effective as of the effective date of the Bond shall apply to the resolution of any Dispute unless modified by the provisions herein, in which case, the provisions of this Bond shall govern.
3. The Surety or the Obligee shall demand Adjudication by filing an Adjudication statement electronically with JAMS, and serving electronic copies by email upon the Principal and the Obligee, utilizing the electronic forms and filing directions provided by JAMS on its website at [www.jamsadr.com](http://www.jamsadr.com). 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 initiation of the Adjudication.
4. Within three (3) Business Days after the Adjudication statement is filed and served, the parties shall appoint an adjudicator (the “Adjudicator”) who shall be a panelist on the JAMS Global Engineering & Construction Panel (“JAMS GEC Panel”) of dispute adjudicators. JAMS shall appoint an Adjudicator administratively from the JAMS GEC Panel if the parties fail to appoint an Adjudicator within the three day period. The Adjudicator shall be under a duty to act impartially and fairly and shall serve as an independent neutral.
5. The Adjudication shall commence on the date that JAMS receives the Adjudication statement and initial deposit of funds, and confirms the appointment of the Adjudicator (the “Adjudication Commencement Date”). Unless the Adjudicator decides otherwise, the Principal, the Surety and the Obligee shall pay the final fees and expenses of Adjudication in accordance with the provisions set forth in the Contract governing the payment of fees and expenses of dispute resolution. In an Adjudication in which the Adjudicator determines that the Principal and Surety are aligned with the same commonality of interest against the Obligee, the Principal and Surety jointly shall be charged with one share and the Obligee will be charged with one share. Should any party fail to deposit funds as required by JAMS, any other party

may advance the deposit, and the amount of that advance deposit will be taken into consideration in the Adjudicator's decision.

6. Upon commencement of the Adjudication, the Adjudicator is empowered to take the initiative in ascertaining the facts and the law, and to exercise sole discretion in managing the Adjudication process. Among other things, the Adjudicator may require the parties to make additional factual submissions such as sworn witness statements and business documents, may interview important witnesses after notice to the parties and affording opportunity to attend, may request and consider expert reports and may call for memoranda on legal issues. Notwithstanding the foregoing, the Adjudicator must decide the following questions:
  - a. Is the Principal in default of the Principal's obligations under the Contract?
  - b. Is the Surety liable to perform in accordance with Paragraph 4 and/or 5 of the Bond?
7. The Adjudicator shall issue a written decision (the "Decision") which shall be binding upon and enforceable by the parties through the completion of the Principal's obligations under the Contract, 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 terms of the Bond. Any payment required in the Decision shall be made immediately. The Decision shall be issued through JAMS as soon as practicable but in no event later than thirty (30) calendar days of the Adjudication Commencement Date or within any later time agreed upon by the parties. Unless the parties agree otherwise, the Decision shall state reasons therefore and shall be admissible in later administrative, arbitral or judicial proceedings solely concerning Surety's liability pursuant to the Bond between the parties.
8. This 30 calendar day period also may be extended by the Adjudicator in its sole discretion up to 14 days in the event that JAMS has requested any party to make an additional fee and expense deposit and such funds have not been deposited as requested or advanced by another party.
9. 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 terms of the Bond. 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.
10. Upon any settlement by the parties of the Dispute prior to issuance of a Decision, the parties shall jointly terminate the Adjudication. Such removal or termination shall not affect the parties' continuing joint and several obligations for payment to JAMS of unpaid fees and expenses.

If the Decision is that the Surety is liable to perform in accordance with Paragraphs 4 and 5 of the Bond, then notwithstanding the commencement of any appeal de novo of the Decision, the Surety

shall perform in accordance with the Decision and with the terms of the Bond until the Principal's Obligations under the Contract are completed, but not to exceed the penal sum of the Bond.



## FORM OF PAYMENT BOND

BOND NO. \_\_\_\_\_

BOND AMOUNT: \$[●]

### **KNOW ALL MEN BY THESE PRESENTS, THAT:**

**WHEREAS**, the Virginia Passenger Rail Authority (“Owner”) has awarded to [●], a [●] duly organized and existing under the laws of the State of [●] (“Design-Builder”) a contract (“Contract”) for the [●] Project (“Project”) dated [●]; and

**WHEREAS**, one of the conditions of the Contract is that Design-Builder provide this duly executed instrument (“Bond”).

**NOW THEREFORE**, We, the undersigned Design-Builder and [●], a corporation duly organized and existing under and by virtue of the laws of the State of [●] and authorized to transact business as a surety within the Commonwealth of Virginia (“Surety”), are held and firmly bound, jointly and severally, unto Owner, as obligee, and its successors and assigns, in the sum of [●], lawful money of the United States of America, for the payment of which, well and truly be made to Owner and Claimants, Design-Builder and Surety bind themselves and each of their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

### **THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT:**

1. The Contract is hereby incorporated by reference herein as if said Contract were fully set forth herein. Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the Contract.

2. If Design-Builder shall: (a) make payments of all sums due to all persons and entities having a direct contract with Design-Builder, or a direct contract with a subcontractor having a direct contract with Design-Builder, for supplying labor, material, and/or supplies used directly or indirectly by Design-Builder in the prosecution of the Work provided in the Contract (such persons and entities hereinafter referred to collectively as “Claimants”); and (b) shall fully indemnify and save harmless Owner from all costs and damages which Owner may suffer by reason of Design-Builder’s failure to fulfill its obligations to Claimants under clause (a) above, including but not limited to, fully reimbursing and repaying Owner reasonable counsel fees incurred as a result of any action arising out of or in connection with any such failure, then Surety’s obligations under this Bond shall be void; otherwise such obligations shall remain in full force and effect.

3. All Claimants shall have a direct right of action only against Surety and Contractor under this Bond; *provided, however*, that no claim, suit or action shall be brought by any Claimant after the expiration of one (1) year following the date on which Claimant last performed labor or

last furnished or supplied materials to the Project. Any suit or action must be brought in a state or federal court of competent jurisdiction located in the Commonwealth of Virginia.

4. Any Claimant who does not have a direct contractual relationship with Contractor shall, as a condition precedent to bringing such claim, suit or action, provide written notice thereof to Contractor, Surety, and Owner, no later than ninety (90) days from the date Claimant last supplied labor or materials, stating with substantial accuracy the amount claimed, the name of the person for whom the work was performed or to whom the material was furnished, and the dates on which such labor or materials were supplied.

5. Surety shall, after receipt of reasonable notice to Surety of any claim, demand, suit or action brought against Owner by a Claimant, defend, with counsel approved by Owner, indemnify and hold harmless Owner from any and all claims, demands, suits or actions brought by any Claimant. Owner shall have a direct right of action against Surety and Contractor for any breach by Surety of its obligation to defend, indemnify and hold harmless Owner.

6. Surety, for value received, hereby stipulates and agrees that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Contract, or in the Work to be performed with respect to the Project, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the Contract, or any rescission or attempted rescission by Contractor of the Contract, or this Bond, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of Claimants otherwise entitled to recover under this Bond, shall in any way affect its obligations on this Bond, and Surety does hereby waive notice of such changes, extension of time, alterations, additions, omissions or other modifications.

7. Surety acknowledges that the amounts owed to Contractor under the Contract shall first be available for the performance of the Contract, including Owner's superior right to use the funds due for the completion of the Work, and then may be available to satisfy claims arising under this Bond. Owner shall not be liable for the payment of any costs or expenses or claims of any Claimant under this Bond and shall have no obligation to make payments to, or give notice on behalf of, any Claimant.

8. Any provision in this Bond which conflicts with applicable laws, regulations and ordinances shall be deemed modified to conform to applicable laws, regulations and ordinances.

9. Contractor or Owner shall furnish a copy of this Bond or permit a copy to be made upon request by any person or entity who may be a Claimant as defined above.

10. ***[Note: Use in case of multiple sureties ("Co-Sureties") or, otherwise, delete; If Co-Sureties are used, modify the preceding language accordingly to reflect this]*** The Co-Sureties agree to empower and designate a single, "Lead Surety" with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that Owner and Claimants will have no obligation to deal with multiple sureties hereunder. All correspondence from Owner and Claimants to the Co-Sureties and all claims under this Bond shall be sent to such designated Lead Surety and service of such correspondence or notice upon the Lead Surety shall constitute service upon all co-sureties. The Lead Surety may be changed only by delivery of written notice (by personal delivery or by

certified mail, return receipt requested) to Owner designating a single new Lead Surety, signed by all of the Co-Sureties. The initial Lead Surety shall be [●].

11. This Bond shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without regard for conflicts of laws principles, and any action seeking enforcement of the Bond will be litigated exclusively in the courts of the Commonwealth of Virginia.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, We have hereunto set our hands and seals on this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

**DESIGN-BUILDER** (full legal name):

Address:

By: \_\_\_\_\_

Title:

Contact Name:

Phone: (    )

**SURETY** (full legal name):

Address:

By: \_\_\_\_\_

Title:

Contact Name:

Phone: (    )

[Note: Date of this Bond must not be prior to date of Contract.]

[Note: If more than one surety, then add appropriate number of lines to signature block.]

[Note: A copy of a certificate that the Surety (or Co-Sureties) is (are) authorized to transact business in Virginia must be attached.]

[Note: The Bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (*e.g.*, an attorney-in-fact), but are not a members of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority including the appropriate power of attorney documentation must be attached.]

**Exhibit F**

**Forms**

## APPENDIX 1

### Definitions

Defined terms used in this RFQ have the following meanings:

Affiliate	With respect to an entity referenced in this RFQ: a) Any Person that directly or indirectly controls, or is controlled by, or is under common control with, such entity; and b) Any other Person that owns 20% or more of the entity's equity interest.
Allowance	An amount of compensation established by VPRA available to fund a specific Project risk or risks enumerated within the PDBA, which compensation is only available to Design-Builder if such enumerated risk or risks actually materialize on the Project, and otherwise which compensation goes unearned by Design-Builder.
Authorities Having Jurisdiction (AHJ)	Third party agencies that have jurisdiction over any portion of the Project.
Binding Construction Price Proposal	Design-Builder's binding submission of a proposed Construction Price and Construction Schedule to perform the Phase 2 Services, which is then reviewed and negotiated with VPRA.
Commonwealth	The Commonwealth of Virginia.
Construction Cost Estimate	Design-Builder's submission of estimates of the Construction Price to perform the Phase 2 Services, including the Opinion of Probable Construction Cost, Binding Construction Price Proposal, and Final Construction Price Proposal.
Construction Price	The negotiated lump-sum price to perform the Phase 2 Services under a Phase 2 Amendment.
Construction Price Negotiations	The process of VPRA's and Design-Builder's negotiation of the Construction Price, including comparison of the Construction Cost Estimates to the ICE's estimates and the reconciliation of differences in price. Construction Price Negotiations include negotiation of the Construction Schedule.
Construction Quality Plan	Design-Builder's plan for Quality Control of the Construction Work.
Construction Schedule	Design-Builder's schedule for performance of the Construction Work.
Construction Work	The efforts and services necessary to construct the Project.
Contract Documents	The documents that will comprise the entirety of Design-Builder's and VPRA's obligations with respect to the Project, including the PDBA and Technical Provisions.
Design	The design of the Project.
Design Quality Plan	Design-Builder's plan for quality management of the Design.
Design-Builder	The Person selected pursuant to the RFP, which enters into the PDBA with VPRA to perform the Phase 1 Services and, subject to successful Construction Price Negotiations, the Phase 2 Services.
Designated Contact	The individual designated by a Respondent as the point of contact for communications with VPRA during the procurement.

DOT Component	The division, office, or mode within the USDOT awarding Federal financial assistance. This includes the FTA and FRA.
Early Work	Construction Work that is negotiated separately from the overall Construction Work and may be performed by Design-Builder prior to agreement on a Construction Price for the entirety of the Phase 2 Services.
Evaluation Team	The individuals who will perform the evaluation and scoring of SOQs and Proposals.
Final Acceptance	Completion of the Project by Design-Builder in compliance with the Contract Documents and VPRA's acceptance of the Project in full, other than the obligations of Design-Builder that extend beyond Project completion.
Final Construction Price Proposal	The Binding Construction Price Proposal submitted by Design-Builder at VPRA's request containing the agreed-upon lump sum Construction Price and Construction Schedule to perform the Phase 2 Services and the terms and conditions of the Phase 2 Amendment.
Final Design	All design and engineering services to complete the design of the Project and receive RFC disposition of all design packages.
Guarantor	A Person that guarantees the financial and performance obligations of Design-Builder.
Independent Cost Estimator (ICE)	A Person that prepares an independent cost estimate of the cost to perform the Phase 2 Services.
Independent Design Quality Manager (IDQM)	An engineering firm retained by the Design-Builder to review design elements, as specified in greater detail in this RFQ. The IDQM may not have a contractual relationship with the Lead Designer or be a Subcontractor under the Lead Designer.
Independent Quality Assurance (IQA)	All actions performed by VPRA to verify that the Design complies with the Contract Documents, including review and comment on the Design, working with the Design-Builder and IDQM to resolve design comments, and other checks VPRA performs on the Design.
Joint Venture	A combination of two or more Persons for the purposes of undertaking the design and construction of the Project. A Joint Venture is not, itself, a distinct business entity, but may be comprised of a combination of business entities and/or individuals. If a Joint Venture is the successful Proposer, then joint venturers must each be a signatory to the PDBA, and must agree to be jointly and severally liable for the performance thereof.
Key Personnel	The individuals specified in <u>Section 4.5.1</u> of this RFQ.
Lead Designer	The firm that leads the team performing the Design of the Project. A Lead Designer may be either a Principal Participant or Subcontractor.
Major Subcontractor	The firms described in <u>Section 4.5.2</u> of this RFQ and the only Subcontractors (other than the Lead Designer and IDQM firms) that may be identified in the SOQ to perform work during the Phase 2 Services.
North Package	The northern portion of the Long Bridge project, as described in greater detail in the RFQ. The North Package is the work that is the subject of this procurement.

Open Book	Design-Builder's provision of information, including pricing, that shows all assumptions, data, and other substantiation supporting the information presented and that allows VPRA to check and verify the accuracy of the material presented. For cost estimates, this entails the provision of all information that Design-Builder used to develop the cost under consideration, including labor, fringe benefits, equipment, materials, productivity, schedule, phasing, estimating factors, allowances, risk, contingency, indirect costs, discount rates, interest rates, inflation, insurance, bonding, fees, overhead, profit, and other items that comprise the cost.
Opinion of Probable Construction Cost	A non-binding cost estimate to perform the Phase 2 Services prepared by the Design-Builder, which shall be based on the preliminary engineering information provided by VPRA and submitted within 90 days after Design-Builder commences the Phase 1 Services.
Organizational Conflict of Interest Policy	VPRA's policy governing conflicts of interest, as described further in <u>Section 1.6</u> of the RFQ.
Person	Any individual, firm, corporation, company, joint venturer, voluntary association, partnership, trust, or unincorporated organization, or combination thereof.
Phase 1	The first phase of the Progressive Design-Build process, during which the Design-Builder performs the Phase 1 Services and the Construction Price Negotiations.
Phase 1 Services	The services that the Design-Builder will perform during Phase 1 of the Project, which includes the Design of the Project and the additional preconstruction services, as further detailed in <u>Exhibit C</u> .
Phase 2	The second phase of the Progressive Design-Build process, during which the Design-Builder performs the Phase 2 Services. Phase 2 is contingent on VPRA's execution of a Phase 2 Amendment to the PDBA.
Phase 2 Amendment	An amendment to the PDBA that adds all or a portion of the Phase 2 Services to the Design-Builder's scope of work.
Phase 2 Services	The remaining Final Design work necessary to receive RFC disposition for all design packages, together with the Construction Work (but excluding any Early Work).
Point of Contact (POC)	VPRA's single point of contact for the procurement of this Project, identified in <u>Section 1.4</u> of this RFQ.
Principal Participant	Any of the following entities: the Respondent; individual firms (e.g., corporation, limited liability company, limited liability partnership), general partners, or Joint Venture members of the Respondent; and/or; all Persons and legal entities holding (directly or indirectly) a 15% or greater beneficial or ownership interest in the Respondent.
Procurement Rules	The rules of procurement adopted by VPRA that govern VPRA's procurements, available at: <a href="https://www.vapassengerrailauthority.org/Procurement-Rules.pdf">Procurement-Rules.pdf (vapassengerrailauthority.org)</a>
Procurement Schedule	The schedule for this procurement detailed in <u>Section 2.1</u> of this RFQ.



Progressive Design-Build (PDB)	A method of procurement and project delivery in which VPRA procures a single entity to perform Phase 1 Services, and, subject to successful Construction Price Negotiations, Phase 2 Services.
Progressive Design-Build Agreement (PDBA)	The written agreement executed between VPRA and the Design-Builder containing the terms and conditions governing the Work and all attachments thereto.
Project	The North Package of the Long Bridge project.
Proposal	The response to the RFP submitted by a Proposer.
Proposer	A design-build entity that submits a Proposal in response to the RFP. Where context dictates, Proposer shall also mean a potential Proposer.
Quality Acceptance ("QA")	For the Design, all services provided by the IDQM to verify conformance of the Design with the Contract Documents and the resolution of comments on the Design. For Construction Work, all planned and systematic actions performed by VPRA to ensure that all Work complies with the requirements of the Contract Documents and that all materials incorporated in the Work, all equipment used, and all elements of the Work will perform satisfactorily for the purpose(s) intended. Actions include specification reviews, document control reviews, and working plan reviews; construction inspection; materials sampling and testing at the production site and the Project site; oversight of manufacturing/processing facilities and equipment; oversight of on-site equipment; calibration of test equipment; acceptance or rejection of material; and documentation of all activities.
Quality Control ("QC")	The total of all activities that are performed by the production staff of the Design-Builder, Lead Designer, Subcontractors, producer, or manufacturer to ensure the Work meets the requirements of the Contract Documents. QC may include design reviews and checks; inspection of material handling and construction; calibration and maintenance of sampling and testing equipment; working plan review; document control; production process control; any inspection, sampling, and testing done for these purposes; and documentation of QC activities.
Quality Plan	Design-Builder's plan detailing its approach to design and construction quality management for the Work. The Quality Plan consists of the Design Quality Plan and Construction Quality Plan.
Release for Construction (RFC)	VPRA's acceptance of a design submission by the Design-Builder that allows the Design-Builder to construct only the design submission for which RFC disposition is provided. "Acceptance" for purposes of an RFC disposition is subject to the definition to be provided in the PDBA and is without prejudice to VPRA's rights with respect to work that does not comply with the Contract Documents. Acceptance may also entail acceptance by third-parties with the right to review design submissions.
Request for Proposals (RFP)	The request for the submission of Proposals by Shortlisted firms interested in serving as Design-Builder for the Project.

Request for Qualifications (RFQ)	This request for the submission of Statements of Qualification from entities interested in serving as Design-Builder for the Project.
Respondent	A design-build entity that submits a SOQ in response to this RFQ. Where dictated by context, Respondent shall also mean potential Respondent. A Respondent may only be a full team or entity capable of performing all services necessary to design and construct the Project.
Shortlist	The shortlist of Respondents named after evaluation of the SOQs submitted in response to this RFQ.
South Package	The southern portion of the Long Bridge project that will be separately procured and delivered.
Statement of Qualifications (SOQ)	The submission by a Respondent in response to this RFQ.
Subcontractor	A firm under contract with the Design-Builder or another Subcontractor to perform a specified portion of the Work. Subcontractor includes firms under contract at any tier to perform a specified portion of the Work.
Tangible Net Worth	The difference between the (i) the sum of paid-in capital stock plus preferred stock plus retained earnings, less (ii) the sum of treasury stock plus minority interest plus intangible assets, including goodwill, patents, and licenses, all determined in accordance with Generally Accepted Accounting Principles and as interpreted by the Securities and Exchange Commission in connection with financial statements filed pursuant to the Securities Exchange Act of 1934.
Technical Provisions	The portion of the Contract Documents that contains the technical requirements for the Project, including the performance-based and prescriptive specifications. The Technical Provisions include the design requirements provided with the RFP and the final version of the Technical Provisions developed as part of the Phase 1 Services and included in the Contract Documents with the Phase 2 Amendment.
Tri-Party Agreement	The agreement executed by VPRA, the Design-Builder, and the Lead Designer that grants VPRA the right to negotiate a contract with the Lead Designer to complete the Project's design (and other related services) if VPRA decides not to execute a Phase 2 Amendment with Design-Builder.
VPRA Website	VPRA's website on which VPRA posts information about its ongoing procurements, accessible at: <a href="https://vapassengerrailauthority.org/working-with-us/procurement/">https://vapassengerrailauthority.org/working-with-us/procurement/</a>
Work	The efforts and services to be provided by the Design-Builder to complete its obligations under the Contract Documents. Where dictated by context, Work may refer to the Phase 1 Services, the Phase 2 Services, or both.
Work Product	All materials and information generated by or on behalf of Design-Builder in the performance of and to perform the Work.

## **APPENDIX 2**

### **Representative List of Material Changes**

#### List of Representative Material Changes:

- (a) An event of default or bankruptcy involving the affected entity, or an entity directly or indirectly controlling of the affected entity;
- (b) A change in Tangible Net Worth of 10% or more of shareholder equity;
- (c) A sale, merger or acquisition exceeding 10% of the value of shareholder equity prior to the sale, merger or acquisition that in any way involves the affected entity or an entity directly or indirectly controlling the affected entity;
- (d) A downgrade in credit rating for the affected entity or an entity directly or indirectly controlling the affected entity;
- (e) Non-payment of any debt service when due;
- (f) Inability to meet material conditions of loan or debt covenants by the affected entity or an entity directly or indirectly controlling the affected entity, which has required or will require a waiver or modification of agreed financial ratios, coverage factors or other loan stipulations, or additional credit support from shareholders or other third parties;
- (g) In the current and three most recently completed fiscal years, the affected entity or an entity directly or indirectly controlling the affected entity either: (i) incurs a net operating loss; (ii) sustains charges exceeding 5% of the then shareholder equity due to claims, changes in accounting, write-offs or business restructuring; or (iii) implements a restructuring/reduction in labor force exceeding 10% of the workforce or involves the disposition of assets exceeding 10% of the then shareholder equity; or
- (h) Other events known to the affected entity that represent a material change in financial condition over the past three fiscal years or may be pending for the next fiscal year.