

VPRA Response to Proposer Clarifications

Franconia-Springfield Bypass Project
RFP No. 01-007-23-0001
August 31, 2023

No.	RFP Section No. Or Form	Question	VPRA Response
1	Exhibit F - Contract Template Section 17.0 - Liquidated Damages and Disincentives	The Liquidated Damages for Substantial Completion are indicated as \$(##). Please provide the Liquidated Damages cost per Day for Substantial Completion.	VPRA will address this in an addendum.
2	Exhibit F - Contract Template Section 17.0 - Liquidated Damages and Disincentives	The Liquidated Damages for Final Acceptance are indicated as \$(##). Please provide the Liquidated Damages cost per Day for Final Acceptance.	See response to Question No. 1.
3	Exhibit F - Contract Template General Terms and Conditions Article 14 - 14.12.9	This Article states "A VPRA-Caused Delay shall be eligible solely for a Completion Deadline adjustment directly attributable to the VPRA-Caused Delay. VPRA-Caused Delay shall not be eligible for Extra Work Costs or Delay Costs." The Contractor needs to be compensated for cost if delay is caused by VPRA Please revise.	VPRA will address this in an addendum.
4	Request for Proposals -Form Q -BUY AMERICA CERTIFICATION/FRA	This Form is blank. Please provide instructions as to how to fill out.	VPRA will include the form in an addendum.
5	Request for Proposals - Form R - BUILD AMERICA, BUY AMERICA CERTIFICATION	This Form is blank. Please provide instructions as to how to fill out.	VPRA will include the form in an addendum.
6	Request for Proposals -FORM S - PROOF OF AUTHORITY TO TRANSACT BUSINESS IN VIRGINIA	This Form is blank. Is providing the DPOR License number sufficient? If not, please provide instructions as to how to fill out.	VPRA will include the form in an addendum.
7	Request for Proposals - Exhibit G - Forms	The Forms are not provided in editable format. Can an editable version be provided? For example, Form I is a 2 page PDF and RFP page 15 Section 4.4 indicates "3 pages per project".	VPRA will not make the requested change. The forms are editable in Adobe.

8	Section 1.1 Project Information and Section 1.6 Rules of Contact	As the vast majority of the Project area is within CSXT right-of-way (i.e., private property), it would be beneficial for Proposers to be able to conduct a site tour to further expand our knowledge of site conditions, clearances, utility conflicts, etc. Would VPRA consider contacting CSXT to arrange such a tour for Proposers?	VPRA will be offering a pre-proposal site tour to interested Proposers on Friday, September 1, 2023. Details for the tour were published on VPRA's website and can be accessed at Franconia-Springfield-Bypass-Site-Tour.pdf (vapassengerrailauthority.org). All attendees will be required to sign VPRA's standard Release and Indemnity Agreement as a condition of their being granted access to the project site. Railroad operators may also have additional forms/agreements which must be signed by attendees.
9	Section 4.5.1 Key Personnel	Please clarify whether the Quality Manager must be an employee of the CM/GC Contractor, or can it be a subcontractor as is more typical of projects in the region.	The Quality Manager must be an employee of the CM/GC Contractor.
10	Form H	We require further clarification on the requirements for certified small businesses as mentioned in the RFP. DSBSD- Certified Small Business consists of a broad listing that includes MBE, WBE, DBE, etc. In the RFP, it states that the proposer should demonstrate a history of only using firms that have been certified by the DSBSD. When responding to Form H, Record of Small Business Participation, does that only apply to the State of Virginia, or does this apply to Projects in other states like New York/New Jersey/Etc. These projects may have been outside the Comm of VA and used other certifications.	VPRA will clarify this in an addendum. Form H is intended to be multi-jurisdictional in nature (i.e, not limited to projects involving DSBSD-certified firms).
11	GM/GC Contract Agreement, Section 17.1.1	Please provide the amount of the Liquidated Damages per item (a) and (b) in Section 17.1.1.	See response to Question No. 1.
12	GM/GC Contract Agreement, Section 17.1.1	The last paragraph in Section 17.1.1 indicates "The fact that VPRA has agreed to accept	Financial recovery for delay is limited to Liquidated Damages, however, Liquidated Damages are not

		Liquidated Damages as compensation for its damages associated with any delay in meeting A Completion Deadline will not preclude VPRA from exercising its other rights and remedies concerning the delay set forth in Section 17.2, other than the right to collect other damages due to the delay." Please confirm that LD's are the sole and exclusive remedy for Contractor delay.	the sole and exclusive remedy (e.g., VPRA could hold Contractor in default).
13	GM/GC Contract Agreement, Exhibit A	Exhibit A, defines Delay Costs and indicates, as limited to those costs provided in Exhibit J. No exhibit J was provided. Please provide Exhibit J.	VPRA will provide Exhibit J in an addendum.
14	GM/GC Contract Agreement, Exhibit B, Section 3.3.5	Exhibit B, Section 3.3.5 indicates that the contractor will obtain all Governmental Approvals to permit the Work to proceed in accordance with the Contract Documents. Please provide a permit matrix defining the known permits and clarify the responsible for each permit. We assume VPRA or the Designer has or will obtain permits such as NEPA, 4f, VDEQ, etc. The Contractor should only be responsible for obtaining all trade permits. Please clarify.	VPRA has been maintaining a permit matrix, but it will not be distributed at this time. All environmental permits, such as the ones listed, will be obtained by VPRA and/or the Design Consultant. The Contractor will be responsible for obtaining trade permits.
15	GM/GC Contract Agreement, Exhibit H	Exhibit H is the Required Certifications. Please provide this document.	Exhibit H consists of the signed certifications included with the Proposal. These are inserted at time of contract execution.
16	GM/GC Contract Agreement, Exhibit P	Exhibit P is the Davis Bacon Wage Rate Determination. Please provide this document.	Exhibit to be included at the time of contract execution.
17	GM/GC Contract Agreement, Exhibit Q	Exhibit Q is the Unpermitted Road Closure and Unpermitted Track Closure. Please provide this document.	VPRA will provide Exhibit Q in an addendum.
18	RFP Form Q	RFP Form Q was not provided. Please provide this form or clarify. Exhibit K, Article 21: Buy America Requirements outlines the requirements. Please confirm that a Buy America Certificate	See response to Question No. 4. The Buy America certification is due at time of proposal submittal.

		does not have to be submitted with the response to the RFP.	
19	RFP Form R	RFP Form R was not provided. Please provide this form or clarify. Exhibit K, Article 22: Build America, Buy America Requirements outlines the requirements. Please confirm that a Build America, Buy America Certificate does not have to be submitted with the response to the RFP.	See response to Question No. 5.
20	RFP Form S	RFP Form S is the Proof of Authority to Transact Business in Virginia. Please provide this missing Form and clarify what constitutes acceptable proof.	See response to Question No. 6.
21	RFP, Article 4.2.2	In lieu of the financial statements submissions required per RFP4.22, we request that VPRA accept a financial capability letter attesting to our financial strength signed by the CFO, as we consider the financials highly confidential and proprietary. Financial statements could be provided if selected for award.	VPRA will not make the requested change.
22	Section 1.1 Project Information	Please provide details regarding expected review times and frequency for CSXT and Amtrak (and other applicable governmental bodies).	Please refer to Section 7.5.3 of the General Terms and Conditions.
23	Exhibit E Performance and Payment Bonds	We kindly request that VPRA consider using the AIA 312 performance and payment bond forms for this procurement.	VPRA will not make the requested change. The bond forms included at Exhibit E to the RFP were modeled after forms recently used on other projects undertaken within the Commonwealth, which executed versions were supplied by many prominent sureties in the industry. They have been determined to be sufficient as to form and promote the efficient disposition of claims. Based on industry feedback, VPRA will, however, clarify certain terms within the forms in an addendum.
24	Section 1.1 Project Information; 18.0 CSXT Project Activities	Can VPRA provide additional details regarding the following major scope item: "installation of	No, the signal/communication systems within the project limits will be designed and constructed by

		<p>signal/communication systems (led by CSXT under the Franconia to Lorton Third Track Project)"?</p> <p>Will there be an opportunity for the CM/GC Contractor to self-perform that scope? Additionally, will the CM/GC Contractor need to design the path for the new signal installations and will CSXT be pulling cables, terminating, tagging, and integrating the new system connection into the existing operational command center?</p>	CSXT as part of the Franconia to Lorton Third Track project.
25	Exhibit B Project Information	Does VPRA anticipate releasing additional Exhibit B documents that Proposers should be prepared to review and address in our proposal?	VPRA anticipates adding a draft geotechnical report to Exhibit B.
26	Exhibit F Railroad Operator Indemnifications	We respectfully request that Exhibit A, Item 1.A and 1.B be revised so that indemnification obligations be assessed to the extent of CM/GC Contractor's negligence. This will enable the team to lower the project risk profile and associated contingencies. Moreover, Virginia law bars indemnification of a party against that party's own negligence.	VPRA will not make the requested change.
27	Exhibit F Railroad Operator Indemnifications	Please provide the Section reference of the Contract missing in Item I.A.	VPRA will make this change in an addendum.
28	Exhibit G: Forms A-U	To ensure consistency, can VPRA provide native files (e.g., Word documents) for required Forms A-U?	See response to Question No. 7.
29	Section 4.6.1(b) Approach to Work	Please provide a list of permits being acquired by VPRA and their current status.	See response to Question No. 14.
30	Section 1.1 (e) Project Information	Please provide the executed agreements and/or status updates from CSXT regarding utility relocations (e.g., Plantation Pipeline). Also, what is the timing and triggers for VPRA to opt to take over this responsibility to meet the Project schedule as described in this scope item?	CSXT holds the agreements with the Utility Owners and is currently responsible for utility relocations. VPRA has no current plans to take ownership of utility relocation coordination from CSXT. VPRA would only opt to take over utility relocations if we

			felt that we could work with the Utility Owners to relocate their utilities faster than CSXT.
31	4. Technical Proposal	The table on PDF page 20 of the RFP indicates that "Section 4.9: Comprehensive Small Business Utilization Approach" and "Section 4.10: Additional Forms & Documents" are both to be included in tab number 9. Please indicate if this is the case, or if "Section 4.10: Additional Forms & Documents" should appear in tab number 10.	VPRA will address this request in an addendum.
32	12.3 Calculations of Payment for Construction Work	We request that calculation of payment for construction work be computed utilizing the approved Schedule of Values with each progress payment being based on the percentage of completion of work in each respective period as is typical in the industry.	VPRA will not make the requested change.
33	12.5 Limitations on Payment; Retainage	As retainage is tied to the Baseline Schedule, please confirm that potential retainage is applicable to Phase 2 Services only.	Correct, retainage is only applicable to the Phase 2 Services.
34	Definitions	Can VPRA release the current versions of the ROW Schedule and ROW Work Map? These documents would enable Proposers to better plan work sequencing and also provide insight into internal risk assessments associated with the Project.	No, VPRA will not release this information at this time. VPRA is working to obtain temporary access/construction easements. VPRA is interested in avoiding permanent ROW acquisition altogether on this project. ROW information will be provided to the selected CM/GC contractor upon NTP.
35	4. Technical Proposal	Will VPRA allow Proposers to include an appendix for additional relevant information with the Technical Proposal?	No. Proposals must comply with the format requirements of the RFP.
36	CMGC Agreement, 3(g), p.83/337	Please consider revising as follows. Proposed Language: The Proposal, except that shall comply with all statements, offers, and terms that can reasonably be interpreted as offers to provide higher quality items than otherwise	VPRA will not make the requested change.

		<p>required by the Contract Documents or to perform services in addition to those otherwise required, or otherwise contains terms that are more advantageous to VPRA than the requirements of the higher priority Contract Documents, as determined by VPRA</p> <p>At a minimum please consider: The Proposal, except that Contractor shall comply with all statements, offers, and terms that can reasonably be interpreted as offers to provide higher quality items than otherwise required by the higher-priority Contract Documents or to perform services in addition to those otherwise required, or otherwise contains terms that are more advantageous to VPRA than the requirements of the higher-priority Contract Documents, as determined by VPRA</p>	
37	General Conditions 2.3, p.125/337	<p>Please consider omitting this language</p> <p>Proposed Language: The fact that the Contract Documents omit or misdescribe any minor details of any Work that are necessary to carry out the intent of the Contract Documents, or that are customarily performed under similar circumstances, will not relieve from performing the omitted Work or the misdescribed details of the Work, and they must be performed as if fully and correctly stated and described in the Contract Documents, without entitlement to adjustment of the Contract Price or a Completion Deadline except as specifically allowed under Article 1.</p>	VPRA will not make the requested change.
38	CM/GC Agreement, 10.0, p.85/337	<p>Please consider the language below.</p> <p>Proposed Language: Contractor shall, as part of the Phase 1 Services, independently review verify and confirm the accuracy, completeness, and sufficiency of any documents furnished by VPRA,</p>	VPRA will address this in an addendum.

		and shall promptly report in writing to VPRA any error, omission, or insufficiency in such documents that Contractor discovers. Contractor's warranties and indemnities under the Agreement cover errors in the Project even though they may be related to any error, omission, or insufficiency in the RFP Documents and Reference Documents.	
39	General Conditions, 8.1.2, p.146/337	Two (2) days is very short. Please consider five (5) business days for notice. Proposed Language: Upon encountering a Differing Site Condition, Contractor shall provide prompt written notice to VPRA of such condition, which notice shall not be later than two (2) five (5) days after such condition has been encountered.	VPRA will not make the requested change.
40	General Conditions 6.5.1, p.140/337	"Sole discretion" means no right to dispute resolution. (RFP, General Conditions 1.4, p.124/337). Please consider "reasonable discretion." Proposed Language: VPRA may, in its sole reasonable discretion, reject Nonconforming Work.	VPRA will not make the requested change.
41	General Conditions 7.4.2.2 p.144/337	Please consider that Contractor be responsible for the cost of a New Environmental Approval only where the reason for needing a New Environmental Approval is within its reasonable control. Proposed Language: If a New Environmental Approval becomes necessary for any reason other than those specified in Section 6.4.2.1 within Contractor's reasonable control , Contractor shall be fully responsible for the effort and cost of obtaining the New Environmental Approval.	VPRA will make this change in an addendum.

42	General Conditions 15.3, p.175/337	<p>“Sole discretion” means no right to dispute resolution. Please consider a “reasonable discretion” standard.</p> <p>Proposed Language: If VPRA determines, in its sole reasonable discretion, that any Person employed by Contractor or by any Subcontractor is not performing the Work properly and skillfully, or is intemperate or disorderly, then Contractor or Subcontractor must remove that Person and must not re-employ that person on the Project without VPRA’s prior written approval.</p>	VPRA will not make the requested change.
43	General Conditions 18.7(d) p.182/337	<p>“Sole discretion” means no right to dispute resolution. Please consider a “reasonable discretion” standard and an objective standard as to reduction in Claim amounts.</p> <p>Proposed Language: The amount due to Contractor under this Article 18 of these General Terms and Conditions will be reduced by... (d) amounts that are reasonably necessary VPRA deems advisable, in its reasonable sole discretion, to retain to cover any existing or threatened claims relating to the Project...</p>	VPRA will address this in an addendum.
44	General Conditions 14.8.4, p.162/337	<p>This is a very broad no damages for delay clause. Contractor cannot waive relief to the extent arising from VPRA breach or interference. Also, Contractor cannot waive any and all right to recover prompt payment penalties, interest, and attorney’s fees for example where they may otherwise be a statutory basis for recovery. Please consider the following language.</p> <p>Proposed Language:</p>	VPRA will not make the requested change. The cited clause in the General Terms and Conditions is not a “no damages for delay clause.” The Contract allows for delay damages based on the formula provided in Exhibit J. Additionally, Contractor is entitled generally to late payment interest (General Terms and Conditions Section 12.7) other than the specific types of interest stated in Section 14.8.4.

		<p>Regardless of the basis asserted, Contractor shall not recover and is not entitled to recover the following categories of damage for delay: ...</p> <p>(g) intentionally omitted late payment charges associated with any Claim, or disputed Work or Materials. Contractor is also not entitled to late payment charges on any judgment or award made to Contractor;</p> <p>(h) intentionally omitted. prejudgment or post-judgment interest related to or arising from any disputed Claim or on any award made to Contractor; or</p> <p>(i) intentionally omitted attorney's fees and costs, Claim preparation expenses, and litigation or other costs related to or arising from any disputed Claim, or prosecution thereof ...</p> <p><i>After romanette (i) and before 14.8.5, please insert the following language: Notwithstanding anything to the contrary herein, Contractor may seek to recover actual direct damages to the extent arising from VPRA breach of contract or interference with the work or VPRA-Caused Delay.</i></p>	
45	General Conditions 14.12.3.1, p.166/337	<p>Please consider including inaccurate Service Lines in the definition of Inaccurate Utility Information.</p> <p>Proposed Language: Notwithstanding the obligations in this section, Contractor shall be responsible for, no Change Order will be issued due to, Inaccurate Utility Information for any of the following ...; or (e) Service Lines.</p>	VPRA will make this change in an addendum.
46	General Conditions 14.12.4 p.167/337	Denying all relief in the event of any Contractor delay is disproportionate. Please consider a	VPRA will not make the requested change.

		<p>proportionate denial, that is, to the extent of any Contractor delay.</p> <p>Proposed Language: Contractor shall not be entitled to claim relief for a Utility Delay to the extent unless all of the following conditions are satisfied: (a) Contractor has provided evidence reasonably satisfactory to VPRA that (i) Contractor has fulfilled its obligation under the applicable Utility Agreement(s) to coordinate with the Utility Owner to prevent or reduce the delays, and (ii) Contractor has otherwise made diligent efforts to obtain the timely cooperation of the Utility Owner but has been unable to obtain this timely cooperation; (b) if Contractor is responsible for the Relocation, Contractor has provided a reasonable Relocation Plan to the Utility Owner and Contractor has obtained, or is in a position to timely obtain, all applicable approvals, authorizations, certifications, consents, exemptions, filings, leases, licenses, permits, registrations, options, and/or rulings required by any Governmental Approval or Law to design and construct the Relocation; and (c) to the extent no circumstances exist that have delayed or are delaying the affected Relocation that are attributable to Contractor, other than those that fit within the definition of a Utility Delay. Contractor shall provide an explanation and details demonstrating compliance with the above-stated conditions in the Request for Change Order submitted as provided in Section 14.4 of these General Conditions.</p>	
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47	General Conditions 14.12.8.1 p.168/337	<p>Events outside the Project ROW could still directly impact the Work. Please consider modifying this restriction.</p> <p>Proposed Language: Contractor shall not be entitled to any relief (Extra Work Costs, Delay Costs, Completion Deadline Adjustment) for Relief Events (e), (g), (h), (i), (j), (k) or (p) in the definition thereof that occur outside the Project ROW unless those Relief Events directly impact the Work.</p>	VPRA will address this in an addendum.
48	General Conditions 14.14, p.169/337	<p>Shifting all risk for errors in the Construction Documents to Contactor is disproportionate as Contractor is acting as the CM/GC and not the designer. Further, Contractor should be entitled to reasonably rely on the Reference Documents and should not be responsible for errors in same. Please consider modifying this restriction as follows:</p> <p>Proposed Language: Matters that are Contractor's exclusive responsibility include the following... (a) errors in the Construction Documents (but not including errors directly attributable to errors in the Reference Documents) but only to the extent Contractor discovered such errors and failed to report such error in writing.</p>	VPRA will not make the requested change; see also response to Question Nos. 38 and 70.
49	General Conditions 21.1.2(b), p.193/337	<p>Please consider an objective instead of subjective standard for what constitutes an emergency.</p> <p>Proposed Language: If VPRA reasonably believes a condition affecting the Project poses an immediate and imminent danger to public health or safety, VPRA may rectify the condition at Contractor's cost without giving notice or providing any cure period</p>	VPRA will not make the requested change. VPRA's actions under this portion of Section 21.1.2 of the General Terms and Conditions are subject to VPRA's "good faith determination...in the absence of clear and convincing evidence to the contrary."

50	General Conditions 21.2.1(i), p. 194/337	<p>Please consider an objective instead of subjective standard for what expenses are reasonable.</p> <p>Proposed Language: "If VPRA exercises any right to perform any obligations of Contractor, in the exercise of such right VPRA may, but is not obligated to, among other things: ... (ii) spend such sums as are VPRA deems necessary and reasonable to employ and pay such architects, engineers, consultants, and contractors, and obtain Materials and Equipment as may be required for the purpose of completing such Work; ... (v) take any and all other actions that it may consider are reasonably necessary to complete the Work;"</p>	VPRA will not make the requested change. Refer to General Terms and Conditions Section 1.4, which entails that VPRA's determinations are subject to a reasonableness standard, unless a different standard applies.
51	General Conditions 21.2.2.1, p. 194/337	<p>Please consider making liquidated damages the sole and exclusive remedy for delay, and limiting liability to direct costs rather than consequential damages.</p> <p>Proposed Language: If an Event of Default has occurred, Contractor, its Principal Participants, Surety, and any Guarantor(s) shall be jointly and severally liable to VPRA for all direct costs VPRA reasonably incurs to complete the Work or to have the Work completed by others. This liability is in addition to any other damages under the Contract Documents other than those costs intended to be covered by Liquidated Damages payable under the Contract Documents. Costs of completing the Work include re-procurement costs, costs of construction, and throw away costs for unused portions of the completed Work, and increased financing costs.</p>	VPRA will not make the requested change, except that VPRA will remove the recovery of increased financing costs in an addendum.
52	CM/GC Agreement 17.1, p.89/337	Please consider a liquidated damages liability cap.	VPRA will address this in an addendum.

53	CM/GC Agreement 17.1.1, p.89/337	<p>Consistent with the intent stated in the Contract 17.1.1, please clarify that liquidated damages are the sole and exclusive remedy for delay.</p> <p>Proposed Language: If Contractor fails to complete the Work in accordance with the Contract Documents, VPRA will suffer substantial losses and damages. Contractor shall be liable for all such losses and damages as and to the extent set forth herein.</p>	VPRA will address this in an addendum.
54	General Conditions 19.1, p.183/337	<p>Please consider a proportionate indemnity to the extent arising from Contractor's negligent performance of the work.</p> <p>Proposed Language: Contractor shall indemnify, defend, and hold harmless the Commonwealth of Virginia and VPRA together with their officers, agents, and employees (collectively, the "Virginia Indemnitees") from and against all third-party claims, losses, damages, liabilities, including reasonable attorneys' fees, costs, and expenses, asserted against a Virginia Indemnitee and to the extent arising from Contractor's negligent performance of, or the failure to perform, the Work.</p>	VPRA will not make the requested change. Refer to General Terms and Conditions Section 19.1.2. Note that there are situations where Contractor is liable to indemnify the Virginia Indemnitees other than for Contractor's negligence, such as when Contractor is grossly negligent, reckless or willful. Note further that Section 19.1.2 does not make Contractor liable for indemnity to the extent of such actions by the Virginia Indemnitees.
55	General Conditions 20.3.3, p.188/337	<p>Please reconsider asking Contractor to finance any dispute resolution proceeding.</p> <p>Proposed Language: The Parties shall each be responsible for 50% of the costs of the Neutral process. Contractor shall pay the Neutral in the first instance and submit an invoice to VPRA for VPRA's share.</p>	VPRA will clarify this in an addendum. Contractor will be entitled to invoice VPRA on a monthly basis for VPRA's share of the costs.
56	General Conditions 20.6, p.191/337	Please consider including a prevailing party attorney's fees clause.	VPRA will not make the requested change.

57	General Conditions, 23.3.5, p.203/337	<p>Please consider reasonable notice before a Claims-related audit.</p> <p>Proposed Language: No Reasonable notice is required before commencing any examination prior to 60 Days after Final Acceptance.</p>	VPRA will not make the requested change.
58	RFP, Exh.1, Definitions, "Change in Law," p.103/337	<p>Please consider removing the exclusion of "federal or Local Law" from Change in Law relief.</p> <p>Proposed Language: A "Change in Law" excludes: (a) Any change in, or new, federal or Local Law; and (b) Any change in, or new, Law relating to Contractor's general business operations, including minimum wage, licensing and registration fees, income taxes, gross receipts taxes, property taxes, transaction privilege taxes, sales and use taxes, payroll related taxes, and unemployment taxes</p>	VPRA will address this in an addendum.
59	RFP, Exh.1, Definitions, "Differing Site Conditions", p.105/337	<p>Please consider removing the exclusionary language such that Utilities, Contaminated Materials, or Force Majeure events can be Differing Site Conditions if they otherwise meet the standard.</p> <p>Proposed Language: Concealed or latent physical conditions or subsurface conditions at the Site that: (i) materially differ from the conditions indicated in the RFP Documents or as discovered during the Phase 1 Services or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work. The foregoing definition shall not apply to Utilities, Contaminated Materials, or Force Majeure events.</p>	VPRA will not make the requested change. These items are compensable as independent Relief Events.

60	RFP, Exh.1, Definitions, "Extreme Weather Event," p.107/337	<p>Please consider broader relief for Extreme Weather.</p> <p>Proposed Language: The occurrence of rain or snow at any location on the Project ROW that prevents Contractor from performing Work on a Critical Path activity for 6 hours or more and that does not otherwise qualify as a Force Majeure.</p> <p>For a rain event to qualify as an Extreme Weather Event, the rainfall must be at least equivalent to a 100-year frequency 24-hour rainfall event, as defined by the National Oceanic and Atmospheric Administration (NOAA) Atlas 14. The total rainfall experienced during an analyzed duration must equal or exceed the single depth listed for the duration by NOAA, in inches, to qualify as an Extreme Weather Event; confidence intervals do not apply. For snow to qualify as an Extreme Weather Event, the snow must be at a rate of no less than 20 inches per 24 hour period, as defined by the National Weather Service.</p>	VPRA will not make the requested change.
61	CM/GC Agreement, Definitions, "Force Majeure," p.108/337	<p>It is entirely possible that a Force Majeure event outside of the Project ROW could still impact performance. Further, there may be Force Majeure type events not specifically captured in this definition. Please consider the revisions below.</p> <p>Proposed Language: Force Majeure - Force Majeure - An unforeseeable event beyond the control of Contractor, not due to an act or omission of any Contractor-Related Entity, that materially and adversely affects Contractor's ability to meet its obligations under the Contract Documents, to the extent that the event (or the effects of which event) could not have been avoided or prevented by due diligence and use of reasonable efforts by</p>	VPRA will address this in an addendum.

		<p>Contractor. Force Majeure shall include only but shall not be limited to the following events: (a) war; (b) an act of terrorism, riot, insurrection, civil commotion, or sabotage within directly impacting the Project ROW; (c) national strikes that specifically caused disruption to the Project and are not specific to a Contractor-Related Entity; (d) explosion caused by an explosive device that causes direct physical damages to directly impacting the Project or the Project ROW; (e) flood, other than that caused by an Extreme Weather Event; (f) a fire, tornado, sinkhole, or landslide, in each case caused by natural events and causing direct physical damage within the Project ROW that impacts directly impacting the Project; (g) a state of emergency (as declared by the Governor of Virginia or Mayor of Washington, D.C.) within the limits of directly impacting the Project ROW other than an Extreme Weather Event, except one consisting of or arising out of traffic accidents; (h) one or more earthquakes with a moment magnitude greater than 5.0 (measured by the U.S. Geological Survey moment magnitude) with an epicenter within 100 miles of the northernmost point of the Project ROW, where such earthquake(s) cause direct physical damages to the temporary or permanent works directly impact of the Project; and (i) pandemic or epidemic, in each case to the extent that it results in a delay to the supply of Materials or the quarantine of workers directly impacting the Project located in the Commonwealth or Washington, D.C.</p>	
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62	CM/GC Agreement, Definitions, "Non-renewal of VPRA Permits or Environmental Clearance," p.111/337	<p>Please consider expanding the definition of Relief Event (o). Contractor requests relief for changes to VPRA Permits, Environmental Clearance, and Governmental Approvals and not merely non-renewal of those permits, environmental clearances, or Governmental Approvals. There are two distinct components to this request: (1) expand the existing definition to "changes" and not just "non-renewals" and also (2) extend this same concept to Governmental Approvals.</p> <p>Proposed Language: The non-renewal of Changes to permits, or environmental clearance, or Governmental Approvals that VPRA is required by the Contract Documents to obtain or comply with, provided that Contractor has cooperated with all requests for information from VPRA or other steps for which Contractor is responsible that are necessary for VPRA to obtain renewal of the permit or environmental clearance at issue.</p>	VPRA will not make the requested change. Situations of this nature may be addressed as a VPRA-Directed Change to the extent VPRA requires compliance with a change to a permit condition.
63	CM/GC Agreement, Definitions, "Railroad Delay," p.113/337	<p>Please consider broader relief for Railroad delays beyond just delays in issuing permits and approvals.</p> <p>Proposed Language: A delay to the Critical Path caused by a Railroad's failure to issue a permit or other approval necessary for Work that impacts a Railroad by the time required by a legal obligation, whether by Law or contract, or a Railroad's failure to comply with any approved permit or other commitment or other Railroad act, provided that Contractor has cooperated with all reasonable requests from the Railroad with respect to the matter causing the delay.</p>	VPRA will not make the requested change.

64	CM/GC Agreement, Definitions, "Relief Event," p.114/337	<p>Same as in Section 27 above. Please consider expanding the definition of Relief Event (o). Contractor requests relief for changes to VPRA Permits, Environmental Clearance, and Governmental Approvals and not merely non-renewal of those permits, environmental clearances, or Governmental Approvals. There are two distinct components to this request: (1) expand the existing definition to "changes" and not just "non-renewals" and also (2) extend this same concept to Governmental Approvals.</p> <p>Proposed Language: Relief Event shall mean the occurrence of one or more of the following: ... (o) Non-renewal of Changes to VPRA Permits, or Environmental Clearance, or Governmental Approvals.</p>	See response to Question No. 62.
65	CM/GC Agreement Definitions, "VPRA-Caused Delay," p.117/337	<p>Please consider relief from other VPRA breaches or interference.</p> <p>Proposed Language: Unavoidable delays, to the extent that they affect the Critical Path, arising from the following matters and no others: (a) A suspension for convenience pursuant to Section 13.1, to the extent provided therein; (b) VPRA-Directed Changes; (c) Failure or inability of VPRA to provide Contractor with access to Right of Way identified on the ROW Work Map on or before the date stated in the ROW Schedule, subject to Section 6.1; and (d) Failure or inability of VPRA to provide responses to proposed schedules, design submittals, and other submittals and matters for which response by VPRA is required, within the time periods provided in the Contract Documents. This clause (d) applies to VPRA's late provision of responses due to a Third-Party's delay in returning</p>	VPRA will not make the requested change.

		comments to VPRA on a Contractor submittal or other document; and (e) other VPRA breaches of contract or interference with the Work.	
66	RFP, 14, p.43/337	Please consider a stipend for unsuccessful proposers.	VPRA will not make the requested change.
67	General	Please consider an overall Contractor liability cap. Will VPRA agree to enter into good faith negotiations with CM/GC Contractor post-award to negotiate a cap on these amounts?	VPRA will not make the requested change.
68	Section 10 Documents Furnished by VRPA	CM/GC Contractor will need a warranty and indemnification for the design documents. CM/GC Contractor's verification of the accuracy of the documents should not include a verification for the design. Will VPRA consider amending this section to reflect such language?	See response to Question No. 38.
69	17.2.1 Set-off Rights	CM/GC Contractor requests a strike of the following: “plus any amounts due and owing to the Commonwealth for any other reason including tax delinquencies or monetary penalties relative thereto.” The right to set-off should be limited to contractual disputes between the parties to the contract.	VPRA will not make the requested change.
70	Exhibit A Railroad Operator Indemnifications	1.2 A.2 Definition of “Construction Documents”: Will VPRA agree to specifically exclude any design or architectural plans, specifications, or drawings from this definition, as later language makes Contractor responsible for these documents?	VPRA will address this in an addendum.
71	Exhibit A Railroad Operator Indemnifications	1.2 A.2 Definition of “Good Industry Practice”: CM/GC Contractor requests a uniform standard of care, which should be the ordinary standard of care. Will VPRA agree to make the second	VPRA will not make the requested change.

		paragraph applicable to both Construction Work and Professional Services?	
72	Article 7.1.5 Obligation to Provide Written Notice	This section requires “30-day written notice” to VPRA in the event VPRA fails to deliver access to the referenced parcels. Is that 30 days from the date Contractor becomes aware of the delay or does that refer to something else? Contractor would appreciate some clarification on this clause.	VPRA will clarify this in an addendum.
73	Article 7.3.1 Multiple Relocations of the Same Utility	It is unclear why Contractor would be required to reimburse VPRA for a Utility Owner’s decision to later relocate a Utility. Would VPRA consider striking this clause?	VPRA will not make the requested change. Contractor would only be liable for multiple relocations that do not qualify as a Relief Event.
74	Article 7.4.3 Environmental Compliance Plan	This clause references “Design-Builder”. Is that meant to be “Contractor”?	Yes. VPRA will clarify this in an addendum.
75	Article 8.1.2 Differing Site Conditions	Two days is a short time frame for notice, in particular if an event occurs over or prior to the weekend. Will VPRA agree to amend this to two “business” days?	VPRA will not make the requested change. Note that two days is the time required for Contractor to notify VPRA so that VPRA and Contractor can mitigate the impact of the condition. The two-day timeline applies only to the initial notice of the potential Differing Site Condition to VPRA; Contractor is not obligated to provide a complete Change Notice in compliance with Section 14.3.5 of the General Terms and Conditions within two days. Rather, after providing the two-day notice required by Section 8.1.2 of the General Terms and Conditions, Contractor is subject to the timelines in Section 14.3.4 of the General Terms and Conditions to provide the Change Notice.
76	Article 12.7 Interest on Late Payments	Both parties should have the same interest rates running on their respective claims. Will VPRA agree to allow both parties to have the same interest rate?	VPRA will make this change in an addendum.

77	Article 14.3.5 Contents of Change Notice	This requires the CM/GC Contractor to provide a lot of details in its initial seven-day notice. This is a very short time frame to have all this information put together. Will VPRA consider limiting this to subparagraphs (a), (d), and (e) and allowing the rest to be provided with the 60-day Request for Change Order?	VPRA will not make the requested change.
78	Article 14.12.2 Differing Site Conditions	Would VPRA consider amending the notice period to two (2) "business" days in the event of DSC discovery? Two calendar days is too short of a time frame, especially for weekend events.	VPRA will not make the requested change; see also response to Question No. 75. Please note VPRA has removed the first paragraph of Section 14.2.2 of the General Terms and Conditions as this was duplicative of the provisions in Section 8.1.2 of the General Terms and Conditions.
79	Article 17.4 Suspension of Early Work and 17.5 Suspension of Phase 2 Services	This is a long timeframe. CM/GC Contractor would have to wait to terminate a contract for a suspension that is not its fault. Will VPRA agree to reduce this from 180 days to 90 days?	VPRA will not make the requested change.
80	Article 21.3 Right to Stop Work if Undisputed Payment is Not Made	Two hundred forty days is too long for Contractor to go without payment especially if it is expected to continue to maintain its workforce and keep its subcontractors paid. Will VPRA reduce this to 90 days?	VPRA will not make the requested change.
81	Exhibit B Project Information	As part of the package of 30% design drawings provided to all Proposers, interim plan and profile drawings were included as sheets 37-41 of 209. Please provide further information regarding interim plan usage as part of this Project.	The structure will be designed and constructed to accommodate two tracks in the future. However, only one track will be constructed on the structure as part of this Project.
82	1.1 (p 6) and Exhibit A	"As part of VPRA's delivery of the Project, VPRA is obligated to provide certain indemnifications to CSXT, and Amtrak will pass-through to the CM/GC Contractor. These indemnification obligations are	No.

		<p>attached as Exhibit A and are non-negotiable terms to the Contract.”</p> <p>The pass through requires indemnity for AMTRAK negligence and a liability cap is not included. Will VPRA execute the agreement with AMTRAK and provide relief for negligence and a liability cap for the CM/GC?</p>	
83	1.4.3 Self-Performance Requirements	<p>1.4.3 states that the CM/GC Contractor will be required to self-perform Construction Work comprising at least 30% and no more than 70% of the value of the Construction Work. The section expands this with ‘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 are included in calculating the value of self-performed work...’</p> <p>Please confirm that the value of the self-performed work will be the result of the self-performed Construction Work (excluding the direct cost of materials) divided by all the Construction Work (excluding the direct cost of materials).</p>	Correct.
84	5.1.3 / 5.1.4 Reimbursable Costs	<p>5.1.3 - 90% Mandatory Markup. Designer or Contractor labor service markup multipliers typically range between 2.7 and 3.2. The 1.9 (90% markup) does not cover the cost of providing Phase 1 Services (material, services, equipment, or goods/services). Please consider VPRA revising documents to compensate CMGC Contractor during Phase 1 for items such as project staff vehicles, office space, travel, phones, computers, IT, etc.</p>	VPRA will address this in an addendum; see revisions to Exhibit C of the RFP and Exhibit C to the Contract.

		<p>5.1.4 states that reimbursable costs such as travel, specialized equipment, rentals, permit fees and any equipment or machinery used to perform Site exploratory investigation, borings, or test pits that are to be executed by the CM/GC Contractor as part of the Phase 1 Services will be addressed during performance thereof. Direct reimbursable costs must be job-specific and may not include any costs that have been included in the markup established by Section 5.1.3. Please confirm is the travel reimbursement stated within 5.1.4 intends to cover all travel expenses (airfare, hotel, meals, etc) of project staff associated with all Phase 1 services or is it solely travel for the bolded site investigations above.</p> <p>For the avoidance of doubt will reimbursable costs for Phase 1 direct overhead also include; subsistence (travel, lodging, per diem), vehicles for project oversight (including fuel), technology and communications, temporary facilities (including rent, utilities, office equipment, office expenses, furniture and taxes), insurance (other than payroll) and similar incidentals? If not, please provide the mechanism for compensation of office expenses and rental, other direct costs associated with Phase 1 services.</p>	
85	5.1.3/5.1.4, page 32	During Phase 1 Preconstruction Services, if project staff vehicles are not considered reimbursable under Section 5.1.4, how will preconstruction project staff vehicles be compensated?	See response to Question No. 84.
86	5.1.3/5.1.4	Will VPRA provide collocated office space for the CMGC Contractor during Phase 1 Services?	VPRA is still evaluating its office space needs for the Phase 1 Services. To the extent collocation is

		Please clarify how space allocation (possible co-location), inclusive of utilities, janitorial, IT, office supplies, copiers, etc. shall be paid during Phase 1.	deemed necessary, it will be addressed in the Contract negotiation phase.
87	Exhibit D, page 55, 5.1.4 p 32	How will the CMGC Contractor be compensated for the insurance requirements, Exhibit D, disclosed in section A, Phase 1 and Early Work Insurance Requirements?	Insurance premiums are reimbursable direct costs.
88	1.4.6/5.1.5 Phase 1 Service Fee	The Phase 1 Services Fee is a not-to-exceed amount based on actual hours. If CMGC and VPRA realize a savings in the not-to-exceed amount, please advise if VPRA will share with Contractor the cost savings 50:50 for Phase 1 Services.	VPRA will not make the requested change.
89	Form L (PDF page 320)	There is a cover sheet for Form L - Small Business Subcontracting Plan included in the RFP, but there is not a form that follows. Is the proposer to include form PD 60 (PDF page 267), also titled Small Business Subcontracting Plan (which is Exhibit N of the draft CM/GC agreement) as form L?	VPRA will provide this form in an addendum.
90	Form Q	Please confirm we can use the Form Q - Buy America Certification/FRA provided in the draft RFP	VPRA will provide this form in an addendum.
91	Form R	Please confirm we can use the Form R - Build America, Buy America Certification provided in the draft RFP	VPRA will provide this form in an addendum.
92	Form S	Please confirm we can use the Form S - Proof of Authority to Transact Business in Virginia provided in the draft RFP	VPRA will provide this form in an addendum.

93	Section 5.2.1 and Appendix 1 Definition for Construction Cost Markup	Last paragraph states the field indirect and direct costs of the "Construction Work" shall be components of the Construction Work used to develop the GMP. Further in the definition of "Construction Cost Markup", it defines the CM/GC Contractor's markup to the Direct cost of the Construction Work to account for profit and home office overhead as defined in Form U. These two sections contradict each other. Please clarify that both direct costs and indirect costs shall be marked up as identified on Form U.	VPRA will clarify this in an addendum. Construction Markup is applied against the GMP which figure includes Contractor's direct and indirect costs of the Construction Work.
94	CMGC Agreement, page 96 of 337	<p>Section 26. Authorization to Transact Business. Please confirm that joint ventures are allowed to register with the Virginia State Corporation Commission (VA SCC) after the Proposals are submitted and the Top Rank Proposer is notified of VPRA's intent to award, but prior to signature of the Contract. Or are joint venture Proposers required to register with the VA SCC prior to Proposal submission on September 11, 2023?</p> <p>Please advise if the Virginia GC License is required specifically in the name of the Proposer (joint venture entity) or are valid GC licenses only a requirement of the Principal Participants within the joint venture?</p>	Please refer to RFP Sections 4.10, and 6.1.1(g). Proposers must submit Form S (Proof of Authority to Transact Business in Virginia) at time of Proposal submittal. To the extent an application remains pending with the State Corporation Commission at time of Proposal submittal, Proposers should check box "D" on Form S to request a waiver.
95	CMGC Contract Agreement	7.0 PHASE 1 Services: Agreement states that Contractor shall not be entitled to Delay Costs due to any impacts, disruption, delays or otherwise occurring during performance of the Phase 1 Services. If VPRA or any other party exceeds or fails to meet any time limit provided in the Contract Documents for	VPRA will not make the requested change.

		<p>performance of any action during the Phase 1 Services, Contractor's sole remedy shall be an adjustment of the time period for performance.</p> <p>Please reconsider entitlement for Delay Costs during Phase 1 for elements of work outside of CMGC contractors' control.</p>	
96	Exhibit J	Please provide Exhibit J: Extra Work and Delay Cost Specification.	VPRA will provide Exhibit J in an addendum.
97	Exhibit Q	Please provide Exhibit Q: Unpermitted Road Closure and Unpermitted Track Closure	VPRA will provide Exhibit Q in an addendum.
98	RFP 6.2	If VPRA and the Top Ranked Proposer fail to reach an agreement, will and when is the bid security released?	If no agreement is reached between VPRA and the Top Ranked Proposer, the bid security will be released within ten (10) days of VPRA's termination of the negotiations.
99	1.4.2 / Exhibit C - Phase 1 Services Schedule	Section 1.4.2 GMP Negotiations indicates that an OPCC shall be submitted within 90 days of commencing Phase 1 services based on the 30% design. The Phase 1 Services Schedule contained within Exhibit C indicates Submission of OPCC shall be at Day 45. Please clarify.	VPRA will clarify this in an addendum.
100	Exhibit B, 7.1.4 and 14.12.9	7.1.4 states that Contractor may be entitled to ROW delay cost and schedule impacts through relief for a VPRA-Caused Delay, however, 14.12.9 states that VPRA-Caused Delays shall not be eligible for Extra Work Costs or Delay Costs, but only Completion Deadline adjustment. Please clarify.	VPRA will clarify this in an addendum.
101	RFP 3.1	3.1 Proposal Deadline and Instructions states the Proposal file name shall be: [Proposer Name/F-S Bypass Proposal 01-007-23-0001/Date]. Please be advised that Windows does not allow file	VPRA will address this in an addendum.

		names to contain special characters such as "/", "\", or " ". Please confirm substitution of "/" for "." (period) or "-" (hyphen) will be acceptable, or provide alternative formatting criteria?	
102	Section 1.14 (PDF pg 14)	The RFP requires an executed Proposal Bond using Form A from Exhibit G (page 300 of the PDF file); however, instructions for the location of the form within the Proposer's submittal document are unavailable. In what section would VPRA request the Proposer to include Form A within its submittal document?	VPRA will address this in an addendum.
103	Section 1.14 (PDF pg 14)	Due to the nature of this procurement, we kindly request VPRA remove the requirement for a Proposal Bond from the RFP.	VPRA will not make the requested change.
104	Section 4.10 (PDF pg 31)	The draft RFP included forms that are not present in the final RFP. These forms include Form Q - Buy America Certification/FRA (VPRA Procurement Form PD 32), Form R - Build America Buy America Certification (VPRA Procurement Form PD 33), and Form S - Proof of Authority to Transact Business in Virginia (VPRA Procurement Form PD 44). Could VPRA please provide these forms as part of the RFP or provide a direct link to an online repository for these forms?	VPRA will provide the forms in an addendum.
105	Section 2.1 (PDF pg 15)	Please confirm last day for issuing Addendum.	No deadline applies as to issuance of addendum on the RFP. However, VPRA will endeavor to post all addendum within ten (10) days of the due date for Proposals.
106	Section 2.1 (PDF pg 15)	We kindly request an extension of three calendar weeks to provide time to perform an in-depth review of the project and provide a more consummate estimate. This will also allow the time	VPRA will not make the requested change.

		necessary for legal and contractual reviews and due diligence.	
107	Section 6.1.2 (PDF pg 36)	Please clarify how the Interviews will be used in the evaluation process and if/how they will affect the evaluation scoring considering that they "will take place within thirty (30) days of the due date for Proposals".	Interviews are not scored discreetly and instead may be broadly considered by the Evaluation Team when scoring the evaluation criteria within the qualitative review.
108	Section 1.1 (PDF pg 7)	According to the RFP Language "VPRA is delivering the Project in partnership with CSXT, Amtrak, VRE, and other state and local agencies with jurisdiction over the Project area. VPRA and the CM/GC Contractor will work closely with these stakeholder groups and applicable governmental bodies to coordinate the Work and ensure that design and construction conform to applicable specifications and requirements." Please provide a complete list of technical specifications and order of precedence, if any.	Technical specifications will primarily be based on CSXT's Construction Standard Specifications but will include special provisions as necessary. VPRA is in the process of establishing its own set of Stormwater Management and Erosion & Sediment Control standard specifications, based on CSXT's Annual Standards & Specifications, with VDEQ.
109	Section 1.1 (PDF pg 6)	According to the RFP Language "The CM/GC Contractor will work within defined parameters related to maintaining rail service to construct the flyover. The timing of outages and other arrangements to maintain CSXT traffic will be further considered and discussed as the Design progresses". Please provide preliminary parameters and outage timing to improve project logistics understanding.	While CSXT will be interested in limiting track outages, there are no specific parameters that have been agreed to with CSXT at this time. VPRA expects the Contractor to work collaboratively with all parties to establish the parameters regarding track outages, flagging, etc. during Phase 1 of the Project.
110	Section 1.1 (PDF pg 6)	Please confirm which section of the RFP includes detailed information regarding project interface / interference with the Franconia to Lorton Third Track project.	Please refer to Exhibit B of the RFP. The interface for the trackwork at the south end of the Bypass is at Track 1 Station 339+00. At the north end of the structure, VPRA is responsible for the track shift of Existing Track 3 while CSXT is responsible for the added third track.

111	Section 1.4.3 (PDF pg 9)	According to the RFP Language "For the avoidance of doubt, no less than 30% of the value of the Construction Work shall be performed by Subcontractors procured through competitive bidding. The competitive bidding process will generally require that the CM/GC Contractor select the price offered by the lowest responsive bidder." Please consider revising this requirement and allow more flexibility for the CM/GC. As foreseen in the RFP, responsiveness and lowest price do not necessarily correspond to the "Best Proposal" and "Best Value (price being considered but not determinative)".	VPRA will not make the requested change.
112	Section 3.1 (PDF pg 21)	Please consider replacing "/" characters with "_" characters in the Proposal PDF file name [Proposer Name/F-S Bypass Proposal 01-007-23-0001/Date] and financial statements PDF file name [Proposer Name/F-S Bypass FinancialStatements/Date]. Most computer operating systems do not allow the use of "/" within a file name.	VPRA will make this change in an addendum.
113	Section 1.1 (PDF pg 6) & Exhibit B	Section 1.1, major scope (b) states "Construction of a track on the flyover bridge and approaches. The track will connect to an existing track to the north and to a proposed track to the south, both within the limits of the Franconia to Lorton Third Track project." However, Exhibit B drawing EX-PS-01A does not indicate connection between new tracks and an existing track, nor drawing EX-PS-5 shows connection to a proposed new track. Please clarify.	The EX-PS drawings are for existing conditions. Therefore, connections to proposed tracks are not shown. Drawing EX-PS-01A is at the south end of the Bypass project, where the track connects to a proposed track, as described in Section 1.1. Drawing EX-PS-05A shows the proposed track tying into existing track at the north end of the Project, as described in Section 1.1.
114	Section 1.1 (PDF pg 6) & Exhibit B	Section 1.1, major scope (f) states "Installation of signal/communication systems (led by CSXT	The signal/communication systems within the Project limits will be designed and constructed by

		under the Franconia to Lorton)." Please clarify the design of signal/communication systems is excluded from the project. To ensure systems work operational integration, it is suggested this work may be better performed by CSXT. The CMGC provides interface coordination service only.	CSXT as part of the Franconia to Lorton Third Track project.
115	Exhibit C	Phase 1 Services Schedule indicates the 60% constructability review is planned 90 days after NTP. Generally, the 60% design completion would encompass finalization of subsurface investigation. The 90 day schedule is apparently aggressive for geotechnical exploration, as well as utility sounding activities. Please reconsider to extend it to 150 day schedule.	The time period specified for commencement of the 60% Constructability Workshop is not intended to operate as a due date for the 60% plans.
116	Exhibit B TR-TS-01 to TR-TS-12	Future Track 0 is shown with complete trackwork for eventual operational track configuration. Please clarify the ballast and corresponding trackbed for Track 0 is excluded from the Project.	The future track is excluded from the Project. However, ballast and trackbed shall be constructed over the length of the structure. The design is at 30%, and ballast and trackbed limits are subject to further coordination as design progresses.
117	n/a	We kindly request VPRA hold any interviews with each Proposer in the event VPRA elects to hold interviews at their sole discretion.	VPRA will not make the requested change. To the extent held, interviews will only be conducted with Proposers determined to be within a competitive range.
118	n/a	Please provide any available schedule developed for the design and construction services for the project showing milestone and final design deliverables. This would allow us to optimize our design and construction approach in the technical narrative.	Draft schedules will be provided to the successful Proposer and finalized as part of the Phase 1 Services.
119	n/a	Please provide any available utility relocation schedule or teaming agreements for the project.	See response to Question No. 30.

120	n/a	Please provide any agreements from rail authorities impacted by the project.	Most of VPRA's agreements with the railroad operators are publicly available at https://vapassengerrailauthority.org/resources/rail-agreements/ . To the extent deemed relevant to the Work, any additional agreements will be furnished to Contractor during the Phase 1 Services.
121	n/a	Please provide VPRA's Risk Register.	VPRA will not entertain this request.
122	n/a	Please provide geotechnical exploration reports and boring logs if available.	A preliminary geotechnical report will be provided in an addendum.
123	n/a	Please provide missing exhibits to EXHIBIT F - CONTRACT TEMPLATE when available. Items include: - EXHIBIT H - REQUIRED CERTIFICATIONS - EXHIBIT J - EXTRA WORK AND DELAY COST SPECIFICATION - EXHIBIT Q - UNPERMITTED ROAD CLOSURE AND UNPERMITTED TRACK CLOSURE	VPRA will provide the exhibits J and Q in an addendum; see also response to Question No. 15.
124	GM/GC Contract Agreement, Section 3.0 (g)	Order of Precedence. Paragraph (g) in Section 3.0 essentially undoes the order of precedence by requiring the higher quality items or more advantageous terms despite the order of the Contract Documents. Please delete item (g).	VPRA will not make the requested change.
125	GM/GC Contract Agreement, Section 3.0 (b) and (c)	Order of Precedence. The Phase 2 Amendment and any Early Work Amendment will be more detailed and include specific assumptions and exclusions. For this reason, please consider revising the Order of Precedence to have (c). The Phase 2 Amendment and any Early Work Amendment as a higher order of precedence than (b).	VPRA will not make the requested change.
126	GM/GC Contract Agreement, Section 10	Documents Furnished by VPRA. The Contractor does not have the right to rely on any documents	See response to Question No. 38.

		provided by VPRA, including the Reference Documents. This is very broad. Please clarify. In addition, please clarify that the design documents are excluded from this provision. (i.e., Contractor would be entitled to relief for design errors that affect the Work provided it has complied with its obligation to review the documents under 2.4 of the GCs).	
127	GM/GC Contract Agreement, Section 17.4.1 (c) and 17.4.2	The Contractor's waiver in 17.4.1 (c) has a lengthy definition of consequential damages. In 17.4.2 the VPRA waiver is only limited to "consequential and punitive damages", which is undefined. Please confirm that this is a mutual waiver and VPRA applies the definition of "consequential damages" used for the Contractor in 17.4.1 applies to VPRA in 17.4.2 as well.	VPRA will address this in an addendum.
128	Exhibit B, General Terms and Conditions, 21.3	Right to Stop Work for Nonpayment, GC 21.3: Contractor has the right to stop work for nonpayment by VPRA but must provide 30 days' notice + 60 additional days without payment before it may be exercised. This leaves Contractor exposed to 120+ days of work unpaid. Please consider reducing this total duration to no more than 60 total days.	VPRA will not make the requested change.
129	Exhibit B, General Terms and Conditions, GC19, Exhibit F	Indemnity, GC 19, Exhibit F: Contractor owes an indemnity obligation to Amtrak for "all losses or claims arising from the acts or omissions of Contractor in performing the Contract". In addition, Contractor owes an indemnity obligation to CSXT "to the same extent to which VPRA is entitled to indemnity" under its contract with Contractor. Contractor's indemnity to VPRA and the Commonwealth of VA, as well as the Amtrak	VPRA will not make the requested change.

		<p>indemnity, are very broad and are not limited to insurable claims for bodily injury or property damage. These indemnities could conceivably include business losses associated with cancelled or delayed train operations, etc. Please revise these indemnity obligations to insurable risks and provide a cap on the exposure.</p>	
130	Missing documents	<p>The RFP, CM/GC Agreement, and Exhibit B General Terms and Conditions are missing several critical Exhibits and Forms, which were not provided to the Contractors before the August 18th deadline to submit Clarification Request. Please allow two weeks for the Contractors to review and submit Clarification Requests, after issuance of these documents.</p>	<p>VPRA will not make the requested change. Exhibits and forms will be provided in an addendum.</p>
131	Exhibit B, General Terms and Conditions, 1.2, 3.1	<p>Compliance with Laws, GC 1.2, 3.1: Contractor is obligated to comply with “all Laws” and indemnify VPRA for any violations. The definition of Law is overbroad and includes laws governing Utility Work being performed by a Utility Owner, over which Contractor has no control. Contractor’s obligations should be limited to compliance with law bearing on the performance of its own Work (which would also exclude potential violations of law in the design, for which Contractor should not be responsible). Please revise these provisions.</p>	<p>VPRA will address this in an addendum.</p>
132	Exhibit B, General Terms and Conditions, GC 8.1.2	<p>GC 8.1.2 indicates that the Contactor shall provide notice to VPRA after a Differing Site Condition has been encountered. Please consider changing the notice provision to be based on when the Contractor was aware of the Differing Site Condition, rather than when the condition was encountered.</p>	<p>VPRA will not make the requested change.</p>

133	Bond Duration, GC 9.2, 4.1.2	The Performance bond must continue until the later of (1) the second anniversary of Final Acceptance or (2) the expiration of any extended warranties. Per 4.1.2 the Warranty period is two years from Substantial Completion. Please confirm GC 9.2 is to be based on Substantial Completion not Final Completion.	VPRA will clarify this in an addendum.
134	Exhibit B, General Terms and Conditions, GC 9.1	Please confirm that the Contractor's Performance Bond does not cover utility work performed by utilities or others.	Correct, the Performance Bond is intended to cover Work performed by Contractor as part of the Phase 2 Services and any Early Work Packages.
135	Exhibit B, General Terms and Conditions, GC 20.2	The dispute resolution process is long and burdensome, with several escalation steps required. All steps in the process, including decisions by the Neutral selected by both parties, are non-binding until the parties reach litigation, and the parties are precluded from litigating until, at the earliest, the project is complete. Please consider a more fast-track process or establishing the Neutral procedure as binding.	VPRA will not make the requested change.
136	Exhibit B, General Terms and Conditions, GC 23.2.2	GC23.2.2 requires that each Subcontractor submit to the Contractor a copy of all documents used in determining its Subcontract price. This requirement will likely reduce subcontractor participation and is not needed for the Contractor to manage their subcontractors. Please consider reducing this to a copy of the Subcontractor's written quote only.	VPRA will not make the requested change.
137	GM/GC Contract Agreement, Section 7	Article 7.0 identifies Phase 1 Services duration to be no longer than 400 days. RFP Draft Contract Exhibit C, Phase 1 Services Schedule identifies a 365-day timeline. Please clarify.	Article 7 of the Contract includes the maximum allowable timeframe for completion of the Phase 1 Services. The timeframe in Exhibit C is specific to the Phase 2 NTP, which is noted to be "Contingent."

138	Preliminary Engineering Plans	Preliminary Engineering Plans dated December 23, 2022 were provided with the Industry Draft RFP dated June 30, 2023; however, no Plans were provided with the Final RFP issued August 4, 2023. Please confirm that the Draft RFP Plans are the most current and be relied upon for Phase 1 Services Proposal preparation purposes.	Draft 30% plans are included at Exhibit B to the RFP. As set forth in the RFP, Proposer's must execute a non-disclosure agreement to obtain the documents included in this exhibit.
139	Exhibit B, General Terms and Conditions, GC 14.12.9	VPRA -Caused Delay are only eligible for a time extension only. Given the CM/GC delivery and onerous nature of this clause, please consider revising VPRA-Caused Delay to be compensable or establish a VPRA delay holiday of perhaps 21 days.	See response to Question No. 3.
140	Exhibit B, General Terms and Conditions, GC 14.12.10	Per the definition of "Change in Law", The Contractor is eligible for relief for changes in VA law only, not for changes in federal law of local law that affect the Project. Please revise to include all Law affect the Project.	VPRA will address this in an addendum.
141	Builder's Risk, Exhibit D.	<p>The Builder's Risk sublimits are very high and will require a significant premium to obtain.</p> <p><i>In no event will the minimum limits of such coverage be less than \$200,000,000. Further, the policy shall include sub-limits as follows: (x) at least \$25,000,000 for off-site storage and transit; (y) at least \$50,000,000 for debris removal and demolition; and (z) at least \$10,000,000 for increased costs of construction, soft costs (including VPRA's continuing Project administration expenses), professional fees and loss adjustment expenses.</i></p>	VPRA will address this in an addendum.

		<p>Recommend amending the builder's risk sublimits in Exhibit D article B.8 to the following:</p> <ul style="list-style-type: none"> ○ \$10M off site storage and transit ○ 25%/\$10M Debris removal ○ \$1M professional fees <p>\$1M claim preparation expense</p>	
142	Exhibit B, General Terms and Conditions, GC 14.14	GC14.14 (a) indicates that errors in the Construction Documents (which by definition include specifications, RFI's, supplemental design, and other documents) are ineligible for a Change Order. Please clarify as the Contractor must be able to rely on the specifications, RFI responses, etc.	See response to Question No. 48.
143	Exhibit B, General Terms and Conditions, GC 14.8.2(b)	Increases in the Contract Price are not available for costs or circumstances that "could reasonably have been anticipated due to Contractor's performance of Phase 1 Services." While we understand VPRA's approach in this article, this type of approach tends to create unnecessarily inflated contingencies and could increase the amount of time and effort to achieve Early Work Package GMP's and the overall GMP. Please consider removing item (b).	VPRA will not make the requested change.
144	Exhibit A, Railroad Delay	The definition for Railroad Delay included the Railroad's failure to issue a permit or other approval "by the time required by a legal obligation". Please clarify and clarify how the Contractor will know these legal obligations.	See response to Question No. 120.
145	Governmental delays	Relief is available (under certain conditions) for utility delay and railroad delay, but delay by other third parties (e.g Governmental Authorities) are not	VPRA will not make the requested change.

		addressed. Please confirm that the Contractor is eligible for relief for third party delays.	
146	RFP due date revision	Please consider postponing the RFP due date by one to two weeks.	VPRA will not make the requested change. Proposals are due 9/11/23 by 2:00 PM EST.
147	Exhibit B, General Terms and Conditions, GC 14.12.7.2	There is no relief for unknown preexisting Contaminated Materials if such materials "should have been discovered through investigation of the Site performed by the Contractor." There currently is not site investigation scope in Phase 1 Services. In order to mitigate this significant risk, please confirm that preexisting Contaminated Materials will be handled as an Allowance, or that extensive site investigations will be added to Phase 1 Services.	VPRA will address this in an addendum.
148	CM/GC Contractor Agreement, Form A – Proposal Bond	Please clarify in which section of the technical or price proposal Form A – Proposal Bond should be placed.	See response to Question No. 102.
149	CM/GC Contractor Agreement, Form Q (Buy America Certification/RFA)	Form Q in the RFP shows a blank intro page only. Please provide the Form Q (Buy America Certification/RFA) document that can be filled out, signed and submitted with the technical proposal.	VPRA will provide this form in an addendum.
150	CM/GC Contractor Agreement, Form R (Build America, Buy America Certification)	Form R in the RFP shows a blank intro page only. Please provide the Form R (Build America, Buy America Certification) document that can be filled out, signed and submitted with the technical proposal.	VPRA will provide this form in an addendum.
151	CM/GC RFP, Article 4.9 CSBUA	Being aware that there is not a goal for this contract, VPRA endeavors the CM/GC Contractor to strive towards its 10% participation. Can VPRA state how it calculates the 10% goal, is it based off total contract value or total subcontracted value. Given the current market we	The 10% goal is based on overall Contract value.

		suggest this be based off of the subcontracted value. Please clarify.	
152	CM/GC Contractor Agreement, Article 3.0 Order of Precedence	<p>Please modify sub-section (g) as set forth below.</p> <p>(g) The Proposal, except that Contractor shall comply with all statements, offers, and terms that can reasonably be interpreted as offers to provide higher quality items than otherwise required by the higher-priority Contract Documents or to perform services in addition to those otherwise required, or otherwise contains terms that are more advantageous to VPRA than the requirements of the higher-priority Contract Documents, as determined by VPRA.</p>	VPRA will not make the requested change.
153	CM/GC Contractor Agreement, Article 10.0 Documents Furnished by VPRA	<p>Please modify this provision as set forth below. Contractor should be entitled to rely on information provided by VPRA, including but not limited to information provided by VPRA's Design Consultant, and seek relief if the information provided by VPRA is erroneous.</p> <p>10.0 VPRA makes no representation or warranty as to the accuracy, completeness, or sufficiency of any document furnished by VPRA to Contractor prior to the Effective Date, including the RFP Documents and the Reference Documents. Contractor shall, as part of the Phase 1 Services, independently verify and confirm review the accuracy, completeness, and sufficiency of any documents furnished by VPRA, and shall promptly report in writing to VPRA any error, omission, or insufficiency in such documents that Contractor discovers. Contractor's warranties and indemnities under the Contract cover errors in the Project even though they</p>	See response to Question No. 38.

		<p>may be related to any error, omission, or insufficiency in the RFP Documents and Reference Documents. Contractor shall have no right to seek any adjustment to the Contract Price or the Completion Deadlines as the result of any error, omission, or insufficiency relating to any information provided to Contractor by or on behalf of VPRA in connection with this Contract.</p>	
154	CM/GC Contractor Agreement, Article 14.2 Early Work Amendments	Please clarify whether VPRA will require a separate P&P Bond for each Early Work Package, and a separate P&P Bond for the Phase 2 Services.	VPRA will clarify this in an addendum. Contractor will have the option of issuing separate Performance and Payment Bonds for the Phase 2 Services and any Early Work Packages.
155	CM/GC Contractor Agreement, Article 17.1.1 Failure to Meet Completion Deadlines	<p>Please adding language clarifying that liquidated damages are VPRA's sole and exclusive remedy for delays caused by Contractor's failure to meet the completion milestones.</p> <p>If Contractor fails to complete the Work in accordance with the Contract Documents, VPRA will suffer substantial losses and damages. Contractor shall be liable for all such losses and damages. Contractor acknowledges and agrees that because of the unique nature of the Project, the fact that it is an essential part of the rail transit system in the I-95 corridor, and the fact that inconvenience to the traveling public and freight traffic will be one of the significant impacts of any completion delay, it is impracticable and extremely difficult to ascertain and determine the actual damages that would accrue to VPRA and the public if Contractor fails to achieve Substantial Completion and/or achieve Final Acceptance by</p>	VPRA will not make the requested change; see also response to Question No. 51.

		<p>the applicable Completion Deadlines. Therefore, Contractor and VPRA agree to stipulate the amount payable by Contractor for its failure to meet the Completion Deadlines. Liquidated Damages are VPRA's sole and exclusive remedy intended to compensate VPRA solely for Contractor's failure to meet the Completion Deadlines and will not excuse Contractor from liability for any other breach of the Contract, including any failure of the Work to conform to applicable requirements.</p>	
156	CM/GC Contractor Agreement, Article 17 Liquidated Damages and Disincentives	Please consider a reasonable cap on liquidated damages.	VPRA will address this request in an addendum.
157	CM/GC Contractor Agreement, Article 17.4.1 Limitation on Damages Recoverable by Contractor	<p>Please delete the sub-sections below: 17.4.1 Contractor shall not be entitled to damages of the following nature:</p> <p style="text-align: center;">(e) late payment charges for any judgment or award to Contractor;</p> <p>pre-judgment interest relating to or arising from any disputed Claim or on any award to Contractor;</p> and	VPRA will not make the requested change.
158	CM/GC Contractor Agreement, Article 18.0 CSXT Project Activities	It is assumed that CSXT flagging cost for Phase 1 are reimbursed by VPRA and that the CM/GC Contractor shouldn't carry any cost for this in its Phase 1 price. Please confirm.	Correct, VPRA will directly pay for any flagging costs imposed by CSXT during the Phase 1 Services.
159	CM/GC Contractor Agreement, Exhibit A Definitions	<p>The Change in Law provision should include changes in or adoption of any new Federal, state or local law.</p> <p style="text-align: center;">Change in Law The adoption of or change in any Law of the Commonwealth after the Final Binding GMP</p>	VPRA will address this question in an addendum.

		<p>Proposal that materially impacts Contractor's costs or time to complete the Work. A "Change in Law" excludes includes:</p> <ul style="list-style-type: none"> (a) Any change in, or new, federal or Local Law; and (b) Any change in, or new, Law relating to Contractor's general business operations, including minimum wage, licensing and registration fees, income taxes, gross receipts taxes, property taxes, transaction privilege taxes, sales and use taxes, payroll-related taxes, and unemployment taxes. 	
160	CM/GC Contractor Agreement, Exhibit A Definitions	<p>Please delete references to "within the Project ROW" as set forth below. So long as the Force Majeure event "materially and adversely affects the Contractor's ability to meet its obligations under the Contractor Documents" (which is included in the definition) the Contractor should be entitled to seek relief.</p> <p>Force Majeure An unforeseeable event beyond the control of Contractor, not due to an act or omission of any Contractor-Related-Entity, that materially and adversely affects Contractor's ability to meet its obligations under the Contract Documents, to the extent that the event (or the effects of which event) could not have been avoided or prevented by due diligence and use of reasonable efforts by Contractor. Force Majeure shall include only the following events:</p> <ul style="list-style-type: none"> (a) war; (b) an act of terrorism, riot, insurrection, 	VPRA will address this question in an addendum.

		<p>civil commotion, or sabotage within the Project ROW;</p> <p>(c) national strikes that specifically caused disruption to the Project and are not specific to a Contractor-Related-Entity;</p> <p>(d) explosion caused by an explosive device that causes direct physical damages to the Project or the Project ROW;</p> <p>(e) flood, other than that caused by an Extreme Weather Event;</p> <p>(f) a fire, tornado, sinkhole, or landslide, in each case caused by natural events and causing direct physical damage within the Project ROW that impacts the Project;</p> <p>(g) a state of emergency (as declared by the Governor of Virginia or Mayor of Washington, D.C.) within the limits of the Project ROW other than an Extreme Weather Event, except one consisting of or arising out of traffic accidents;</p> <p>(h) one or more earthquakes with a moment magnitude greater than 5.0 (measured by the U.S. Geological Survey moment magnitude) with an epicenter within 100 miles of the northernmost point of the Project ROW, where such earthquake(s) cause direct physical damages to the temporary or permanent works of the Project; and</p> <p>(i) pandemic or epidemic, in each case to the extent that it results in a delay to the supply of Materials or the quarantine of workers located in the Commonwealth or Washington, D.C.</p>	
161	General Conditions, 3.3.6 Personnel Performing Professional Services	Persons providing professional services should assume professional responsibility	VPRA will not make the requested change.

		<p>only for the documents they prepare in accordance with the applicable standard of care. Please modify 3.6 as set forth below:</p> <p>3.6 Where applicable, Contractor shall ensure that the Work is performed by or under the supervision of Persons licensed to practice architecture, engineering or surveying (as applicable) in the Commonwealth. Contractor's Work shall be performed by personnel who are: (1) competent, skilled, and experienced in their respective trades or professions, (2) professionally qualified to perform the Work in accordance with the Contract Documents, and (3) able and willing to assume professional responsibility for the accuracy and completeness of the any documents that they prepare or check in accordance with the applicable standard of care.</p>	
162	General Conditions, 4.1.1 Project Warranties	<p>Please remove the warranty set forth in subsection (d) from Section 4.1.1. The Contractor expressly warrants that the Work meets the requirements of the Contract Documents.</p> <p>4.1.1 Contractor warrants that:</p> <ul style="list-style-type: none"> (a) the Project shall be free of defects in Materials and workmanship; (b) Materials and Equipment furnished under the Contract Documents shall be of good quality and be new when installed; (c) the Work shall meet all of the requirements of the Contract Documents; and (d) the Project shall be fit for use for the intended function. 	VPRA will make this change in an addendum.

163	General Conditions, 4.1.5	<p>Please provide finality to the warranty period for Corrected Work to avoid an evergreen warranty.</p> <p>The Warranties will apply to all Work redone, repaired, corrected or replaced. The Warranties as to each redone, repaired, corrected or replaced element of the Work shall extend for the longer of:</p> <p>(a) the remaining Warranty period; or</p> <p>(b) one year after completion of the Warranty Work. In no event shall the Warranty period for all Corrected Work extend beyond one (1) year following Final Completion.</p>	VPRA will address this question in an addendum.
164	General Conditions 6.5.1, Nonconforming work	<p>Please add the following language to the end of section 6.5.1, to clarify that VPRA does not have <u>sole</u> discretion to determine whether work is Nonconforming Work.</p> <p>“For purposes of clarity, VPRA’s sole discretion applies to the decision of whether to reject or accept Nonconforming Work. VPRA does not possess the sole discretion over whether Work constitutes Nonconforming Work.”</p>	VPRA will make the requested change in an addendum.
165	General Conditions 9.1, Performance and Payment Bond	Please clarify whether VPRA will require a separate P&P Bond for each Early Work Package, and a separate P&P Bond for the Phase 2 Services.	VPRA will clarify this in an addendum; see also response to Question No. 154.
166	General Conditions, 12.5 Limitations on Payment	<p>Whether the Design-Builder’s progress is “satisfactory” to VPRA is subjective. VPRA’s ability to withhold retainage should be tied to something that can be objectively measured, like compliance with the current approved schedule.</p> <p>12.5.2 VPRA may withhold retainage if VPRA determines that Contractor’s progress is unsatisfactory (i.e., not in accordance with the</p>	VPRA will not make the requested change.

		<p>Baseline Schedule, unless such non-compliance is the subject of a pending Change Notice).</p> <p>VPRA may in its sole discretion withhold up to five percent (5%) retainage of the monthly payment for each month that Contractor's actual progress is determined to be not in accordance with the Baseline Schedule unsatisfactory. If and when VPRA determines that Contractor's progress has achieved compliance with the Baseline Schedule, the five percent (5%) retainage previously withheld because of unsatisfactory progress non-compliance with the Baseline Schedule will be released in Contractor's next monthly payment, and the remaining monthly payments will not be subject to retainage provided that Contractor's progress continues to be satisfactory in compliance with the Baseline Schedule. <u>The foregoing right of VPRA to withhold retainage applies solely to the Phase 2 Services and Early Work and shall not apply to the Phase 1 Services.</u></p>	
167	General Conditions, 14.2.2 Unilateral Change Orders	<p>VPRA's right to issue Unilateral Change Order "at any time" VPRA has not issued a Request for Change Order is too broad. The language proposed below also confirms that if Design-Builder disagrees with the compensation or time included in the Unilateral Change Order, such disagreement is subject to the dispute resolution provisions.</p> <p>12.2.2 Unilateral Change Orders: VPRA may unilaterally issue a Change Order when VPRA and Design- Builder cannot agree upon the scope, cost, or time estimation of a proposed change, alteration or other modification, or where due to issues of emergency, safety, environmental damage, or other similar critical</p>	VPRA will address this question in an addendum.

		<p>factors VPRA must act quickly and unilaterally to effect the change. At any time if VPRA has not issued a Request for Change Proposal ("Unilateral Change Order"). Design-Builder's approval of a Unilateral Change Order shall not be required and Design-Builder shall implement all changes contained within a Unilateral Change Order promptly or by such time as specified therein. The issuance of a Unilateral Change Order by VPRA shall in no way invalidate or relinquish the Contractors rights under Article 18. Further, notwithstanding anything to the contrary in the Contract, when the cumulative amount of Unilateral Change Orders for which VPRA and Contractor have not reached agreement regarding a change in Contract Price exceeds \$3,500,000.00 (Three Million Dollars and No Cents), VPRA shall make Progress Payments to Contractor in the amount of 50% of the cumulative, disputed amounts tracked in accordance with this Section 12 for each Progress Payment period until such time as the dispute is resolved in accordance with this Agreement. This provision is intended to encourage VPRA and Contractor to reach a timely resolution of all disputes concerning changes in the Contract Price.</p> <p>Additive Unilateral Change Orders must state that Design-Builder shall be entitled to compensation for the corresponding Extra Work. A deductive Unilateral Change Order may contain a price deduction deemed appropriate by VPRA.</p>	
168	General Conditions, 14.3.4 Prompt Delivery of Change Notice Required	<p>Please add the following to this provision: A Change Notice will be deemed delivered only if it fully conforms to the requirements of <u>Section 14.3.5 of these General Terms and Conditions.</u> VPRA will acknowledge in writing receipt of</p>	VPRA will not make the requested change.

		each Change Notice within seven (7) Working Days.	
169	General Conditions, 14.3.5 Contents of a Change Notice	<p>Please adjust the language in the first sentence to the following:</p> <p>The Change Notice shall include, to the maximum extent of the information then available:</p>	VPRA will not make the requested change.
170	General Conditions, 14.4.1 Contents of a Change Notice	<p>The provision on requirements for Contents of a Request for Change Order should be adjusted to account for new information received by Contractor beyond the time period required to submit the RCO. Please adjust the language as follows:</p> <p>12.4.1 Each Request for Change Order shall contain the following information to the maximum extent then available:</p> <p>....</p> <p>(e) a detailed, itemized estimate of all amounts claimed for Extra Work Costs and Delay Costs to the extent such amounts are eligible for compensation under this <u>Article 14 of these General Terms and Conditions</u> for the Relief Event in question, subject to the following requirements:</p> <p>(i) all such amounts shall be broken down in terms of the eligible costs for labor (including hourly wage rates, fringe benefits rates, and audited burden), Materials, Equipment, third party</p>	VPRA will not make the requested change.

		<p>fees and charges, extra insurance, and performance and payment security (e.g., bonds and letters of credit), as applicable, and other costs, including expenses and profit, and any other cost category or categories VPRA specifies; and</p> <p>(ii) Contractor shall provide copies of invoices or other proof of payment documentation of incurred or potential future costs for Equipment or Materials, and for Equipment, shall provide evidence of the applicable rental rate or cost of Equipment in accordance with <u>Exhibit J of the Contract</u>;</p> <p>...</p> <p>(j) Contractor Representation: Each Request for Change Order must contain a sworn certification by Contractor certifying that the amount of the Completion Deadline or Contract Price adjustment requested is based on all known information available as of Contractor's submission of the RCO, subject to Contractor's obligation to update VPRA in accordance with 14.4.2 and 14.4.4 includes all known and anticipated impacts or amounts that may be incurred as a result of the event of matter giving rise to the Relief Event and also certifying that Contractor has no reason to believe and does not believe based on information then available</p>	
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		that the factual basis for the Request for Change Order is falsely represented.	
171	General Conditions, 14.8.4 Limitations on Delay Costs	<p>Delay Costs are defined to include those costs due to a “delay in the Critical Path caused by a Relief Event.” Contractor should be entitled to recover costs incurred due to acts or omissions by VPRA that cause disruptions or inefficiencies in the Work, but may not otherwise delay the Critical Path.</p> <p>Except for Acceleration Costs authorized by VPRA in accordance with <u>Section 14.4.3 of these General Terms and Conditions</u>, Delay Costs shall be limited to only those costs specified in <u>Exhibit J of the Contract</u>. Other than Delay Costs specified in <u>Exhibit J of the Contract</u>, Contractor shall not be entitled to any other costs, damages, or otherwise attributable to the delays, disruption, inefficiencies, or any other claim of a similar nature due to a delay to the Critical Path caused by a Relief Event. Further, except a otherwise provided by the Contract Documents, in no event shall Contractor submit or be entitled to payment based on any of the following, including: Eichleay formula, the total cost method, original Contract period formula, burden fluctuation method, comparative absorption rates, and other similar or related methods. Regardless of the basis asserted, Contractor shall not recover and is not entitled to recover the following categories of damage:....</p>	The limitations in Section 14.8.4 of the General Terms and Conditions apply only to Delay Costs; that is, additional costs arising from a compensable delay to the Critical Path. The limitations in Section 14.8.4 do not apply to costs in the nature of Extra Work Costs. VPRA will clarify this in an addendum.
172	General Conditions, 14.8.5 Additional Limitations on Completion Deadline Adjustments and Delay Costs	<p>Please modify sub-section (b) as follows: (b)the Relief Event that is the subject of the requested Change Order has not caused or will not result in an identifiable and measurable disruption of the Work that impacted delay of an</p>	VPRA will make the requested change in an addendum.

		activity on the Critical Path activity;	
173	General Conditions, 14.12.1 VPRA-Directed Change	<p>VPRA-Caused Delay includes VPRA-Directed Change. Please modify this paragraph to make clear that if a VPRA-Directed Change delays the Critical Path, then Contractor may seek schedule-related relief.</p> <p>14.12.1 A VPRA-Directed Change shall only be eligible for Extra Work Costs. A VPRA-Directed Change shall not also be eligible for Delay Costs or an adjustment of a Completion Deadline if a VPRA-Directed Change delays the Critical Path. Notwithstanding the foregoing, Contractor may seek schedule-related relief for a VPRA-Caused Delay in accordance with <u>Section 14.12.9 of these General Terms and Conditions</u>.</p>	VPRA will address this question in an addendum.
174	General Conditions, 14.12.7.2 Discovery of Unknown Preexisting Contaminated Materials	<p>VPRA should be responsible for all pre-existing Contaminated Materials, unless those Contaminated Materials were disclosed to Contractor in information furnished by VPRA to Contractor prior to the Final Binding GMP Proposal.</p> <p>Contractor shall not be entitled to a Relief Event for the Discovery of Unknown Preexisting Contaminated Materials (Relief Event (h) of the definition thereof) arising from the discovery of Contaminated Materials that were identified in the Reference Documents or other information furnished by VPRA to Contractor prior to the Final Binding GMP Proposal, or where the presence of such Contaminated Materials was discovered or should have been discovered through an investigation of the Site performed by Contractor</p>	VPRA will address this question in an addendum.

		prior to the Final Binding GMP Proposal .	
175	General Conditions, 14.12.8 Relief Events (i) and (j)	<p>Please adjust this paragraph as follows: Contractor shall not be entitled to relief under Relief Events (i) and (j) in the definition thereof to the extent that the archeological, paleontological, cultural, or biological resources, or the threatened or endangered species, were identified in the Reference Documents or other information furnished by VPRA to Contractor prior to the Final Binding GMP Proposal, or where the presence of such archeological, paleontological, cultural, or biological resources was discovered or should have been discovered through an investigation of the Site performed by Contractor prior to the Final Binding GMP Proposal.</p>	VPRA will not make the requested change.
176	General Conditions, 14.14 Matters Not Eligible for Change Orders	<p>Please delete subsections (a), (i), and (j). Contractor acknowledges and agrees that no increase in the Contract Price or adjustment of a Completion Deadline is available except in circumstances expressly provided for in the Contract and, that such Contract Price and Completion Deadline adjustments shall be available only as provided in this Article 14 of these General Terms and Conditions, and that Contractor shall bear full responsibility for the consequences of all other events and circumstances. Matters that are Contractor's exclusive responsibility include the following: (e) errors in the Construction Documents (including errors directly attributable to errors in the Reference Documents); ... </p>	See response to Question No. 48.

		<p>(i) all other events beyond the control of VPRA for which VPRA has not agreed to assume liability hereunder, and</p> <p>(j) any situations (other than Force Majeure events) which, while not within one of the categories delineated above, were or should have been anticipated because such situations are referred to elsewhere in the Contract Documents or arise out of the nature of the Work</p>	
177	General Conditions 19.2.2, Generator Number for Contaminated Materials	<p>Please modify this paragraph as follows:</p> <p>VPRA assumes generator status for any and all Contaminated Materials encountered on the Site whether or not identified in the Contract Documents, provided the Contaminated Materials were not negligently introduced, produced, or released by the Contractor. VPRA, as Owner, shall sign all transportation manifests as generator for any Contaminated Materials that were not generated by Contractor. Except for Contaminated Materials for which generated by Contractor is responsible:</p> <p>(a) Contractor shall not be required to execute any hazardous materials manifests as a “generator”; and</p> <p>(b) Contaminated Materials encountered in the performance of the Work shall be disposed of, if at all, utilizing an EPA identification number or other appropriate legal device obtained by, and carried in the name of, VPRA or another Person designated by VPRA.</p>	VPRA will not make the requested change.
178	General Conditions	Please modify section 14.16.2 as follows:	VPRA will make this change in an addendum.

	<p>14.16.2 No Change Order Based on Course of Conduct or Order by Unauthorized Person</p>	<p>No course of conduct or dealings between the Parties nor express or implied Acceptance of alterations or additions to the Work, and no claim that VPRA has been unjustly enriched shall be the basis for any Claim, request for additional compensation or adjustment of a Completion Deadline. Further, Contractor shall undertake, at its risk, work included in any request, order or other authorization issued by a Person in excess of that Person's authority as provided herein, or included in any oral request. Contractor shall be deemed to have performed such work as a volunteer and at its sole cost. In addition, VPRA may require Contractor to remove or otherwise undo any such work at Contractor's sole cost without the right to an adjustment of the Contract Price or a Completion Deadline.</p>	
<p>179</p>	<p>General Conditions 19.1 General Indemnification of Virginia Indemnitees</p>	<p>The Contractor should not be required to indemnify the Owner for any damages caused by anyone for whom the Contractor is not responsible.</p> <p>19.1.1 Contractor shall indemnify, defend, and hold harmless the Commonwealth of Virginia and VPRA together with their officers, agents, and employees (collectively, the "Virginia Indemnitees") from and against all third-party claims, losses, damages, liabilities, including reasonable attorneys' fees, costs, and expenses, asserted against a Virginia Indemnitee, but only to the extent caused by the negligent acts or omissions of the Contractor, Subcontractors, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. and arising from Contractor's performance of, or</p>	<p>See response to Question No. 54.</p>

		<p>the failure to perform, the Work.</p> <p>Contractor's indemnity obligations under <u>Section 19.1.1 of these General Terms and Conditions</u> will not extend to any loss, damage, or cost only to the extent that such loss, damage or cost was caused by the negligence or willful misconduct of a Virginia Indemnitee, <i>however</i>, Contractor's indemnity obligations under <u>Section 19.1.3 of these General Terms and Conditions</u> will be in accordance with <u>Exhibit F of the Contract</u> and will not be limited by this <u>Section 19.1.2 of these General Terms and Conditions</u>.</p>	
180	General Conditions 20.5 Litigation of Unresolved Disputes	<p>Please extend the time frames for consolidating litigation.</p> <p>20.5 The Parties waive any defense predicated on the expiration of the statute of limitations applicable to a Dispute, provided that all Unresolved Disputes are consolidated into a single litigation that is commenced within the later of: (i) 60 120 Days after Final Acceptance or (ii) 30 60 Days after the Neutral has issued a Recommendation on all Disputes submitted to the Neutral. Any Disputes not included in the single action shall be deemed forever and irrevocably waived, abandoned, and barred and no recovery shall be permitted for the actions, omissions or circumstances comprising such waived Disputes.</p>	VPRA will make the requested change in an addendum.
181	General Conditions 23.3.5 Claims Examinations	<p>Please modify (t) as follows:</p> <p>(t) Non-privileged Work sheets used to prepare the Claim establishing the cost components for items of the Claim including labor, benefits and insurance, Materials, Equipment, Subcontractors,</p>	VPRA will make the requested change in an addendum.

		all documents that establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals; and	
182	21.1.2 Right to Cure	<p>Please modify the last sentence of subparagraph (a) to allow for an extension of the cure period beyond sixty (60) days if Contractor is otherwise commencing and satisfactorily continuing to cure the alleged default.</p> <p>...If a breach for which a thirty (30)-Day cure period is provided is curable but by its nature cannot be cured within thirty (30) Days, as determined by VPRA, VPRA will not declare an Event of Default if Contractor commences the cure within the thirty (30)-Day cure period and thereafter diligently prosecutes the cure to completion. No cure period may exceed sixty (60) Days in total, unless the cure cannot be completed in sixty (60) days and Contractor is continuing to diligently prosecute the cure to completion.</p>	VPRA will address this question in an addendum with respect to the overall maximum of 60 days for a cure period.

183	Exhibit D, Section A5 & Section B5	<p>Please strike the language in both Section A5 and B5 of Exhibit D as the request is too broad.</p> <p>5 Cyber Liability Insurance with limits not less than \$2,000,000 per claim. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in the Contract including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties, and credit monitoring expenses with limits sufficient to respond to these obligations. VPRA, the Commonwealth, Amtrak, and CSXT shall be additional insureds with regard to any third-party claims.</p>	VPRA will not make the requested change.
184	Exhibit B TR-TS-01 to TR-TS-12	<p>Would VPRA consider the use of Direct Fixation (DF) track within the flyover (pergola) crossing range, instead of ballasted track? DF track imposes less dead loads on the underlain substructure/foundation, which lead to cost and schedule savings.</p> <p>Reason for withholding from disclosure: Potential design improvement/ATC that should remain confidential to our team. This is a potential cost and schedule savings.</p>	VPRA does not anticipate significant cost and schedule savings and has concerns about long-term maintenance costs if Direct Fixation were implemented on this structure. Therefore, VPRA is unlikely to consider the use of Direct Fixation track unless a strong argument were to be presented.