



FRANCONIA-SPRINGFIELD BYPASS

CONSTRUCTION MANAGER/ GENERAL CONTRACTOR

REQUEST FOR PROPOSALS

Addendum 2

RFP No.: 01-007-23-0001

~~August 4~~ September 1, 2023

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Exhibits

- A: Railroad Operator Indemnification Provisions
- B: Project Information
- C: Phase 1 Services Scope of Work
- D: Insurance Requirements
- E: Performance and Payment Bonds
- F: Contract Template
- G: Forms

Form ID	Form
A	Proposal Bond
B	Acknowledgement of Receipt of RFP, Addenda, and Responses to Questions
C	Proposer's Organization Information
D	Legal and Disputes History
E	Principal Participant Certification
F	Conflict of Interest Disclosure
G	Safety Questionnaire
H	Record of Small Business Participation
I	Project Experience Description
J	Key Personnel
K	Subcontractor Information
L	Small Business Subcontracting Plan (VPRA Procurement Form PD 60)
M	Affidavit of Non-Collusion
N	Lobbying Certificate
O	Proposer's Clarification Request
P	Proprietary/Confidential Information Identification
Q	Buy America Certification/FRA (VPRA Procurement Form PD 32)
R	Build America, Buy America Certification (VPRA Procurement Form PD 33)
S	Proof of Authority to Transact Business in Virginia (VPRA Procurement Form PD 44)
T	Price Proposal (Phase 1 Price Component)
U	Price Proposal (Construction Cost Markup)
<u>V</u>	<u>Exceptions to RFP Documents</u> <u>(VPRA Procurement Form PD 20)</u>

Appendix

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

1. INTRODUCTION

VPRA is issuing this RFP to obtain Proposals from Proposers interested in serving as the CM/GC Contractor for the Project. This will be a single-step procurement in which interested firms will submit Proposals detailing the firm's relevant project experience and Key Personnel, as well as their approach to the Project, quality management, pricing, and small business utilization. Each Proposer must also provide a Price Proposal.

Proposals must meet all requirements established by this RFP. Requirements of this RFP generally will use the words "shall", "will", or "must" (or equivalent terms) to identify a required item that must be submitted with the Proposal. Failure to meet an RFP requirement may render a Proposal non-responsive. The extent to which a Proposer meets or exceeds evaluation criteria will be rated by the Evaluation Team (in its sole discretion) and be reflective of the Evaluation Team's consensus scoring of Proposals. Award of the Contract will be made to the Proposer which has made the best Proposal and provides the Best Value (price being considered but not determinative).

Unless otherwise defined herein, acronyms and capitalized terms shall have the meanings set forth in Appendix 1.

1.1. Project Information

Included within VPRA's Transforming Rail in Virginia program, and a key component of the Phase 1, I-95 project group, the Project consists of 1.4-miles of infrastructure improvements within the Richmond, Fredericksburg, and Potomac ("RF&P") corridor. The primary feature of this Project is a new, approximately 0.6-mile-long two-track rail flyover bypass bridge over the CSXT mainline tracks. The bypass bridge and other Project deliverables will greatly enhance the movement of passenger trains crossing over the two existing CSXT mainline freight tracks between the west side of the corridor north of the new flyover bridge and the east side of the corridor south of the new bridge without delay to trains on any of the tracks at this location.

The Project limits are as follows:

- (a) Northern terminus (CFP 97.6): south end of VRE Franconia-Springfield Station
- (b) Southern terminus (CFP 96.2): approximately 0.5-mile north of Newington Road

A map of the Project area and the flyover bridge is shown below:



The Project consists of the following major scope items:

- (a) Construction of a flyover rail bridge.
- (b) 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.
- (c) Construction of grading and drainage improvements to accommodate the third track.
- (d) Construction of approach embankments and both cut and fill retaining walls as required to minimize impacts to adjacent property owners and environmental impacts.
- (e) Utility relocations necessary to accommodate the Work. Major utility adjustments include the Plantation Pipeline, which runs longitudinally along the track alignment, as well as several telecom and sewer crossings transverse to the Project alignment. Utility relocations are currently being led by CSXT through existing agreements with utility owners. VPRA may opt to take over this responsibility to meet the Project schedule.
- (f) Installation of signal/communication systems (led by CSXT under the Franconia to Lorton Third Track project)

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. Phasing and coordination with

the adjacent Franconia to Lorton Third Track project, which will likely be constructed simultaneously with the Bypass Project, will be key to successful project delivery. Constructability will be a key challenge and the potential focus of innovation from the successful CM/GC Contractor. Limitations on the timing and means and methods of construction must be considered by the CM/GC Contractor and incorporated into the development of the Project schedule and price.

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. CSXT and Amtrak will participate in the design review process and have approval authority over certain aspects of the Design. It is anticipated that these stakeholders (and applicable governmental bodies) may also be involved in the approval of the Work. As part of VPRA's delivery of the Project, VPRA is obligated to provide certain indemnifications to CSXT and Amtrak that will be passed-through to the CM/GC Contractor. These indemnification obligations are attached as Exhibit A and are non-negotiable terms to the Contract.

This Project received an approved Categorical Exclusion from the Federal Highway Administration on April 13, 2021 and was subsequently adopted by the FRA on April 19, 2021. The environmental documents are available for review here:

[Franconia-Third-Track-CE-Final-Documents-with-Attachments.pdf \(vapassengerrailauthority.org\)](#)

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

1.2. Project Goals

VPRA's goals for this Project are as follows:

- (a) substantial completion of the Project by the end of calendar year 2026;
- (b) managing costs and completing the Project within budget;
- (c) maximizing the innovation potential and collaboration of the CM/GC delivery method;
- (d) safe construction of the Project, including ensuring worker safety and the safety of the traveling public;
- (e) maintaining continuous rail traffic at all times except during pre-approved outage windows;
- (f) effective collaboration, communication, and partnership with all members of the Project Team and Project stakeholders during design and construction;
- (g) minimizing the impacts of construction to the public, stakeholders, AHJ's, and governmental agencies;
- (h) maximizing community engagement and the use of DSBSD certified small businesses; and
- (i) enhanced availability of passenger rail services within the Commonwealth, particularly within the heavily traveled I-95 corridor.

1.3. Project Team and Responsibilities

The Project Team as referenced herein is comprised of VPRA, the Design Consultant, and the CM/GC Contractor. VPRA will retain an ICE through a separate procurement process. The CM/GC Contractor will collaborate with the other members of the Project Team throughout the design phase of the Project.

1.3.1. VPRA

VPRA will administer and manage the Project. VPRA's Project Manager will be the point of contact and the lead for VPRA's responsibilities. The Project Manager will guide design decisions while overseeing the collaborative process among the Project Team.

1.3.2. Design Consultant

VPRA has engaged Parsons Transportation Group, Inc. for the Project's Design and to serve as the Design Consultant. As part of the CM/GC process, the CM/GC Contractor is expected to work collaboratively with VPRA and the Design Consultant to optimize the Design and explore design options. The intent is to streamline the project delivery and to reduce risk and cost by incorporating the CM/GC Contractor's input into the design process.

1.3.3. Independent Cost Estimator

VPRA will retain an ICE who will provide comparative price estimates as the Design advances. The ICE will use existing market conditions for the cost estimates. The Binding GMP Proposals by the CM/GC Contractor will be evaluated against the contemporaneous estimate prepared by the ICE.

1.4. Construction Manager/General Contractor Process

1.4.1. CM/GC Delivery

VPRA will deliver the Project using the CM/GC delivery method, which will be as follows:

Phase 1 Services (Preconstruction)

VPRA will select the CM/GC Contractor through this RFP. Following execution of the Contract and VPRA's issuance of Notice to Proceed, the CM/GC Contractor will perform the Phase 1 Services. The Phase 1 Services consist of the services identified in Exhibit C, and primarily include constructability reviews; proposed construction staging; input on maintenance of traffic options, estimating, scheduling and phasing; review of the Design for cost, risk and innovation; and other related services. The CM/GC Contractor's input during the Design process is used to supplement, but not replace or duplicate, the engineering services performed by the Design Consultant.

The CM/GC Contractor will perform ongoing estimates of the price to construct the Project. As the Design is progressed from 60% to approximately 90%, the CM/GC Contractor will submit a Binding GMP Proposal containing a proposed GMP to construct the Project. The CM/GC Contractor and VPRA will then negotiate a GMP for the Construction Work. During these negotiations, the CM/GC Contractor may revise and resubmit the Binding GMP Proposal based on the negotiations with VPRA, including input from the ICE.

If VPRA accepts a Binding GMP Proposal, VPRA will award the Construction Work to the CM/GC Contractor. If VPRA and CM/GC Contractor fail to negotiate a GMP, VPRA may terminate the CM/GC Contractor and procure the Construction Work by another procurement method. If VPRA terminates the CM/GC Contractor, VPRA will own all Work Product produced by the CM/GC

Contractor as part of the Phase 1 Services. Additionally, if VPRA terminates, the CM/GC Contractor and its Principal Participants will be ineligible to bid as a prime or subcontractor in any subsequent procurement for the Project's Construction Work.

Phase 2 Services (Construction)

If VPRA and the CM/GC Contractor agree on a GMP and baseline Construction Schedule for the Construction Work, VPRA will execute a Phase 2 Amendment that adds the Construction Work to the CM/GC Contractor's scope of work. The price to perform the Phase 2 Services will be the agreed-upon GMP. The CM/GC Contractor will perform the Phase 2 Services in accordance with the final design prepared by the Design Consultant.

1.4.2. GMP Negotiations

The GMP Negotiations are a critical component of the Phase 1 Services. The CM/GC Contractor will submit an OPCC within 90 days of commencing the Phase 1 Services based primarily on the 30% design provided by VPRA. The OPCC is a non-binding estimate that will aid VPRA and the CM/GC Contractor in evaluating design parameters and, as needed, to clarify the final scope of construction. Thereafter, following the resolution of comments (including comments from CSXT, Amtrak, and other stakeholders) on the Design Consultant's 60% design submittal, the CM/GC Contractor will prepare a Construction Cost Estimates with the goal of submitting an initial Binding GMP Proposal with or before the 90% Design. The CM/GC Contractor will have flexibility to determine the optimal timing of the first Binding GMP Proposal, provided that it is submitted no later than the 90% Design milestone.

VPRA will use an ICE to prepare independent cost estimates of the Construction Work to assist VPRA with the evaluation of whether to accept the CM/GC Contractor's Binding GMP Proposal. The CM/GC Contractor, ICE, and VPRA will participate in workshops to reconcile differences between the CM/GC Contractor's Binding GMP Proposal and the ICE's estimate. To facilitate reconciliation, the CM/GC Contractor shall provide all cost estimates to perform the Construction Work on an Open Book basis, which entails providing all assumptions and substantiation to build the Construction Cost Estimates. The CM/GC Contractor shall work collaboratively with VPRA to reconcile price differences and to ensure that VPRA is receiving a fair and reasonable price for the Construction Work.

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

1.4.3. Self-Performance Requirements and Limitations

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 with its own employees and forces. For any self-performed work in excess of 50%, the CM/GC Contractor must participate in the competitive bidding process. 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. As part of the Phase 1 Services, the CM/GC Contractor

will prepare a Subcontracting Plan for VPRA's approval that sets forth the competitive bidding process.

For purposes of calculating the value of the self-performed work, the direct cost of permanent materials (those that are incorporated into the Work) will be excluded. All other costs to perform the Construction Work are included in calculating the value of self-performed work, including markup and construction costs not allocable to specific activities (i.e., general conditions costs, field indirect costs, etc.).

1.4.4. Early Work Packages

During performance of the Phase 1 Services, the CM/GC Contractor may identify Early Work packages, which are discrete packages of construction that can be performed separately from the entirety of the Phase 2 Services. If the CM/GC Contractor identifies potential Early Work, VPRA and the CM/GC Contractor may negotiate the terms and conditions for the CM/GC Contractor to perform the Early Work. VPRA's approval of an Early Work package does not prejudice VPRA's right to terminate the CM/GC Contractor prior to the execution of a Phase 2 Amendment.

For each Early Work package, VPRA and the CM/GC Contractor shall enter into an Early Work Amendment in a mutually acceptable format executed by both VPRA and CM/GC Contractor and which (a) describes the Work to be performed thereunder, (b) establishes at VPRA's direction, pricing on a time and materials, fixed price or unit price basis for that portion of the Work, and (c) establishes a substantial completion date for that portion of the Work.

1.4.5. Contract Template

A copy of the Contract template is attached hereto as Exhibit F.

1.4.6. Shared Cost Saving

Contractor and VPRA will share any cost savings realized where the total construction cost of the Project is less than the Guaranteed Maximum Price. Such cost savings shall be shared 50:50 between the Contractor and VPRA.

1.5. Single Point of Contact

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

John Kostyniuk, VPRA Procurement
919 E. Main Street, Suite 2400
Richmond, VA 23219
(804) 339-2604
procurement@vpra.virginia.gov

All communications regarding the procurement shall be directed to the Point of Contact. Only written communications received from the Point of Contact may be relied on throughout this procurement. VPRA is not responsible for or bound by oral communications or other communications that occur outside the communications protocol established by this RFP.

1.6. Rules of Contact

As of the date of issuance of this RFP, no Proposer shall contact any employee or representative of VPRA concerning this RFP or the Project, except for the Point of Contact as specifically

permitted in this RFP. This prohibition does not apply to discussions with VPRA not related to this RFP or the Project.

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

- (a) Kimley-Horn and Associates, Inc.;
- (b) Mott MacDonald, Inc.;
- (c) Parsons Corporation;
- (d) WSP USA Inc.;
- (e) Schnabel Engineering, Inc.;
- (f) Alvi Associates, Inc.;
- (g) O.R. Colan Associates, LLC;
- (h) PRR, Inc.;
- (i) Michael Baker International;
- (j) Patrick Engineering Inc.;
- (k) Alfred Benesch & Co.;
- (l) RailPros;
- (m) Geosyntec Consultants, Inc.; and
- (n) Interrail Engineering.

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

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

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

whether a potential Subcontractor is participating with another Proposer and whether such potential Subcontractor may be participating with more than one Proposer.

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

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

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

1.7. Conflict of Interest

VPRA's procurement of the Project is governed by VPRA's Organizational Conflict of Interest Policy (the "OCI Policy"), available at: https://vapassengerrailauthority.org/wp-content/uploads/2022/09/VPRA-Organizational-Conflict-of-Interest-Policy_Executed-FINAL_Effective-08_24_2022_V1.pdf. Prior to submission of a Proposal, a Proposer may request that VPRA determine whether a specific conflict of interest exists by following the process in OCI Policy. Such requests must be sent electronically to procurement@vpra.virginia.gov.

Proposers are required to provide information concerning potential organizational conflicts of interest in their Proposals (or prior to submittal as noted above). Proposers must state how their interests, or those of their Principal Participants, Affiliates, chief executives, directors, Key Personnel, or any proposed consultant, contractor or Subcontractor may result, or could be viewed as, an organizational conflict of interest. The information shall be submitted on **Form F**.

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

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

1.7.1. Ineligible Firms

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

- (a) Kimley-Horn and Associates, Inc.;
- (b) Michael Baker International;
- (c) Mott MacDonald, Inc.;
- (d) Alfred Benesch & Co.;

- (e) WSP USA Inc.;
- (f) Parsons Corporation;
- (g) Schnabel Engineering, Inc.;
- (h) Alvi Associates, Inc.;
- (i) O.R. Colan Associates, LLC;
- (j) PRR, Inc.;
- (k) Patrick Engineering Inc.;
- (l) RailPros;
- (m) Geosyntec Consultants, Inc.; and
- (n) Interrail Engineering.

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

1.8. Legal Authority

VPRA is conducting this procurement in accordance with the Procurement Rules adopted by VPRA pursuant to Va. Code § 33.2-299.1 and intends to execute the ensuing agreements pursuant to its powers granted under Va. Code § 33.2-292. This procurement is not subject to the Virginia Public Procurement Act (Va. Code § 2.2-4300 *et seq.*) or any of its companion acts (e.g., Chapter 43.1 of Title 2 of the Code of Virginia, “Construction Management and Design-Build Contracting”).

1.9. Federal Funding and Requirements

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

1.10. Small and Diverse Business Participation

It is the policy of VPRA that firms certified as a small business by the DSBSD have an equal opportunity to participate in the Project. Proposers must ensure that DSBSD certified small businesses have a meaningful chance to compete for and perform Work on the Contract and should take all necessary and reasonable steps for this assurance. Wherever feasible, the CM/GC Contractor should seek to maximize the use of certified small businesses for as much of the Work as possible throughout the lifetime of the Project. This includes utilization of firms certified as small and any subcategory of small, small women-owned, small minority-owned, small

micro or small service-disabled veteran-owned businesses. Instructions regarding small business submittal requirements are set forth in Section 4.9.

1.11. Proposer Composition

Principal Participants and Key Personnel identified in the Proposal may not be removed, replaced, or added after receipt of Proposals without written approval from VPRA. A written request from a Proposer to change Proposer's organization must document the proposed change, identify good cause for the change, and demonstrate that the change will be equal to or better than the Principal Participant or Key Personnel submitted in the Proposal. If Proposer requests to change a Principal Participant or Key Personnel prior to execution of the Contract, and VPRA approves the change, VPRA may re-assess the qualifications of the Proposer and determine whether the substitution affects the ranking of Proposers.

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

Additionally, VPRA may disqualify a Proposer if any of its Principal Participants belongs to more than one Proposer organization, or if any Affiliate of Proposer or any of its Principal Participants is a member of another Proposer organization.

1.12. Licensing Requirements

The CM/GC Contractor shall possess all necessary certificates or licenses to perform the Work. It is incumbent upon each Proposer to investigate all applicable licensure requirements and possess such qualifications as may be required for the performance of the Work. Failure to comply with applicable law with regard to any registration or licensure requirements, whether business, individual, or professional in nature may result in VPRA declining to execute, or terminating, any applicable contract resulting from this procurement.

Proposers shall be required to have all required licenses at the time of execution of the Contract and/or the Phase 2 Amendment, as applicable, and will be required to submit evidence that Key Personnel and other specified individuals have all required licenses as a pre-condition to execution of the Contract and/or Phase 2 Amendment.

1.13. Prevailing Wages

During the term of the Contract, CM/GC Contractor shall be responsible for paying the higher of the federal prevailing (*i.e.*, Davis-Bacon) wages or any other applicable prevailing wages.

1.14. Proposal Security

Each Proposer shall provide with its Proposal a Proposal Security equal to 5% of Proposer's Phase 1 Services Fee. Such Proposal Security shall be in the form of a certified or cashier's check made payable to the Virginia Passenger Rail Authority, or a surety bond issued by a surety authorized to conduct business in the Commonwealth and who is approved in Federal Circular 570 as published by the U.S. Treasury Department using the form provided in **Form A**, executed by the surety and Proposer. Proposer shall submit the Proposal Security with the Price Proposal.

Proposer pledges to enter into the Contract with VPRA on the terms stated in the RFP and will furnish the required bonds covering the faithful performance of the Work and payment of all obligations arising hereunder. Should the Proposer refuse to enter into the Contract or fail to furnish such bonds, the amount of the Proposal Security shall be forfeited to VPRA as liquidated damages, not as penalty.

VPRA will have the right to retain the Proposal Security of Proposers until the Contract has been executed or the specified time has elapsed so that Proposals may be withdrawn, or all Proposals have been rejected.

1.15. Safety, Job Quality, and Workforce Assurance

Proposers shall consider the use of a Project-specific workforce agreement if such agreement results in a safer, more efficient delivery of the Project. Such agreement would be between the successful CM/GC Contractor and one or more labor organizations, and would provide the following: (i) a guaranteed supply of qualified labor, (ii) a prohibition against strikes and lockouts (and similar labor disruptions), (iii) uniform procedures for resolving project-related disputes, and (iv) provisions governing worker safety. Any such agreement must conform to all applicable laws¹ and regulations; it may neither require nor prohibit workers to be union members or to pay union dues in order to work on the Project.

2. PROCUREMENT PROCESS

2.1. Procurement Schedule

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

Event	Date
Release Draft RFP	June 30, 2023
Industry Day	July 20, 2023 from 2:00pm – 3:00pm EST
Release RFP	August 4, 2023
Request for Clarifications Due	August 18, 2023 (by 2:00 PM EST)
Proposal Due Date	September 11, 2023 (by 2:00 PM EST)
Team Interviews (at the discretion of VPRA)	October 10, 2023
Announcement of Top Ranked Proposer/Issuance of Notice of Intent to Award	October 20, 2023

¹ Under Virginia law, among other laws, any such agreement must comply with Article 3 of Chapter 4 of Title 40.1 of the Code of Virginia (Denial or Abridgement of Right to Work) – colloquially called Virginia’s “right to work statute.”

Event	Date
Execution of Contract	November 2023
NTP for Phase 1 Services	November 2023
Start of Construction (other than Early Work)	2024
Substantial Completion of Construction	2026

2.2. Questions from Proposers

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

- (a) RFP Section Number or Form Number; and
- (b) Question.

Proposers submitting a question that contains proprietary or other confidential information may identify the question as confidential by submitting **Form P** with the question(s). VPRA will review questions marked confidential and if it concurs that the question contains confidential information, will not make the question or response public. If VPRA disagrees that the question contains confidential information, VPRA will notify the Proposer submitting the question and provide the option to withdraw the question, amend the question, or allow the question to remain submitted without confidentiality protection.

Only written inquiries by e-mail will be accepted. No oral requests for clarification or interpretation, whether in person or by telephone, will be accepted. The email subject line must contain "Franconia-Springfield Bypass RFP 1-007-23-0001 Request for Clarification."

Except for questions containing proprietary or confidential information, VPRA will post all questions received and VPRA's responses on the VPRA Website. Proposers will be required to affirm receipt of all responses to questions issued by VPRA using **Form B**.

2.3. RFP Addenda

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

2.4. Requests for Clarification

VPRA may, at any time, issue one or more requests for clarification to the individual Proposers, request additional information from a Proposer, or may request a Proposer to verify or certify any aspect of its Proposal. Any requests for clarification from VPRA shall be in writing to Proposer's Designated Contact. Proposers shall respond to any such requests within the time stated in the request from VPRA. Upon receipt of requested clarifications and additional information as

described above, if any, VPRA may re-evaluate the Proposals to factor in the clarifications and additional information.

2.5. Proposers Responsible for All Costs

Issuance of this RFP by VPRA in no way constitutes a commitment by VPRA to award a contract or to pay any costs incurred by a Proposer in the preparation of a response to this RFP. Proposers shall be responsible for all costs associated with participation in this procurement process, including preparation of Proposals, submission of questions, participation in public forums or other meetings established pursuant to the procurement process, and any other efforts or costs arising from or related to this procurement.

2.6. Correction of RFP Documents

Proposers shall not take advantage of any actual or potential error in the RFP documents. Proposers shall identify any potential errors in writing to the Point of Contact. If VPRA determines that the RFP contains an ambiguity, conflict, error, omission, or mistake, VPRA reserves the right to modify the RFP to correct the ambiguity, conflict, error, omission, or mistake.

2.7. Exceptions to RFP Documents

Prior to the due date for Proposals, Proposers have had the opportunity to request modifications to the RFP documents through questions submitted pursuant to Section 2.2. VPRA's published responses to Proposer questions, together with any RFP Addenda published by VPRA in accordance with Section 2.3, are intended to inform Proposers of VPRA's position on any such requested modifications.

In accordance with, *inter alia*, section 3.2.3.3 of the Procurement Rules, VPRA may conduct limited negotiations on specific terms and conditions with the Top Ranked Proposer after receipt and evaluation of Proposals if the Top Ranked Proposer has objected in writing to such specific terms and conditions proposed by VPRA in the RFP documents. Accordingly, Proposers seeking to list objections to any specific terms set forth within the RFP documents (inclusive of the form of CM/GC Contract and other Exhibits) must complete **Form V**, which is due at time of Proposal submittal. Terms and conditions required by any federal or state law, regulation, or ordinance are not subject to negotiation or waiver by VPRA.

3. PROPOSAL SUBMISSION INSTRUCTIONS

3.1. Proposal Deadline and Instructions

Proposals must be submitted to VPRA on or before **September 11, 2023 at 2:00 p.m. Eastern Time**. VPRA will not accept a late Proposal for any reason. Proposers shall submit their Proposal by e-mail to proposals@vpra.virginia.gov. VPRA will respond with a confirmation of receipt. All Proposals shall be submitted in searchable (i.e., not scanned) portable document format (.pdf). The file name for the Proposal shall be: [Proposer Name/_F-S Bypass Proposal **01-007-23-0001**/_Date]. Technical and Price Proposals may be submitted together as a single document. The file name for the financial statements shall be: [Proposer Name/_F-S Bypass Financial Statements/_Date].

VPRA's e-mail system can receive file sizes up to 150 MB. If a Proposer must submit multiple e-mails to accommodate file size limitations, the transmission e-mail shall state the number of e-mails that Proposer will send to complete the Proposal package. Additionally, each file shall state,

after the information required by the paragraph above, the file number out of the total number submitted (i.e., 1 of 2, 2 of 3, etc.).

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

3.2. Proposal Format

Each Proposer shall organize its Technical Proposal as stated in Section 4 and Price Proposal as stated in Section 5. The information that must be contained in each Tab, in addition to the page limit (if any) for each Tab or portion thereof, is further described in Sections 4 and 5. Note that the financial statements shall not be submitted in Tab 2 of the Technical Proposal with the other financial information, but shall instead be submitted in a separate .pdf file.

Text shall be in English in a standard font, a minimum of 11 points, single-spaced, except that graphics (including the organizational chart) may be no smaller than 10 point font. Pages shall be 8 ½-inch x 11-inch, with lettered/numbered dividers between each Tab. Graphic presentations may be submitted on 11-inch x 17-inch pages. Proposers shall be limited to a total of two (2) 11-inch x 17-inch pages for the entirety of the Proposal, each of which shall count as a single page. Pages must be numbered consecutively and include the Tab number in which the page is included (i.e., 1-1, 1-2; 2-1, 2-2, etc.).

The Proposal shall contain a table of contents before Tab 1. The table of contents shall include links to each tab that allow the user to toggle to each tab by clicking the link. The .pdf containing the financial statements does not require a table of contents.

3.3. Additional Requirements

Proposals shall be signed by an authorized representative of the Proposer. If the Proposer is a Joint Venture, partnership, or other form of consortium, the Proposal must be signed by authorized representatives of each Principal Participant. All signatures must be electronic.

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

4. TECHNICAL PROPOSAL

The Technical Proposal shall be organized as shown in the table below. The information required under each tab is described in further detail in this Section 4. Within each tab, the materials submitted shall be in the order stated in this table.

Tab Number	Content	Required Submissions/ Page Limits
1	Section 4.1: Cover Letter	<ul style="list-style-type: none"> • Cover letter (2 Pages) • Form B (Acknowledgement and Receipt of RFP, Addenda, and Responses to Questions)
2	Section 4.2: Legal, Financial, Safety, and Small Business information	<ul style="list-style-type: none"> • Form C (Proposer's Organization Information) • Organizational agreement or material terms • Form D (Legal and Disputes History) • Form E (Principal Participant Certification) • Form F (Conflict of Interest Disclosure) • Surety Letter • Material change disclosure • Form G (Safety Questionnaire) plus required documents • Form H (Record of Small Business Participation)
3	Section 4.3: Executive Summary	<ul style="list-style-type: none"> • 2 Pages
4	Section 4.4: Proposer Experience	<ul style="list-style-type: none"> • Form I (Project Experience Description) (3 pages per each project) • Narrative (2 pages)

Tab Number	Content	Required Submissions/ Page Limits
5	Section 4.5: Key Personnel and Organization	<ul style="list-style-type: none"> • Form J (Key Personnel) • Key Personnel resumes (2 pages each) • Form K (Subcontractor Information) • Subcontractor description (1 page) • Organizational Chart and description (2 pages)
6	Section 4.6: Approach to the Work	<ul style="list-style-type: none"> • Narrative (12 pages)
7	Section 4.7: Approach to Quality Management	<ul style="list-style-type: none"> • Narrative (4 pages)
8	Section 4.8: Approach to Price	<ul style="list-style-type: none"> • Narrative (3 pages)
<u>9</u>	Section 4.9: Comprehensive Small Business Utilization Approach	<ul style="list-style-type: none"> • Form L (Small Business Subcontracting Plan) • Narrative (2 pages)
<u>910</u>	Section 4.10: Additional Forms & Documents	<ul style="list-style-type: none"> • Form M (Affidavit of Non-Collusion) • Form N (Lobbying Certificate) • Form P (Proprietary / Confidential Information Designation), if needed • Form Q (Buy America Certification/FRA) • Form R (Build America, Buy America Certification) • <u>Form S (Proof of Authority to Transact Business in Virginia)</u> • <u>Form V (Exceptions to RFP Documents)</u>
Separate .pdf	Section 4.2: Financial	<ul style="list-style-type: none"> • Financial statements

4.1. Cover Letter and Form B

Proposer shall provide a cover letter stating its desire to be considered for the Project and stating the official names and roles of all Principal Participants. Proposers shall be comprised only of teams or organizations that are capable of constructing the Project in its entirety. Individual firms

or potential Subcontractors that are not capable of performing the entirety of the Work shall not be eligible to submit a Proposal.

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

In addition, Proposer shall submit **Form B**.

4.2. Legal, Financial, Safety, and Small Business Information

4.2.1. Legal Information

4.2.1.1. Legal Structure

- (a) Using **Form C**, identify Proposer's legal name, legal structure, and relevant state(s) of organization. Provide the legal structure and state of organization for each Principal Participant and the % of equity interest of each Principal Participant.
- (b) If Proposer is a Joint Venture, partnership, or other consortium, provide a copy of the agreement between the constituent entities. If such agreement has not yet been executed, provide a copy of the anticipated key terms of the agreement. The agreement or the key terms must include, at a minimum, the percentages of ownership of each constituent entity, roles of the various entities, a stated commitment to execute an agreement prior to submission of a Proposal, and the provisions concerning joint and several liability stated in part (c) below.
- (c) If the Proposer is a Joint Venture, partnership, or other consortium, each constituent entity of the Proposer must agree to be jointly and severally liable for the Proposer's obligations with respect to the Project.

4.2.1.2. Legal/Disputes History

- (a) Submit **Form D** for the Proposer, Principal Participants in accordance with the instructions on the Form.
- (b) Provide **Form E** for each Principal Participant.
- (c) Using **Form F**, provide the conflict of interest disclosure discussed in Section 1.7. If there is no conflict of interest, affirmatively state as such on Form F.

4.2.2. Financial Information

Submit the following information:

(a) Financial Statements

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

- (i) Opinion Letter (Auditor's Report);
- (ii) Balance Sheet;
- (iii) Income Statement;

- (iv) Statement of Changes in Cash Flow; and
- (v) Footnotes.

In addition, financial statements must meet the following requirements:

GAAP or IFRS Compliant

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

U.S. Dollars

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

Audited

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

English

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

SEC Filings

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

(b) Bonding Capacity and Eligibility

Provide a letter from a surety or insurance company stating that the Proposer is capable of obtaining performance and payment bonds in the amount of \$450,000,000, each in the forms attached hereto as Exhibit E and that the surety or insurance company will issue the required bonds in such amount for this Project. The surety or insurance company submitting such letter must be rated AA-/Aa3 by two nationally recognized rating agencies or at least A-VII by A.M. Best and Company, be listed on Treasury Department Circular 570, and be on the list of companies approved by the Commonwealth. The letter should recognize the Proposer’s backlog and work-in-progress in relation to its bonding capacity. **Letters indicating “unlimited” bonding/security capability are not acceptable.**

(c) Material Changes in Financial Condition

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

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

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

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

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

(d) Guarantor

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

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

4.2.3. Safety Record

Submit **Form G**, Safety Questionnaire, for each Principal Participant, in addition to the documentation specified in **Form G**.

4.2.4 Small Business Participation

Submit **Form H**, Record of Small Business Participation, for each Principal Participant reflecting the record of ~~DSBSD~~-certified small business participation in their contracts for the past three (3) years.

4.3. Executive Summary

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

4.4. Experience of Proposer

Proposer shall identify projects performed by the Principal Participants demonstrating that they have the experience, knowledge, and capability to execute the Project successfully. Proposers should identify projects using alternative delivery methods (CM/GC, progressive design-build, design-build, or methods with early contractor involvement) with a similar scope of work (work in a railroad environment), risks, third-party considerations, and that have collaborative approaches to design, construction, and successful price negotiation similar to that anticipated for the CM/GC method to be used on this Project. Proposers shall provide the following information to demonstrate its experience:

- (a) Using **Form I**, Project Experience Description, provide at least two (2) projects, but no more than three (3) projects, for each Principal Participant. All project descriptions should highlight experience in the last ten (10) years relevant to the Project, with a focus on projects that have similar scopes of work, similar risks, and demonstrate experience comparable to that needed for the Project. Additionally, the projects must have reached final acceptance as defined by the requirements of the submitted projects, except that for each Principal Participant, Proposer may identify no more than one (1) project that has not reached final acceptance provided that at least 50% of the value of the construction work has been completed.
- (b) Provide a narrative explaining how Proposer's project experience identified in Section 4.4(a) qualifies it to perform the work on the Project, with an emphasis on how Proposer's experience equips it to collaborate with VPRA and the Design Consultant during the Phase 1 Services and to perform the Construction Work. Explain how Proposer's project experience will help it address the Project's risks and challenges and to complete the Project on time or early. Proposer should provide specific examples of experience working within a heavily congested freight and passenger railroad corridor and experience working with railroad owners. Discuss whether the members of Proposer's organization have previously worked together and how this experience will benefit the Project.
- (c) Provide a narrative explaining how Proposer's performance of Phase 1 Services similar to the Phase 1 Services on this Project resulted in cost savings and effective schedule management.

4.5. Key Personnel and Organization

4.5.1. Key Personnel

Proposer shall identify Key Personnel with the qualifications and experience to create a collaborative environment that maximizes use of the CM/GC delivery method and will result in a

high-quality Project. Proposer shall submit **Form J** containing the identity of individuals proposed to fill the Key Personnel positions identified in the table below. Additionally, Proposer shall submit a resume for each Key Personnel. Each resume shall highlight the following information:

- (a) Proposed role on Project and experience in area of responsibility;
- (b) History of employment and education;
- (c) Experience on projects with a scope similar as the Project;
- (d) Work on the Projects identified in response to Section 4.4;
- (e) Years of experience; and
- (f) Commitment of time and availability for each of the Key Personnel. Describe where each of the Key Personnel will be headquartered during the Phase 1 Services and the Construction Work and identify any other commitments each of the Key Personnel have and how those commitments will be managed to meet the commitments for this Project.

VPRA may request that the CM/GC Contractor commit additional resources and personnel to the Project as a condition to executing a Phase 2 Amendment. Such positions shall be the subject of the GMP Negotiations.

Key Personnel	Requirements and Preferred Qualifications
CM/GC Project Manager	<p>The CM/GC Project Manager will manage the overall Project for the CM/GC Contractor, including both the Phase 1 Services and, if awarded, the Construction Work. This person will be the main point of communication for the CM/GC Contractor and VPRA's primary point of contact. The CM/GC Project Manager will be responsible to ensure adequate personnel and other resources are made available for the Project, will support VPRA engagement with third parties and stakeholders as needed, will handle contractual matters, and will be responsible for quality and timeliness of the team performance.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> • 20 years managing similar projects, including heavy railroad bridges • Experience with alternative delivery methods or projects with early contractor involvement, including CM/GC, progressive design-build, or design-build for example • Experience working/constructing in an active Railroad environment
Construction Manager	<p>During the Phase 1 Services, the Construction Manager will lead constructability reviews and provide input on the Design to ensure that the Design is constructible within the constraints of the Construction Work. During the Construction Work and any Early Work, the Construction Manager is responsible for coordinating and overseeing all aspects of Construction Work.</p>

	<p>Preferred Qualifications:</p> <ul style="list-style-type: none"> • 20 years managing construction of similar projects • Providing constructability reviews of designs • Experience with alternative delivery methods or projects with early contractor involvement, including CM/GC, progressive design-build, or design-build for example • Experience working/constructing in an active Railroad environment
<p>Quality Manager</p>	<p>The Quality Manager will be in charge of the CM/GC Contractor's quality program. During Phase 1 Services, the Quality Manager will be responsible for development of the CM/GC Contractor's quality program. During the Construction Work, the Quality Manager will oversee that the Project is built in conformance with the approved quality plan and the Design. The Quality Manager will be the primary liaison with VPRA's quality program. The Quality Manager must work for the CM/GC Contractor under the direct supervision of an executive officer above the level of and under a line of authority independent of the CM/GC Contractor's Project Manager. The individual must have the ability to stop construction at any time in the individual's sole discretion.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> • 20 years of quality management experience for similar projects • Licensed Professional Engineer in the Commonwealth
<p>Environmental Compliance Manager</p>	<p>The Environmental Compliance Manager is responsible for ensuring that all Work complies with all environmental laws and environmental requirements specific to the Project. During the Phase 1 Services, the Environmental Compliance Manager may review designs to ensure compliance with environmental requirements. During the Construction Work, the Environmental Compliance Manager will oversee construction operations to ensure compliance with environmental requirements.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> • 10 years of overseeing environmental compliance for similar projects
<p>Lead Cost Estimator</p>	<p>The Lead Cost Estimator is responsible for the cost estimating process during the Phase 1 Services. This person shall be a construction cost estimator with experience assessing price and risk and must be capable of clearly articulating the assumptions used to prepare a Construction Cost Estimate. The Lead Cost Estimator will</p>

	<p>be charged with maintaining and ensuring that the CM/GC Contractor provides its Construction Cost Estimates in an Open Book environment.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> • 20 years of preparing construction cost estimates for similar projects • Experience with alternative delivery methods or projects with early contractor involvement, including progressive design-build, CM/GC or design-build for example • Experience estimating construction costs directly associated with Railroad projects
<p>Lead Scheduler</p>	<p>The Lead Scheduler is responsible for preparing the proposed Construction Schedule during the Phase 1 Services and managing the Construction Schedule during the Construction Work. The schedule prepared by the Lead Scheduler will be the schedule on which the Construction Cost Estimates are based.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> • 20 years of preparing construction schedules for similar projects • Experience with alternative delivery methods or projects with early contractor involvement, including progressive design-build, CM/GC or design-build for example
<p>Safety Manager</p>	<p>The Safety Manager shall oversee and be responsible for safety on the Project site. During the Phase 1 Services, the Safety Manager shall be responsible for preparation of CM/GC Contractor’s safety management plan and may assist with constructability review to verify that construction can be performed safely. During the Construction Work, the Safety Manager shall ensure that all Construction Work is performed safely and in compliance with the safety management plan. The Safety Manager must be on site during all major construction operations.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> • 15 years of managing safety for similar types of construction work, with an emphasis on rail construction and construction in a dense, urban environment
<p>Additional Value Personnel*(see note below)</p>	

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

4.5.2. Organization

Provide the following information about Proposer's organization:

- (a) Using **Form K**, identify known Subcontractors.
- (b) Submit a summary describing the Subcontractors identified in **Form K**.
- (c) Provide an organizational chart identifying Key Personnel and participating firms responsible for major functions to be performed in constructing and providing quality management services for the Proposer's organization. All Key Personnel, Principal Participants, and Subcontractors must be identified on the chart. Provide a brief description of the significant functional relationships among these firms. The chart must show the flow of the "chain of command" with lines identifying, by name and working title, participants who are responsible for major functions to be performed and their reporting relationships during the design and construction of the Project. The organizational chart must include the names of the Key Personnel (and company) complete with working titles in both construction and design. The chart must also identify a Project Principal who is an owner or principal authorized by the company or Joint Venture to direct the Proposer's team or make binding decisions on behalf of the Joint Venture.

4.6. Approach to the Work

4.6.1. Proposer shall explain its approach to the Project, key risks and challenges, and how it will use the CM/GC delivery method to improve the Project and mitigate risk. Where indicated, Proposer shall describe its approach to both the Phase 1 Services and the Construction Work. Proposer shall describe the following:

- (a) Proposer's understanding of the Project, VPRA's goals, and Proposer's preliminary approach to completing the Project on time and within budget;
- (b) Approach to using the CM/GC delivery method, including the approach to creating a collaborative environment with VPRA and the Design Consultant;
- (c) Approach to the Phase 1 Services, including how Proposer will use the Phase 1 Services to mitigate cost and schedule risk, enhance the Design, save costs, and expedite completion of the Project;
- (d) Approach to integrate and optimize the Construction Schedule with the design schedule, outside constraints, and the overall controlling program management schedule.
- (e) Approach to assisting VPRA in coordinating with CSXT, Amtrak, and other stakeholders to obtain approvals for the Work;
- (f) Proposer's method to identify and perform Early Work and the benefit that Early Work will bring to the overall Project;
- (g) Approach to the Construction Work, including Proposer's concepts for sequencing and staging the Construction Work;

- (h) Approach to assisting VPRA with obtaining required permits and other third-party approvals necessary for construction;
- (i) Approach to utility coordination and relocation, including how Proposer will manage the utility coordination process during the Phase 1 Services and Construction Work and how Proposer will integrate both CM/GC Contractor-performed and utility-performed utility adjustments;
- (j) Safety, including the protection of workers and general public;
- (k) Preliminary major risks and challenges associated with the Project and how the Proposer would plan to mitigate those risks and overcome those challenges, including how Proposer would use the CM/GC method to mitigate risk;
- (l) Proposer's understanding of the Project's significant technical challenges, approach to their resolution, and how Proposer's experience demonstrates its capability to achieve such resolution; and
- (m) Approach to project management, including construction management, interacting with VPRA, partnering to resolve disputes, management of permit compliance, and document control.

4.6.2. Proposer shall either: (a) provide a plenary explanation of Proposer's efforts to meaningfully consider utilization of a Project-specific workforce agreement and which includes Proposer's rationale in support of its decision to forego the incorporation of such an agreement in the Project or (b) identify its commitment to use a Project specific workforce agreement. Any Project-specific workforce agreement must contain the following: (i) a guaranteed supply of qualified labor, (ii) a prohibition against strikes and lockouts (and similar labor disruptions), (iii) uniform procedures for resolving Project-related disputes, and (iv) provisions governing worker safety.

4.7. Approach to Quality Management

Proposer shall explain its approach to ensure that the Construction Work is performed with a focus on quality. Proposer shall provide a narrative of its approach to quality management, including the approach to Quality Control for construction. Specify the key processes Proposer will employ in its quality plan. Proposer shall discuss such issues as the use of independent checks, stop work authority, resolution of nonconformance reports, and other critical quality issues. Proposer shall identify past successes with its approach to quality management, as well as key lessons learned from its experience.

4.8. Approach to Price

Proposer shall explain its approach to developing a proposed GMP and Construction Schedule, conducting the GMP Negotiations, committing to the Open Book negotiation process, and ensuring that VPRA receives a fair and competitive GMP for the Construction Work. Provide a narrative of Proposer's approach to the following:

- (a) developing its Construction Cost Estimate(s);
- (b) negotiating a GMP with VPRA, including the commitment to Open Book pricing;
- (c) working with VPRA and the ICE to reconcile differences in the Construction Cost Estimates;
- (d) pricing and mitigation of risk, including risks that may increase prices;

- (e) methodology to reduce costs as needed;
- (f) plan to engage and receive competitive bids from Subcontractors for the portion of the Work that is subject to competitive bidding;
- (g) methodology to develop productivity rates for the Construction Work;
- (h) plan to control the volatility of labor and materials pricing (as part of this discussion, identify the materials that will be subject to the greatest volatility and explain how Proposer intends to mitigate this risk);
- (i) plan to identify and procure long-lead time materials; and
- (j) plan to ensure sufficient supply of labor and materials and avoid disruptions to the Work.

4.9. Comprehensive Small Business Utilization Approach

It is the policy of VPRA to actively promote the inclusion of DSBSD certified small businesses within its procurements and whenever practicable, to achieve at least **10%** participation by such entities on each procurement that is not subject to Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. This includes utilization of firms certified as small and any subcategory of small, small women-owned, small minority-owned, or small service-disabled veteran-owned businesses.

While there is no small business contract goal for this solicitation, Proposers shall ensure that DSBSD-certified small businesses have the maximum opportunity to participate in the Project through subcontract opportunities. A directory of DSBSD-certified small businesses is available online at: <https://directory.sbsd.virginia.gov/#/executiveExport>.

Proposer shall submit a CSBUA that explains how the Proposer will utilize DSBSD-certified small businesses on the Phase 1 Services and generally maximize the use of DSBSD certified small businesses throughout the life of the Project through meaningful engagement efforts. The CSBUA shall include the following:

1. a completed **Form L** (VPRA Procurement Form PD 60) detailing Proposer's Small Business Subcontracting Plan for the Phase 1 Services*; and
2. a two (2) page narrative describing:
 - a. the efforts Proposer has undertaken to date to identify DSBSD certified small businesses for use on the Phase 1 Services, including any outreach efforts Proposer has made in an effort to engage with eligible small businesses (e.g., meetings, conferences, workshops); and
 - b. Proposer's plans to identify DSBSD certified small businesses for use on the Construction Work, including any outreach efforts Proposer plans to utilize in an effort to engage with eligible small businesses.

As part of their CSBUA, Proposers should consider assisting small businesses in obtaining DSBSD certification wherever eligible. The CSBUA shall be a component of Proposer's overall Proposal Score as further addressed in Section 6.1.3. VPRA may, in its sole discretion, elect to award zero (0) points in the evaluation process to a CSBUA that includes a Small Business Subcontracting Plan that names firms which are not properly certified by DSBSD at time of

Proposal submittal. Each Proposer is responsible for independently verifying the certification status of the small business firms that it includes within its Small Business Subcontracting Plan. Once approved by VPRA, Contractor's Small Business Subcontracting Plan for the Phase 1 Services becomes part of the Contract Documents and is to be construed as material to the Contract.

Proposers should refer to the *Special Provision Regarding the Utilization of Small and Diverse Businesses* (SP 06) included within Exhibit F for additional terms regarding small business utilization and submittal requirements that will apply during performance of the Contract. As set forth in that document, the CM/GC Contractor will, among other things, be required to provide to VPRA for approval a supplemental Small Business Subcontracting Plan (VPRA Procurement Form PD 60) and other documentation, as a condition precedent to the Phase 2 Services and any Early Work packages.

*** When completing Form L (VPRA Procurement Form PD 60), the Proposer should express small business utilization as a percentage and shall refrain from including a dollar value.**

4.10. Additional Forms

Each Proposer shall submit the following forms for all Principal Participants:

- (a) **Form M:** Affidavit of Non-Collusion;
- (b) **Form N:** Lobbying Certificate;
- (c) **Form P:** Proprietary/Confidential Information Designation (if applicable);
- (d) **Form Q:** Buy America Certification/FRA;
- (e) **Form R:** Build America, Buy America Certification;
- (f) **Form S:** Proof of Authority to Transact Business in Virginia; and
- (g) **Form V:** Exceptions to RFP Documents.

5. PRICE PROPOSAL

Proposer shall submit a Price Proposal that contains the following information:

- (a) Phase 1 Price Component (**Form T**); and
- (b) Construction Markup (**Form U**); and
- (b)(c) Proposal Security (Form A).

Additional details are provided below.

5.1. Phase 1 Price Component

Compensation for the Phase 1 Services will be capped at the Phase 1 Services Fee. The Phase 1 Service Fee is the sum of a Proposer's (a) Phase 1 Price Component (*i.e.*, the total estimated direct labor costs to perform the Phase 1 Services) plus (b) a mandatory 90% markup. Proposer shall submit its Phase 1 Price Component on **Form T** (Price Proposal (Phase 1 Price Component)). The Phase 1 Services are those services described in Exhibit C to the RFP. Instructions for the Phase 1 Price Component are provided below.

5.1.1. Phase 1 Services

Where indicated on **Form T**, Proposer shall provide the Phase 1 Price Component. In addition, where indicated on **Form T**, Proposer shall provide a work plan showing the allocation of labor and number of hours for each task identified in Exhibit C. All Key Personnel must be included in the work plan. Proposers shall also include staff members other than Key Personnel; however, for staff members that are not Key Personnel, Proposer may identify them by category of expertise and use blended billing rates for such categories. However, the total amount of estimated labor costs shown in the work plan must equal the Phase 1 Price Component.

5.1.2. Direct Labor Costs

The Phase 1 Price Component shall consist of the estimated direct labor costs of all individuals who will perform the work described in Exhibit C. Labor rates shall consist of the direct hourly compensation rate for each proposed individual, and shall not include any markup for burden, fringe, or otherwise. Labor rates shall also not include any cost for taxes, insurance, retirement, bonuses, or any other labor markups. Proposer shall not add any costs considered to be home office or overhead to the direct labor rates. Labor rates must be the actual direct costs paid to employees as shown on Proposer's certified payroll. VPRA will require the CM/GC Contractor to submit certified payrolls establishing labor rates prior to execution of the Contract.

5.1.3. 90% Mandatory Markup

The selected CM/GC Contractor will be permitted to markup direct labor costs to generate the Phase 1 Services Fee. The applicable markup rate shall be **90% of the direct labor cost**. This rate is not negotiable.

The 90% markup compensates the CM/GC Contractor for all other costs (in addition to direct labor costs) to perform the Phase 1 Services, including profit, overhead, and all additional indirect costs of labor, including fringe, taxes, and insurance. The 90% markup, together with the CM/GC Contractor's actual direct labor costs, shall constitute full compensation flowing from VPRA to CM/GC Contractor for all labor, materials, services, equipment, or goods/services otherwise necessary to complete the Phase 1 Services, other than the allowable direct reimbursable costs described in Section 5.1.4.

5.1.4. Direct Reimbursable Costs

Proposer may not identify direct reimbursable costs on **Form T**. Direct 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, if incurred, will be reimbursed on an actual cost basis. Direct reimbursable costs must be job-specific and may not include any costs that have been compensated under the markup established by Section 5.1.3. VPRA approval is required prior to CM/GC Contractor incurring such direct reimbursable costs, which will be added to the Phase 1 Services through a Change Order.

Any direct reimbursable costs that involve construction activities, such as Site exploration, will be entitled to a markup that compensates the CM/GC Contractor for overhead and profit. All other direct reimbursable costs will be reimbursed dollar-for-dollar, without markup.

5.1.5. Phase 1 Services Fee

The Phase 1 Services Fee will become the not-to-exceed price stated in the Contract, subject to modification only in accordance with the terms thereof. Actual compensation paid by VPRA to the CM/GC Contractor with respect to the Phase 1 Services will be based on the actual hours incurred by CM/GC Contractor to perform such Work; actual compensation for the Phase 1 Services may fall below, but not above, the Phase 1 Services Fee.

5.2. Construction Cost Markup

As part of its Price Proposal, Proposer shall provide a Construction Cost Markup using **Form U**, which markup shall be expressed as a percentage of the CM/GC Contractor's direct costs to perform the Construction Work. The Construction Cost Markup will serve two purposes. First, during the procurement phase, a Proposer's Construction Cost Markup (expressed as a percentage) will be a component of Proposer's Price Score as further addressed in Section 6.1.3. Second, if a Phase 2 Amendment is successfully negotiated and executed, the Construction Cost Markup stated in **Form U** will be then converted into a fixed sum, which will be paid to the CM/GC Contractor as the Construction Work progresses, with each pay application and in proportion to the progress of the completed Work. **The Construction Cost Markup for self-performed Work and subcontracted Work shall be the same and may not exceed 12%.**

In addition, where indicated on **Form U**, Proposer shall provide a breakdown of the constituent components of the Construction Cost Markup consistent with the requirements below. In breaking down the constituent components, Proposer shall, at a minimum, isolate the portion of its Construction Cost Markup allocable to profit from any other constituent components.

The Construction Cost Markup shall consist of payment for Proposer's profit and home office overhead allocated to the Construction Work for the Project. The markup for subcontracted Work shall include management of subcontractors.

5.2.1. Construction Cost Markup Parameters

Profit includes bonuses, profit sharing, and incentives but excludes all costs associated with direct construction activities, including risk and contingency. Home office overhead is the auditable cost of activities that are necessary to the overall operation of the CM/GC Contractor's business as a whole allocated to all of the CM/GC Contractor's ongoing projects. Home office overhead includes insurance maintained by the CM/GC Contractor as a general cost of doing business. Home office overhead shall not include any field indirect costs or direct costs of performing the Construction Work, as described below.

Field indirect costs that may not be part of the Construction Cost Markup include:

- (a) Job Supervision and Overhead: Wages including benefits, payroll insurance, and taxes for onsite management, supervision, engineers, safety personnel, quality control staff, and administration staff.
- (b) Survey: Cost of construction survey.
- (c) Site Office Expense: Ownership or rental of building, maintenance, removal, utilities, office and engineering expendables, furniture, computers and infrastructure, and photographs.

- (d) Insurance: Insurance other than that based on payroll, such as railroad protective, equipment insurance, and other specified or CM/GC Contractor-required insurances. Insurance that is carried by the CM/GC Contractor as a general cost of doing business and is already included as home office overhead shall not be considered a field indirect cost.
- (e) Taxes: Taxes, excluding payroll taxes, such as property tax and any special local or state sales tax, included with the applicable item taxed.
- (f) Temporary Buildings: Cost of ownership or rental, set up, maintenance, and removal of such buildings as owner's office (if not otherwise a direct bid item), warehouses, first aid building, and other miscellaneous buildings.
- (g) Personnel Expense (other than direct labor): Small tools and supplies, safety expendables, drug screen testing, training, physicals, and hiring expense. Includes any per-diem costs for craft or indirect personnel.
- (h) Project Utilities: Site utilities such as temporary electric, water, and sanitary.
- (i) Mobile Equipment: Overhead vehicles, maintenance equipment and personnel (if not in equipment operating expense), and general service equipment and personnel (such as flatbeds and forklifts if not in direct cost).
- (j) Construction Plant: Include site fences, parking areas, material yards, temporary access, and other such special construction costs not included in direct costs. Haul road construction and maintenance are included in direct costs.
- (k) Quality Control: Cost of QC labor, equipment, and supplies and outside services and CM/GC Contractor-hired personnel with site overhead wages.
- (l) Bonds: Includes cost of payment and performance bond or other guaranties as specified or allowed. Also includes cost of subcontract or material bonds.
- (m) Escalation: Estimated cost of items for which firm pricing cannot be obtained. Includes increases in craft and field indirect wage rates and fringe benefits whether by agreement or estimated.

Additionally, the following shall be considered direct costs of construction and not eligible to be included in the Construction Cost Markup:

- (a) Labor: Includes wages and add-ons including overtime, vacation pay, and all fringe payments such as health and welfare, pensions, and any other costs that may be included in a union agreement or as paid to both craft and staff employees. Includes payroll insurance such as Worker's Compensation and General Liability if based on labor amounts. Includes payroll taxes such as FICA and state and federal unemployment;
- (b) Permanent Materials: Includes the cost of materials incorporated into the Work. Includes estimated loss, waste, and non-pay overruns. Sales tax and any shipping for these materials are included in this category.

- (c) Construction Expendable Materials: Includes non-permanent materials, temporary facilities, small tools (other than those considered as personnel expense), formwork, temporary construction, office supplies, services, insurance, and taxes.
- (d) Equipment Ownership: Includes rental or ownership charge of both company-owned and outside rentals, plus sales tax on any rentals.
- (e) Equipment Operating Expense: Includes repair parts, tires and tracks, CM/GC Contractor's repair labor, services and fuel, oil and grease.
- (f) Subcontract: Cost of items of work subcontracted.

The field indirect costs and direct costs of the Construction Work shall be the components of the Construction Work used to develop the GMP. When pricing the work for Construction Cost Estimates, field indirect costs will be broken out separately and not spread over the cost of the Work.

6. EVALUATION AND SCORING OF PROPOSALS

6.1. Proposal Evaluation

Immediately following the due date for Proposals, the Director of Procurement (or his designee) shall distribute the Proposals to the Evaluation Team. The Evaluation Team will thoroughly review and evaluate the Proposals according to the Selection Criteria contained in the RFP.

Proposals will be evaluated in two steps:

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

6.1.1. Pass/Fail Review

The Evaluation Team will first conduct a Pass/Fail review of all Proposals received. Proposals that receive a "Pass" for all categories of the Pass/Fail criteria will proceed to the qualitative review and be scored. Proposals that receive a "Fail" in any category of the Pass/Fail criteria will be removed from further consideration. VPRA will notify Proposers whose Proposal receive a "Fail."

The Pass/Fail review consists of the following:

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

In performing the responsiveness review, the Evaluation Team reserves the right to waive minor informalities, irregularities, and apparent clerical mistakes that are unrelated to the substantive content of the Proposal. As part of the Pass/Fail review, the Evaluation Team may also require Proposers to clarify responses within their Proposal and/or address any informational deficiencies within their Proposal. Notwithstanding the foregoing, Proposers will not be permitted to submit supplemental information that materially alters the technical

or cost elements of the Proposal. A failure to provide the clarification and/or information requested by the Evaluation Team may result in a Proposal being deemed non-responsive and designated as a “fail.”

- (b) **Legal:** The Proposal complies with and meets or exceeds the minimum requirements listed in Section 4.2.1 and there are no identified issues presenting a material risk that the Proposer is unable to complete the Phase 1 Services or the Construction Work.
- (c) **Financial Capacity:** The Proposal complies with and meets or exceeds the minimum requirements listed in Section 4.2.2 and there are no identified issues presenting a material risk that the Proposer is unable to complete the Phase 1 Services or Construction Work.
- (d) **Safety:** Proposer possesses a comprehensive safety program, performs regular safety training for employees, and through its responses on **Form G**, demonstrates a commitment to a safety culture within the organization as evidenced by its processes, procedures, and outcomes. In addition, there are no identified issues presenting a material risk that the Proposer would not be able to perform the Phase 1 Services and Construction Work safely and with due regard for the health and safety of its employees, VPRA, and the general public.
- (e) **Small Business Participation:** The Proposer demonstrates a history of successful compliance with small business participation requirements and does not present a material risk of failing to use DSBSD-certified small businesses in the Work.
- (f) **Organizational Conflict of Interest:** The Proposer does not have any real or apparent organizational conflict of interest which would preclude their participation in the Contract in accordance with the OCI Policy.
- (g) **Qualification to do Business:** Proposer’s **Form S** (VPRA Procurement Form PD 44) demonstrates that the Principal Participants are all qualified to do business in the Commonwealth.

6.1.2. Interviews

As part of the evaluation process, the Evaluation Team may invite those Proposers whose Proposal receives a “Pass” on all pass/fail categories to participate in an interview. If held, it is anticipated that these interviews will take place within thirty (30) days of the due date for Proposals. Not all Proposers may be invited to be interviewed. VPRA will notify the Proposer of the date, time, and location of the interview through an interview invitation letter. The interview invitation letter will include items for discussion during the interview presentation and other relevant information (e.g., format, required personnel, allotted time for the interviews, and equipment available to Proposer for the presentation, etc.) Only Key Personnel of the Proposer are permitted to participate in the interview. The presentation shall not be used to fill in missing or incomplete information that was required in the Proposal.

6.1.3. Qualitative Review

Proposals that receive a “Pass” will be evaluated and scored as follows:

Category	Total Points Possible
Experience of Proposer	25
Key Personnel and Organization	25
Approach to the Work	20
Quality Management	10
Approach to Price	5
Comprehensive Small Business Utilization Approach	5
Price Proposal	10
Total	100

VPRA will conduct the Proposal evaluations based on the following Selection Criteria:

Category	Evaluation Criteria
Experience of Proposer	The extent to which the Proposer’s organization shows that it has successfully performed similar prior work that demonstrates its qualifications and ability to build the Project and provide meaningful assistance that improves the Project’s design, including but not limited to the information provided in Tabs 2, 3, 4, and 5. This includes the Proposer’s prior successes at maximizing services similar to both the Phase 1 Services and Construction Work by creating a collaborative environment with project owners and maximizing the value of alternative delivery approaches that include early contractor involvement.
Key Personnel and Organization	The extent to which Proposer’s Key Personnel and organization have the background and experience to be successful at delivering a quality Project that meets VPRA’s goals, as demonstrated by the prior successes of the Key Personnel and Proposer’s organization.
Approach to the Work	The extent to which Proposer demonstrates a comprehensive understanding of the Project, key risks,

	<p>and mitigation strategies, including that Proposer will maximize the value of the CM/GC delivery method. Additionally, the extent to which Proposer demonstrates an approach to coordinating with CSXT, VPRA's Design Consultant, and VPRA to improve the design and facilitate innovative solutions to the Construction Work. Further, the extent to which Proposer: (a) provides a plenary explanation of Proposer's efforts to meaningfully consider utilization of a Project-specific workforce agreement and includes Proposer's rationale in support of its decision to forego the incorporation of such an agreement in the Project, or (b) commits to provide a Project-specific workforce agreement containing: (i) a guaranteed supply of qualified labor, (ii) a prohibition against strikes and lockouts (and similar labor disruptions), (iii) uniform procedures for resolving Project-related disputes, and (iv) provisions governing worker safety.</p>
<p>Quality Management</p>	<p>The extent to which Proposer demonstrates a thorough commitment to quality, evidenced by the presence of a robust quality control process that incorporates production staff, contains procedures to identify and correct nonconforming work, vests quality staff with sufficient authority to stop work, and will interact with VPRA's quality program in a manner that facilitates cooperation and improves the overall quality of the Work.</p>
<p>Approach to Price</p>	<p>The extent to which Proposer demonstrates a method of pricing the Construction Work that commits to an Open Book approach, controls for volatility of materials and labor pricing, controls for other risks, implements an effective plan for competitive bidding, and presents a high likelihood of successful negotiations for the GMP and Construction Schedule.</p>
<p>Comprehensive Small Business Utilization Approach (CSBUA)</p>	<p>The extent to which Proposer demonstrates a viable Small Business Utilization Plan for the Phase 1 Services and shows that Proposer has taken efforts to identify potential DSBSD certified small businesses prior to submitting the Proposal and will continue to make such efforts if selected as the CM/GC Contractor such that there will be robust opportunity for meaningful participation by DSBSD certified small businesses over the life of the Project.</p>
<p>Price Proposal</p>	<p>The extent to which Proposer's Price Proposal correlates to the Project requirements, does not contain unbalancing or irregularities, contains a fair and reasonable plan for</p>

	the Phase 1 Services and breakdown of the Construction Cost Markup that is aligned with market conditions and the Project's needs, and is most likely to achieve the Best Value for VPRA. For clarity, the Price Proposal will be evaluated upon (a) the Phase 1 Price Component, and (b) the Construction Cost Markup, and the corresponding information provided with each of them.
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6.1.4. Proposal Scoring Methodology

The Evaluation Team will use a consensus approach to evaluate the Proposals. Members of the Evaluation Team will not score the Proposals individually but instead will arrive at a consensus as to assignment of points on each of the categories identified in Section 6.1.3 of each Proposal. In developing a consensus score, the Evaluation Team is at liberty to consider all information contained within a Proposer's Proposal as well as Proposer's presentation and responses to questions in any interviews, if held. Where deemed relevant to any of the evaluation criteria, information that is considered as part of the Pass/Fail review under Section 6.1.1 may, in the sole discretion of the Evaluation Team, be carried forward and considered when assigning a consensus score as part of the qualitative review under Section 6.1.3. All Proposers advancing to the qualitative evaluation stage will receive a Proposal Score.

6.2. Rankings and Selection of CM/GC Contractor

The Evaluation Team shall rank Proposers from highest to lowest in order of their Proposal Scores, with the highest-ranking Proposer being initially designated as the Top Ranked Proposer. VPRA will then enter limited negotiations with the Top Ranked Proposer ~~for~~ to the Contract extent necessary to address exceptions noted by the Top Ranged Proposer in Form V; such negotiations being only those necessary to finalize the Contract for execution. If VPRA and the Top Ranked Proposer fail to reach agreement on the terms of the Contract, VPRA may go to the next highest ranked Proposer, which shall in turn be deemed the Top Ranked Proposer. VPRA will continue this process until execution of the Contract or cancellation of the procurement. Unless the procurement is otherwise canceled, VPRA shall award the Contract to the Proposer who is fully qualified and is determined to have provided the Best Value for the Work to be provided.

6.2.1. Documents to be Provided

Within five (5) business days of receipt of a Notice of Intent to Award from VPRA, the Top Ranked Proposer shall provide the information and materials stated below to VPRA. Provision of these materials and approval thereof by VPRA is a condition precedent to execution of the Contract. Proposer shall provide the following:

- (a) if Proposer is a Joint Venture, partnership, or other consortium, a letter, in form acceptable to VPRA, from each Principal Participant stating that such Principal Participant agrees to be held jointly and severally liable for any and all of the duties and obligations of CM/GC Contractor under the Contract (such letter shall also identify where this obligation is contained in Proposer's organizational documents);
- (b) if Proposer is a Joint Venture, partnership, or other consortium, the final, executed organizational documents of Proposer;

- (c) if one or more Guarantees are required by VPRA, the proposed Guaranty or Guarantees, which shall be from Guarantor(s) acceptable to VPRA, in its sole discretion, and in the form included with the Contract template attached at Exhibit F;
- (d) evidence of approval of the final form, and of due authorization, execution, delivery, and performance, of the Contract by Proposer and, if Proposer is a Joint Venture, partnership, or other consortium, by all Principal Participants (such evidence shall be in a form and substance satisfactory to VPRA, and shall generally be in the following form):
 - (i) if Proposer is a corporation, such evidence shall be in the form of a resolution of its governing body certified by an appropriate officer of the corporation;
 - (ii) if Proposer is a partnership, such evidence shall be in the form of a resolution signed by the general partners and appropriate evidence of authorization for each of the general partners, in each case, certified by an appropriate officer of the general partner;
 - (iii) if Proposer is a limited liability company, such evidence shall be in the form of: (a) a resolution of the governing body of the limited liability company, certified by an appropriate officer of the company, (b) a managing member(s) resolution, certified by an appropriate officer of the managing member(s), or (c) if there is no managing member, a resolution from each member, certified by an appropriate officer of such member; or
 - (iv) if Proposer is a Joint Venture, such evidence shall be in the form of a resolution of each Joint Venture member, certified by an appropriate officer of such Joint Venture member;
- (e) evidence that Principal Participants and Key Personnel hold all licenses, registrations, and credentials required by the laws of the Commonwealth to perform the Phase 1 Services (such evidence shall include any information on the revocation or suspension of any license, registration, or credential);
- (f) evidence of insurance coverages at or above the limits prescribed in Exhibit D; and
- (g) any other requirements identified by VPRA during negotiations prior to execution of the Contract.

Upon receipt of the foregoing documents, VPRA shall have the right to make comments. Within three (3) business days of receipt of VPRA's comments, Proposer shall submit updated versions of the documents addressing VPRA's comments for VPRA's review. VPRA shall be entitled to make further comments until it approves all required documents. Resolution of VPRA's comments shall be a condition precedent to execution of the Contract.

6.2.2. Execution of the Contract

Upon finalization of negotiations, if any, and VPRA's approval of the documents required by Section 6.2.1, VPRA may, in its discretion, award the Contract to the Top Ranked Proposer. To the extent it elects to enter into the Contract, VPRA will deliver an executed version of the Contract to the Top Ranked Proposer, such version to be delivered for electronic signature using DocuSign or similar program.

The Top Ranked Proposer shall obtain all required signatures and provide a fully executed version of the Contract to VPRA within two (2) business days after receipt of the executed version of the Contract. If CM/GC Contractor is a Joint Venture or a partnership, the Contract must be executed

by all Joint Venture members or general partners, as applicable. The Effective Date of the Contract shall be as provided in the Contract.

If a procurement decision appeal is brought within the applicable time period, then VPRA, at its sole option and sole discretion, may elect to (a) move forward with execution and delivery of the Contract, (b) delay execution and delivery, or (c) terminate the procurement at no cost or penalty to VPRA.

An award of the Contract shall constitute an intent on the part of VPRA to enter into a Phase 2 Amendment, subject to VPRA's and CM/GC Contractor's agreement on a GMP for the Construction Work and VPRA's acceptance of CM/GC Contractor's satisfactory and timely completion of the Phase 1 Services.

6.3. Debriefings

All Proposers submitting Proposals will be notified in writing of the results of the procurement. After execution of the Contract, Proposers not selected as the CM/GC Contractor may request a debriefing. If requested, debriefings shall be provided at the earliest feasible time after execution of the Contract, subject to applicable law. The debriefing shall be conducted by VPRA's Point of Contact or designee, who may be accompanied by other VPRA officials familiar with the rationale for the selection decision.

Debriefings shall:

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

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

7. PROCUREMENT DECISION APPEALS

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

8. SENSITIVE SECURITY INFORMATION; CRITICAL INFRASTRUCTURE

In the event that any information in this Project is determined to contain Sensitive Security Information ("SSI"), the Top Ranked Proposer shall be required to execute a Sensitive Security Information Non-Disclosure Agreement. Once negotiations have been completed and prior to execution of the Contract, personnel handling SSI material or who require access to Critical Infrastructure may be required to pass a fingerprint-based Criminal History Background Check ("CHBC"). An individual employee's failure to successfully pass the fingerprint-based CHBC will not negate the selection and the Top Ranked Proposer will be allowed to replace those individuals. However, if Key Personnel fail the fingerprint-based CHBC, the selection may be cancelled and negotiations begun with the next ranked Proposer.

9. VIRGINIA FREEDOM OF INFORMATION ACT

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

If a Proposer has special concerns about information that it desires to make available to VPRA (including information submitted in a Proposal), but that it believes constitutes a trade secret, proprietary information, or other confidential information exempted from disclosure, such Proposer should specifically and conspicuously designate that information as such in its Proposal and state in writing why protection of that information is needed in accordance with **Form P** (Proprietary/Confidential Information Identification), and submit **Form P** in Tab 9 of the Proposal.

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

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

10. RESERVED RIGHTS

In connection with this procurement, VPRA reserves to itself all rights (which rights shall be exercised by VPRA in its sole discretion) available to it under applicable law, including without limitation, the following, with or without cause and with or without notice:

- (a) the right to cancel, withdraw, postpone, or extend this RFP in whole or in part at any time prior to the execution by VPRA of the Contract, without incurring any obligations or liabilities;
- (b) the right to issue a new RFP;
- (c) the right to reject any and all submittals, responses, and Proposals received at any time;
- (d) the right to modify all dates set or projected in this RFP;
- (e) the right to suspend and terminate the procurement process for the Project, at any time;
- (f) the right to waive or permit corrections to data submitted with any response to this RFP until such time as VPRA declares in writing that a particular stage or phase of its review of the responses to this RFP has been completed and closed;
- (g) the right to issue addenda, supplements, and modifications to this RFP;
- (h) the right to permit submittal of addenda and supplements to data previously provided with any response to this RFP until such time as VPRA declares in writing that a particular stage or phase of its review of the responses to this RFP has been completed and closed;

- (i) the right to hold meetings and conduct discussions and correspondence with one or more of the Proposers responding to this RFP to seek an improved understanding of the responses to this RFP;
- (j) the right to seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to the RFP, including the right to seek clarifications from Proposers;
- (k) the right to permit Proposers to add or delete firms and/or Key Personnel until such time as VPRA declares in writing that a particular stage or phase of its review has been completed and closed;
- (l) the right to add or delete Proposer responsibilities from the information contained in this RFP;
- (m) the right to waive deficiencies, informalities, and irregularities in a Proposal, accept and review a non-conforming Proposal or seek clarifications or supplements to a Proposal;
- (n) the right to disqualify any Proposer that changes its submittal without VPRA approval;
- (o) the right to change the method of award at any time prior to submission of the Proposals; and
- (p) the right to respond to all, some, or none of the inquiries, questions and/or request for clarifications received relative to the RFP.

11. COMPLIANCE WITH LAW IN VIRGINIA

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

12. ETHICS IN PUBLIC CONTRACTING

By submitting their Proposals, Proposers certify that their submissions are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Proposer, supplier, manufacturer or subcontractor in connection with their submissions, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

13. REPRESENTATIONS

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

and execution of the Proposal, Proposal, and the Contract and Proposer's right, title, and authority to perform its obligations thereunder.

14. NO ASSUMPTION OF LIABILITY

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

15. DURATION OF PROPOSAL

The Proposal shall be binding upon the Proposer for ninety (90) days following the due date for submission of Proposals. If not withdrawn at that time, the Proposal shall remain effective until an award is made or the solicitation is cancelled. A Proposer's withdrawal of its Proposal prior to the expiration of the 90-day period shall permit VPRA to retain Proposer's Proposal Security.

16. APPLICABLE COST PRINCIPLES; ACCOUNTING REQUIREMENTS

The Contract will be performed and audited in accordance with 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, which provisions were adopted by DOT at 2 C.F.R. Part 1201 and are incorporated herein by reference. To be eligible for reimbursement, Proposer's costs must comply with cost principles set forth in 2 C.F.R. Part 200. All Proposers submitting Proposals must have internal control systems in place that meet federal requirements for accounting. These systems must comply with requirements of 2 C.F.R. Part 200 and be sufficient to exclude unallowable cost items from Project invoicing to VPRA.

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

EXHIBIT A

Railroad Operator Indemnification Provisions

I. INDEMNIFICATION DUTIES

- A. CSXT. CM/GC Contractor shall indemnify, defend, and hold harmless CSXT Indemnitees to the same extent to which VPRA is entitled to indemnity and defense under Section ~~[**]~~19.1 of the ~~Contract~~General Terms and Conditions.
- B. Amtrak. Subject to applicable law, including Va. Code § 11-4.1, CM/GC Contractor shall indemnify and defend Amtrak for all losses or claims arising from the acts or omissions of CM/GC Contractor in performing the Contract, whether or not CM/GC Contractor is negligent and irrespective of any negligence or fault of Amtrak, *provided that*, CM/GC Contractor's indemnity and duty to defend shall not extend to Amtrak-Assumed Individuals and/or Amtrak-Assumed Property.

II. DEFINITIONS

"Affiliate" means, when used to indicate a relationship with a specified Person, Person that: (a) directly or indirectly, through one or more intermediaries has a 10% or more voting or economic interest in such specified Person or (b) controls, is controlled by or is under common control with such specified Person, and a Person is deemed to be controlled by another Person, if controlled in any manner whatsoever that results in control in fact by that other Person (or that other Person and any Person or Persons with whom that other Person is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract, or otherwise.

"Amtrak-Assumed Individuals" means:

- (i) an employee of Amtrak;
- (ii) any person who is on an Amtrak train other than a Commonwealth-Introduced Individual;
- (iii) any person other than a Commonwealth-Introduced Individual at or adjacent to a passenger station located on the rail lines used for Amtrak service who is at such passenger station for the purpose of boarding or detraining from an Amtrak train, meeting an Amtrak train, purchasing a ticket for an Amtrak train, making a reservation for an Amtrak train, or obtaining information about Amtrak service or conducting business with Amtrak (including a vendor from whom Amtrak receives compensation);
- (iv) any person at or adjacent to a passenger station who is providing local transportation to or accompanying a person described in (iii) above; and
- (v) any person injured or killed by the collision of a vehicle or person with an Amtrak train on or adjacent to the rail lines on which Amtrak operates, including the collision of a derailed Amtrak train or any part thereof beyond the Commonwealth's railroad right-of-way.

"Amtrak-Assumed Property" means:

- (i) the property of any Amtrak-Assumed Individual;

- (ii) any locomotive, passenger car, or any other property or equipment owned by, leased to, used by or otherwise in control, custody, or possession of Amtrak (except that Amtrak's dispatching of trains, which trains are not otherwise in control, custody, or possession of Amtrak, by itself shall not be deemed to place such trains into Amtrak's control, custody, or possession); and
- (iii) property of parties other than Amtrak and VPRA, to which damage is caused by fuel oil which is demonstrated to have spilled from an Amtrak engine and for fuel oil which is demonstrated to have spilled by Amtrak's employees, agents, or contractors (but excluding CSXT) while fueling an Amtrak train.

"Commonwealth-Introduced Individual" means any employee, invitee, or agent of the Commonwealth or the Commonwealth's contractor in the course of his employment or agency, except when such employee, invitee, or agent is a fare-paying passenger of Amtrak.

"CSXT Indemnitees" means CSXT, any Affiliate of CSXT, and any of the officers, directors, shareholders, employees, agents, successors, or assigns of such entities.

III. INCLUSION IN SUBCONTRACTS

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

EXHIBIT B

Project Information

The release of Exhibit B is subject to the execution of VPRA's Non-Disclosure and Confidentiality Agreement (NDA).

For further information or to request a copy of the NDA, please contact: procurement@vpra.virginia.gov.

VPRA reserves the right to deny access to Exhibit B to any party who, in its sole discretion, is determined not to have a legitimate business purpose for the information.

EXHIBIT C

Phase 1 Services Scope of Work

The below describes the Phase 1 Services. Approximate timelines for submission of required deliverables and workshop participation are provided at the end of this Scope of Work. Timelines and schedule for the Phase 1 Services may be subject to negotiation with the CM/GC Contractor.

Task 1. Design and Construction Phase 1 Services

- a) Validate VPRA's Design: CM/GC Contractor shall evaluate the Design as it is prepared and compare it to the scope of Work, the required budget, and schedule to determine if the scope can be executed within those constraints. A validated Design is one that can be constructed within the budget and schedule constraints of the Project. CM/GC Contractor shall provide suggestions to reduce costs or meet budget constraints.
- b) Assist/input to VPRA's Design: CM/GC Contractor shall offer ideas/cost information to the Design Consultant to be evaluated during the Design phase.
- c) Design reviews: CM/GC Contractor shall review the Design to identify errors, omissions, and ambiguities to improve the constructability and economy of the design.
- d) Design innovation: CM/GC Contractor shall participate in structured brain-storming sessions with VPRA to generate ideas to solve design problems and other issues associated with the Project.
- e) Constructability reviews: CM/GC Contractor shall review the Design to determine if it can be constructed within the constraints of the Work and that the required level of tools, methods, techniques, and technology are available to permit a competent and qualified construction contractor to build the Project feature under review in accordance with applicable quality requirements. CM/GC Contractor shall perform constructability reviews on the 30%, 60%, and 90% Designs. At each review, CM/GC Contractor shall prepare a constructability report that identifies potential constructability issues in the Design and provides potential solutions.
- f) Operability reviews: CM/GC Contractor shall confer with VPRA's operations and maintenance personnel and provide them with an opportunity to make suggestions that will improve the operations and maintenance of the completed Project.
- g) Regulatory reviews: CM/GC Contractor shall verify that the Design complies with current codes and will be able to obtain necessary permits. This activity shall consist only of a review and shall not be construed to constitute design or engineering services.
- h) Market surveys for design decisions: CM/GC Contractor shall furnish the Design Consultant with alternative materials or equipment and current pricing data and availability to assist them in making informed design decisions to reduce the need to change the design late in the process resulting from budget or schedule considerations.
- i) Verify/take-off quantities: CM/GC Contractor shall verify the quantities generated by the Design Consultant for the engineer's estimate.
- j) Identify potential Early Work packages: CM/GC Contractor shall identify Early Work packages and negotiate the price to perform the Early Work with VPRA. Performance of the Early Work, if any, will occur under a separate contract. For potential Early Work packages, CM/GC Contractor shall submit cost estimates and negotiate price and schedule consistent with the process established in this Phase 1 scope of work for

estimating and negotiating the Phase 2 Services.

- k) Assistance in shaping the scope of Work: CM/GC Contractor shall generate priced alternatives for VPRA to ensure that the scope of Work correlates to the constraints dictated by the budget and/or schedule. Where appropriate, CM/GC Contractor shall suggest modifications to the scope of Work to fit within the Project's budget and constraints.
- l) Feasibility studies: CM/GC Contractor shall investigate the feasibility of possible solutions to resolve design issues on the Project.
- m) Risk identification and mitigation: CM/GC Contractor shall identify risks associated with the Project and propose response strategies.
- n) Maintenance of Rail Operations: CM/GC Contractor shall review, validate, and/or propose alternative methods to maintain rail service while construction is underway.
- o) Maintenance of Traffic: CM/GC Contractor shall review, validate, and/or propose alternative traffic handling concepts for the Project.
- p) Staging needs: CM/GC Contractor shall review, validate, and/or propose alternative staging construction concepts for the Project.
- q) Construction approach planning: Based on its review and input on the Project's design, CM/GC Contractor shall prepare conceptual plans for means and methods, temporary works, laydown areas, debris containment, dewatering, and other necessary preparations for construction.
- r) Prepare construction provisions and other documents and requirements for the Construction Work. The construction provisions shall contain terms and conditions governing the performance of the construction work that shall be collaboratively developed by CM/GC Contractor and VPRA.

Task 2. Cost-Related Phase 1 Services

- a) Validate VPRA/consultant estimates: CM/GC Contractor shall evaluate VPRA's estimates and determine if the scope can be executed within the constraints of the budget.
- b) Prepare Project estimates: CM/GC Contractor shall provide real-time cost information on the Project at different points in the design process to ensure that the Project is staying within budget.
- c) Cost/benefit engineering reviews: CM/GC Contractor shall review cost to include not only the aspects of pricing but also focus on the concept that "time equals money" in construction projects.
- d) Early award of critical bid packages: CM/GC Contractor shall recommend which design packages should be completed first to ensure that pricing can be locked in on the packages.
- e) Life-cycle cost analysis: CM/GC Contractor shall provide input for design decisions that impact the performance of the Project over its lifespan.
- f) Value analysis/engineering: CM/GC Contractor shall identify aspects of the Design that either do not add value or whose value may be enhanced by changing them in some form or fashion. The change does not necessarily reduce the construction cost; it may instead

decrease the life-cycle costs. CM/GC Contractor shall also identify other potential cost savings for the Project. CM/GC Contractor shall identify and provide value engineering concepts to the Design Consultant. CM/GC Contractor shall prepare cost estimates and if applicable, schedules of the value engineering concepts.

- g) Material selection and cost forecasting: CM/GC Contractor shall develop estimates of construction material escalation to assist VPRA in making decisions regarding material selection and early construction packages. CM/GC Contractor may engage in early procurement of materials with long-lead times if approved by VPRA.
- h) Cost risk analysis: CM/GC Contractor shall furnish VPRA with information regarding cost items that have the greatest probability of being exceeded.
- i) Cash flow projections/cost control: CM/GC Contractor shall conduct earned value analysis to provide VPRA with information on how Project financing must be made available to avoid delaying Project progress. This also may include an estimate of construction carrying costs to aid VPRA in determining projected cash flow decisions.
- j) Biddability reviews: CM/GC Contractor shall review the Design to ensure that Subcontractor work packages can be bid out and receive competitive pricing. This action reduces the risk to the Subcontractors because they are given the specific design product they need for their bids.
- k) Subcontractor bid packaging: CM/GC Contractor shall coordinate the Design packaging to correlate with Subcontractor work packages so that work packages can be easily bid out and awarded. Where appropriate, CM/GC Contractor shall identify portions of Early Work that may be suitable for Subcontractor bidding and recommend advancement of the Design for those packages to facilitate participation by Subcontractors.
- l) Prepare Subcontracting Plan: CM/GC Contractor shall identify the Construction Work that it desires to self-perform and the Construction Work that will likely be performed by Subcontractors. CM/GC Contractor shall prepare a procedure to obtain competitive bids from potential Subcontractors for subcontracted work. CM/GC Contractor and VPRA shall negotiate the scope of self-performed work and the CM/GC Contractor's Subcontracting Plan.
- m) Prepare and submit Construction Cost Estimates containing CM/GC Contractor's Binding GMP Proposal, in the form of a Guaranteed Maximum Price, to construct the Project. CM/GC Contractor shall submit Construction Cost Estimates commencing upon finalization of comments on the 60% design submittal. On or before finalization of the 90% Design, CM/GC Contractor shall submit a Binding GMP Proposal containing a binding offer to perform the Construction Work for a specified GMP and Construction Schedule.

The Construction Cost Estimates include both the self-performed work and subcontracted work. CM/GC Contractor shall attend meetings with VPRA and the preparer of VPRA's independent cost estimates to reconcile differences on an Open Book basis and attempt to negotiate a GMP. CM/GC Contractor and VPRA shall discuss and agree to the format in which CM/GC Contractor will provide the Construction Cost Estimates. At a minimum, CM/GC Contractor's cost breakdown shall show:

- i. A complete list of drawings and construction documents on which the estimate is based;
- ii. Unit prices and quantity take-offs;

- iii. Material costs, equipment costs, labor costs, hourly labor rates, crew sizes, shifts per day, hours per shifts (labor rates shall include employee benefits, payroll taxes and other payroll burdens);
- iv. Risk assumptions and assignment of risks;
- v. Production rates, transportation, and other facilities and services necessary for the proper execution of the work;
- vi. Breakdown of costs by trade;
- vii. breakdown of contingencies;
- viii. Copies of quotations from Subcontractors and suppliers; **and**
- ix. Field indirect costs, bonds, taxes, and insurance; **and**
- ~~ix.x.~~ a fixed-fee markup that constitutes full compensation for profit and Contractor's general and administrative costs, which shall not exceed [Construction Cost Markup amount]% of the total cost of performing the Construction Work.

Additionally, CM/GC Contractor will provide a written narrative of each Construction Cost Estimate that identifies the means, methods, assumptions, and risks that were used to price the Construction Work.

During the reconciliation meetings, CM/GC Contractor shall explain all assumptions used to build the Construction Cost Estimate and answer questions from the ICE and VPRA concerning the estimate.

Task 3. Schedule-Related Phase 1 Services

- a) Validate VPRA's schedules: CM/GC Contractor shall evaluate if the current scope of Work can be executed within the constraints of the schedule.
- b) Prepare Project schedule: CM/GC Contractor shall prepare a Project schedule based on the known constraints and the Design that will form the basis of the Construction Cost Estimates and a proposed GMP. The final Construction Schedule will be incorporated into the Phase 2 Amendment, if awarded.
- c) Develop sequence of Design Work: CM/GC Contractor recommends the sequence of the remaining Design work to mirror the Construction Work so that Early Work packages and Construction Work packages can be developed.
- d) Construction phasing: CM/GC Contractor shall develop a construction phasing plan to facilitate construction progress and ensure maintenance of rail operations and traffic. This includes identification of critical third-party approvals and permitting, right-of-way parcel acquisition, and utility relocations.
- e) Schedule risk analysis/control: CM/GC Contractor shall evaluate the risks inherent to design decisions regarding the schedule and offer alternative materials, means, and/or methods to mitigate those risks.

Task 4. Administrative-Related Phase 1 Services

- a) Kick-off meeting: CM/GC Contractor shall attend a kick-off meeting to discuss issues such as: a plan and schedule for the Phase 1 Services, scheduling of the meetings and workshops, identification of goals for the Phase 1 Services, and other related issues. This meeting shall take place within 3 days of CM/GC Contractor's receipt of Notice to Proceed

for the Phase 1 Services.

- b) Third-party impact avoidance and reduction strategies: CM/GC Contractor shall review agreements, permits, and work arounds (commitments) made to third-parties (cities, utilities, property owners, and regulatory agencies) and determine and/or identify the feasibility of the commitments. CM/GC Contractor shall advise VPRA of impacts and alternative solutions to comply.
- c) Assistance in obtaining third-party approvals and permits: CM/GC Contractor shall work with VPRA to obtain approvals and permits required from third-parties, including by suggesting design concepts, attending meetings, developing construction means and methods, developing construction sequencing, planning construction staging, and other necessary tasks that assist the effort to obtain necessary approvals.
- d) Utility Coordination: CM/GC Contractor shall assist VPRA's efforts to coordinate with utility owners to determine how to address utility facilities impacted by the Project. Where appropriate, CM/GC Contractor shall assist with the preparation of agreements with utility owners.
- e) Document control: CM/GC Contractor shall implement a document control process and software solution, as agreed upon by VPRA, that will allow for the efficient transmittal, sharing, tracking, approval, and filing of all Project related documents.
- f) Coordinate with third-party stakeholders: CM/GC Contractor shall assist VPRA with communication with third-parties involved in the Project, including utilities, railroads, and the general public.
- g) Attend public meetings: CM/GC Contractor shall attend public meetings to answer questions from the public about the construction of the Project.
- h) Assist in Right of Way acquisition/validation: CM/GC Contractor shall assist VPRA and the Design Consultant with identifying options for Right of Way acquisitions. The primary purpose is to minimize the amount of Right of Way actions that must be undertaken and to assist in prioritizing individual parcel acquisition.
- i) Study labor availability/conditions: CM/GC Contractor shall furnish advice during Design regarding the availability of specialty trade Subcontractors and the impact of that availability on the Project budget and schedule constraints.
- j) Analyze environmental commitments/permits: CM/GC Contractor shall review environmental commitments/permits attached to the Project and identify feasibility issues of such commitments/permits.
- k) Coordinate site visits for Subcontractors: CM/GC Contractor shall coordinate site visits for Subcontractors to facilitate the Subcontractor procurement process.
- l) Project Meetings: CM/GC Contractor shall attend scheduled Project meetings and contribute with comments, provide solutions, and carry needed action items.
- m) Project Management Plan: CM/GC Contractor shall prepare a Project Management Plan for VPRA's approval that describes CM/GC Contractor's managerial approach, strategy, and procedures to construct the Project in a way that achieves all requirements of the Construction Work. CM/GC Contractor shall ensure that the PMP complies with Federal Railroad Administration (FRA) guidance.

- n) Quality Plan: CM/GC Contractor shall prepare a plan for quality management of the Construction Work.
- o) Small Business Utilization Submittals: CM/GC Contractor shall submit the items set forth in Sections 1.0 and 2.0 of the *Special Provision Regarding the Utilization of Small and Diverse Businesses on the Project* (SP 06).
- p) Safety Plan: CM/GC Contractor shall prepare a plan establishing its safety management process for the Project.
- q) Environmental Management Plan: CM/GC Contractor shall prepare a plan to comply with the environmental requirements in the Contract.
- r) Sustainability Plan: CM/GC Contractor shall prepare a plan to achieve sustainability in the construction of the Project, including CM/GC Contractor's plan to use recycled and renewable energy materials, efficiently use energy, and minimize the generation of waste.

Other Direct Costs

Other Direct Costs are not included in the Phase 1 Price Component submitted with the Proposal and will be reimbursed on an actual cost basis provided that they are actually incurred by Contractor and VPRA has approved the incurrence of such Other Direct Costs in advance and in writing. Other Direct Costs include only those identified below. All other costs of performing the Phase 1 Services are covered by the applicable markup and are not eligible for reimbursement.

- a) All travel, sustenance, and lodging necessary for performance of the Phase 1 Services, subject to compliance with the most current version of the Commonwealth of Virginia, Department of Accounts (DOA), Commonwealth Accounting Policies and Procedures (CAPP) Manual Topic 20335, available at the DOA website: www.doa.virginia.gov. When travel is authorized it must originate from Contractor's nearest office. Amounts in excess of the travel policy will not be reimbursed. Contractor must submit invoices with itemized receipts for all expenses incurred for which Contractor seeks reimbursement.
- b) An employee of Contractor that does not live local to the Project and requires regular travel to perform the Work shall be eligible for reimbursement of travel expenses for a period not to exceed six months. After such period, Contractor is responsible for all travel costs necessary for such individual to perform the Work and is not eligible for additional reimbursement.
- c) Mileage charges for rental cars in connection with out-of-town travel may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations. Mileage costs for travel within the Washington, D.C. metropolitan area (the area that is within a 20 mile radius of the Project ROW) is considered to be included in the applicable markup and is not eligible for reimbursement.
- d) Permit fees and other fees paid to secure the approval of a Third-Party are eligible for reimbursement on an actual cost basis.

Optional Services

The following services are not included in the Phase 1 Price Component submitted with the Proposal. VPRA may request that CM/GC Contractor perform the following at an agreed-upon price:

- a) Geotechnical investigation

- b) Subsurface utility investigation
- c) Test piles
- d) Site preparation
- e) Survey
- f) Other Site investigation tasks to support completion of the design and risk mitigation
- g) Public Information
- h) Right-of-way acquisition assistance

Phase 1 Services Schedule

Event/Milestone/Workshop	Day
Phase 1 Services NTP	0
Kickoff Workshop	3
30 % Constructability Workshop (Recurring – Schedule to be set)	5
Submission of OPCC	45 <u>90</u>
Cost Reconciliation for OPCC	60 <u>105</u>
60% Constructability Workshop (Recurring – Schedule to be set)	90 <u>105</u>
Submission of Construction Cost Estimate	150
Reconciliation workshops/ Proposed Guaranteed Maximum Price Revisions	175
90 % Constructability Workshop (Recurring – Schedule to be set)	215
Submission of Binding GMP Proposal	215
Submission of Final Binding GMP Proposal	297
Phase 2 NTP (Contingent)	365

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EXHIBIT D

Insurance Requirements

All capitalized terms not otherwise defined in this Exhibit D shall have the meanings ascribed to such terms within Exhibit A (*Acronyms and Definitions*) to the Contract. Contractor at its sole expense shall procure and maintain the types of insurance specified below (or cause others to procure the types and amounts of insurance specified below as appropriate) subject to any conditions noted therein. As a condition to each corresponding notice to proceed, Contractor shall have its insurance broker or insurance company submit a certificate of insurance to VPRA giving evidence of the relevant coverage types and amounts set forth below, as well as compliance with the provisions of Article 10 of the General Terms and Conditions, prior to commencing the corresponding Work under the Contract. All required insurances shall contain a waiver of subrogation provision in favor of the Commonwealth, VPRA, Amtrak, and CSXT.

A. PHASE 1 AND EARLY WORK INSURANCE REQUIREMENTS

1. **Workers' Compensation** for all of its employees engaged in the Project as required by Chapter 8 of Title 65.2 of the *Code of Virginia* (1950), as amended and/or any other jurisdiction in which the Work is performed. If Contractor leases one or more employees through the use of a payroll, employee management, or other similar company, then Contractor must procure workers' compensation insurance written on an "if any" policy form, including an endorsement providing coverage for alternate employer/leased employee liability. Such insurance shall be in addition to the workers' compensation coverage provided to the leased employee by the payroll, employee management, or other similar company.
2. **Employer's Liability Insurance** with limits of \$1,000,000 per occurrence for bodily injury, \$1,000,000 per employee for bodily injury by occupation disease, and \$1,000,000 policy limit for bodily injury by disease.
3. **Commercial General Liability Insurance** including coverage for premises and operations, independent contractors, personal injury, products-completed operations, and broad form contractual liability with limits of at least \$1,000,000 per occurrence and \$2,000,000 annual general aggregate applicable on a per project basis. Such coverage shall be on an occurrence form providing for Named Insured Cross Liability and Severability of Interest and include endorsement CG 24 17 (10/01) Contractual Liability – Railroads, or equivalent. There shall be no exclusion for work within 50 feet of a railroad. The Commonwealth, VPRA, CSXT, and Amtrak are to be named as an additional insured on a primary, non-contributory basis. Such insurance shall provide coverage for all operations and shall be maintained for five years after Final Acceptance and final payment for the Work.
4. **Automobile Liability Insurance** with a limit of at least \$1,000,000 combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles on site or off. The Commonwealth, VPRA, CSXT, and Amtrak are to be named as an additional insured on a primary, non-contributory basis.
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.

6. **Umbrella/Excess Liability Insurance** in excess of the underlying limits noted above for all the above mentioned policies (except cyber insurance and workers compensation) in the amount of \$10,000,000 per occurrence and in the aggregate. Such policy(ies) shall be written on a “following form” basis, without any gaps in the limits of coverages and be at least as broad as and follow the form of underlying primary coverages required herein. The Commonwealth, VPRA, CSXT, and Amtrak are to be named as an additional insured on a primary, non-contributory basis. Such insurance shall provide coverage for all operations including the products-completed operations hazard and shall be maintained for five years after Final Acceptance and final payment for the Work.
7. **Contractor’s Professional Liability Insurance** covering liability for acts, errors, or omissions arising in connection with Professional Services provided as part of the Work. Such coverage may be evidenced utilizing so-called “practice” or “corporate” policies and shall be for a minimum limit of \$5,000,000 any one claim and in the aggregate. The Commonwealth, VPRA, CSXT, and Amtrak are to be included on any such policies as indemnified parties, subject to market availability. The retroactive date for coverage will be no later than the commencement date of any work by Contractor and will provide that in the event of cancellation or non-renewal the discovery period for insurance claims will be at least five years or otherwise as by agreement with VPRA.
8. **Contractor’s Pollution Liability Insurance** shall be required of any entity that is undertaking any Construction Work during Phase 1 including any utility relocation, test boring, or digging test pits. Such coverage shall have a minimum limit of \$3,000,000 per claim and in the aggregate and need not be Project-specific. Such coverage shall indemnify for bodily injury, property damage, cleanup/remediation costs or other amounts which the entity undertaking the Work, its employees, its agents, or its Subcontractors are legally obligated to pay arising out of such activities, including any transit and/or disposal at non-owned disposal sites. The Commonwealth, VPRA, CSXT, and Amtrak are to be named as additional insureds on a primary, non-contributory basis. If coverage is placed on a claims-made basis, such coverage shall continue for a period of three (3) years after all work is complete.
9. **Subcontractor Insurance.** The Contractor will cause all Subcontractors working at the site to obtain and maintain the following insurance coverages with the Commonwealth, VPRA, CSXT, and Amtrak as additional insureds on a primary, non-contributory basis (except for professional liability) and including a waiver of subrogation in favor of the above-noted parties:
 - (a) **Workers’ Compensation and Employer’s Liability Insurance** with statutory workers’ compensation (Coverage A) limits and employer’s liability (Coverage B) limits of \$500,000 bodily injury by accident, each accident, and \$500,000 bodily injury by disease, each employee. Coverage will be extended, if needed, to cover any claims under the United States Longshore and Harbor Workers’

Compensation Act (33 U.S.C. §§ 901-950) and the Jones Act (46 U.S.C. § 30104).

- (b) **Commercial General Liability Insurance** will include coverage for premises and operations, independent contractors, personal injury, product and completed operations, explosion, collapse and underground, and contractual liability with limits must no less than \$1,000,000 per occurrence and \$1,000,000 in the general aggregate annually. There shall be no exclusion for work within 50 feet of a railroad.
- (c) **Automobile Liability Insurance** with a limit of at least \$500,000 combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles on site or off.
- (d) **Umbrella/Excess Liability Insurance** in excess of the underlying limits noted above for employer's liability, commercial general liability and automobile liability in the amount of \$2,000,000 per occurrence and in the aggregate for any contracts valued at \$1,000,000 or more.

B. PHASE 2 INSURANCE REQUIREMENTS

1. **Workers' Compensation** for all of its employees engaged in the Project as required by Chapter 8 of Title 65.2 of the Code of Virginia (1950), as amended and/or any other jurisdiction in which the Work is performed. If Contractor leases one or more employees through the use of a payroll, employee management, or other similar company, then Contractor must procure workers' compensation insurance written on an "if any" policy form, including an endorsement providing coverage for alternate employer/leased employee liability. Such insurance shall be in addition to the workers' compensation coverage provided to the leased employee by the payroll, employee management, or other similar company.
2. **Employer's Liability Insurance** with limits of \$1,000,000 per occurrence for bodily injury, \$1,000,000 per employee for bodily injury by occupation disease, and \$1,000,000 policy limit for bodily injury by disease.
3. **Commercial General Liability Insurance** including coverage for premises and operations, independent contractors, personal injury, products-completed operations, and broad form contractual liability of limits of at least \$1,000,000 per occurrence and \$2,000,000 annual general aggregate applicable on a per project basis. Such coverage shall be on an occurrence form providing for Named Insured Cross Liability and Severability of Interest and include endorsement CG 24 17 (10/01) Contractual Liability – Railroads, or its equivalent. There shall be no exclusion for work within 50 feet of a railroad. The Commonwealth, VPRA, CSXT, and Amtrak are to be named as an additional insured on a primary, non-contributory basis. Such insurance shall provide coverage for all operations and shall be maintained for five years after Final Acceptance and final payment for the Work.
4. **Automobile Liability Insurance** with a limit of at least \$1,000,000 combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles on site or off. The Commonwealth, VPRA, CSXT, and Amtrak are to be named as an additional insured on a primary, non-contributory basis.
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.
6. **Umbrella/Excess Liability Insurance** in excess of the underlying limits noted above for all the above mentioned policies (except workers compensation and cyber liability) with a minimum limit of \$50,000,000 per occurrence and in the aggregate. Such policy(ies) shall be written on a "following form" basis without any gaps in the limits of coverages and be at least as broad as and follow the form of underlying primary coverages required herein. The Commonwealth, VPRA, CSXT, and Amtrak are to be named as an additional insured on a primary, non-contributory basis. Such insurance shall provide coverage for all

operations and shall be maintained for five years after Final Acceptance and final payment for the Work.

7. **Contractor's Professional Liability Insurance** covering liability for acts, errors, or omissions arising in connection with services provided as part of the Work. Such coverage may be evidenced utilizing so-called "practice" or "corporate" policies and shall be for a minimum limit of \$5,000,000 any one claim and in the aggregate. The Commonwealth, VPRA, CSXT, and Amtrak are to be included on any such policies as indemnified parties, subject to market availability. Such policy shall not contain any exclusions directed toward any types of projects, materials, services, or processes involved in the Work. The retroactive date for coverage will be no later than the commencement date of work by Contractor and will provide that in the event of cancellation or non-renewal the discovery period for insurance claims will be at least five years. The Commonwealth, VPRA, CSXT, and Amtrak are to be included as indemnified parties, subject to market availability. The policy shall remain in effect for five years after all work is completed or include a five year extended reporting period. Such policy shall be written in a manner that allows any additional insured to still make a claim under the policy against Contractor or other insured party (i.e., cross-liability).

8. **Builder's Risk Insurance** on an "all risks" basis for physical loss, destruction, or damage to the Work and any temporary structures or works. The Builder's Risk insurance must be project-specific and will cover the Contractor, VPRA, and other Subcontractors of all tiers prior to Substantial Completion; *provided*, that the limits of such coverage may be based on a maximum probable loss analysis, as determined by an experienced third-party and subject to VPRA's approval of such maximum probable loss analysis. 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~~10,000,000 for off-site storage and transit; (y) at least ~~\$50~~10,000,000 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~~. Professional fees and loss adjustment expenses of at least \$1,000,000 each are also acceptable. The policy also will include replacement cost coverage for materials, supplies, equipment, machinery, and fixtures that are or will be part of the Project. Coverage will include, but not be limited to, the following (provided that commercially reasonable sublimits will be accepted where typical):
 - (a) right to partial occupancy;
 - (b) London Engineering Group (LEG) 3 type or equivalent coverage for design error, faulty workmanship, and/or faulty materials;
 - (c) earthquake;
 - (d) earth movement (including subsidence, sinkhole, and collapse);
 - (e) flood;
 - (f) windstorm, tornado, hurricane or named storm;
 - (g) fire and explosion;
 - (h) theft, vandalism, and malicious mischief;

- (i) transit;
- (j) temporary and permanent works; and
- (k) expediting expenses.

The Builder's Risk Insurance must be in place, at the latest, by Phase 2 NTP, *provided* that if the Builder's Risk Insurance is not in place on the Effective Date, Contractor shall submit to VPRA on or before the Effective Date: (x) a letter of certification from the Contractor or the Contractor's insurance broker confirming that Builder's Risk Insurance compliant with the requirements contained herein will be placed prior to Phase 2 NTP; and (y) a specimen Builder's Risk Insurance policy with all appropriate attachments, sub-limits, etc. and any maximum probable loss analysis.

9. **Contractor's Pollution Liability Insurance** to indemnify for bodily injury, property damage, cleanup/remediation costs or other amounts which the Contractor, its employees, its agents, or its Subcontractors are legally obligated to pay arising out of the Work, any transit and/or disposal at non-owned disposal sites. Such insurance will have minimum limits of \$5,000,000 for any one pollution incident and in the aggregate and will remain in full force and effect for the period of the Work and a five (5)-year extended reporting period after Final Acceptance. The Commonwealth, VPRA, CSXT, and Amtrak are to be named as an additional insured on a primary, non-contributory basis. Such policy shall be written in a manner that allows any additional insured to still make a claim under the policy against Contractor or other insured party (i.e., cross-liability).
10. **Other Insurance.** Any use of unmanned aircraft shall be appropriately insured with minimum limits of \$5,000,000 per occurrence and aggregate; the Commonwealth, VPRA, CSXT, and Amtrak are to be named as an additional insured on a primary, non-contributory basis.
11. **Subcontractor Insurance.** Unless covered under a Contractor-Controlled Insurance Program (CCIP) for each of the insurance policies listed below, the Contractor shall cause all Subcontractors working at the site or at a dedicated off-site fabrication facility to obtain and maintain the following insurance coverages with the Commonwealth, VPRA, CSXT and Amtrak as additional insureds on a primary, non-contributory basis (except for workers compensation and professional liability) and also including a waiver of subrogation in favor of the above-noted parties. Note that should the Contractor utilize a CCIP, any such contractors enrolled in such CCIP shall also provide the following coverages for all off-site activities including the additional insured and waiver of subrogation provisions noted above.
 - (a) **Workers' Compensation and Employer's Liability Insurance** with statutory workers' compensation (Coverage A) limits and employer's liability (Coverage B) limits of \$500,000 bodily injury by accident, each accident, and \$500,000 bodily injury by disease, each employee. Coverage will be extended, if needed, to cover any claims under the United States Longshore and Harbor Workers' Compensation Act (33 U.S.C. §§ 901-950) and the Jones Act (46 U.S.C. § 30104).

- (b) **Commercial General Liability Insurance** will include coverage for premises and operations, independent contractors, personal injury, product and completed operations, explosion, collapse and underground, and contractual liability with limits not less than \$1,000,000 per occurrence and \$1,000,000 general aggregate annually. There shall be no exclusion for work within 50 feet of a railroad.
- (c) **Automobile Liability Insurance** with a limit of at least \$500,000 combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles on site or off.
- (d) **Umbrella/Excess Liability Insurance** in excess of the underlying limits noted above for employer's liability, commercial general liability and automobile liability in the amount of \$2,000,000 per occurrence and in the aggregate for any contracts valued at \$1,000,000 or more.

C. GENERAL REQUIREMENTS RELATING TO INSURANCE

1. **General Insurance Requirements.** Contractor shall, at a minimum procure and keep in effect the insurance policies required herein. Each such insurance policy shall be procured from an insurer that is authorized to conduct business in the Commonwealth and shall have a current policyholder's management and financial size category rating of A- (A minus) or better and Class VIII or better by A. M Best and Company's Insurance Reports Key Rating Guide.

Each such policy maintained by the Contractor shall be endorsed to state that coverage cannot be cancelled or reduced in coverage or limits (except with respect to payments under the policy that by their nature erode or deplete the policy limits) by the insurers until 30 days prior written notice (10 days for non-payment of premium) has been provided to VPRA and any other parties as required by contract. Additionally, VPRA, the Commonwealth, CSXT, and Amtrak shall have no responsibility or liability for payment of any premiums, deductibles or self-insured retentions under any of the insurance policies required herein.

2. **Subcontract Agreements.** Contractor shall by appropriate written agreements flow down the requirements for certain insurance coverages as noted above and: (i) the waiver of subrogation for all required insurance, and (ii) additional insured coverage for all required insurance on a primary and non-contributory basis (except workers compensation and employer's liability) and (iii) other requirements of this Exhibit all tiers of Subcontractors for all insurance required of such Subcontractors under this Exhibit.
3. **Separation of Insureds/Cross Liability.** The required insurance shall apply separately to each named insured and additional insured against whom a claim is made, or suit is brought, except with respect to the limits of the insurer's liability. Such provision shall provide that the interests and protections of each additional insured shall not be affected by any unintentional misrepresentation, act or omission of another named insured, or any breach by named insured of any provision in the policy that would otherwise result in forfeiture or reduction of coverage for the other insureds on the policy. There shall be no limitation of coverage for any suits by the Commonwealth, VPRA, CSXT, or Amtrak against any other insured under the policies (i.e., no 'insured v. insured' exclusion).
4. **Waiver of Right to Recover, Including Subrogation.** Contractor and Subcontractors hereby waive all their rights of recovery, under subrogation or otherwise, against the Commonwealth, VPRA, CSXT, and Amtrak with respect to the Project, to the extent covered by insurance required to be provided by Contractor and its Subcontractors of whatever tier. Contractor and all Subcontractors further waive all rights of recovery which are not covered by insurance because of deductible or self-insurance obligations relating to such insurance. These waivers do not apply to Contractor's rights of recovery against its own Subcontractors, vendors, and suppliers of whatever tier. Contractor will require all tiers of its Subcontractors, vendors, and suppliers, by appropriate written agreements, to provide similar waivers each in favor of all parties enumerated in this paragraph. To the fullest extent permitted by law, Contractor will require all insurance policies required by this Exhibit to include clauses stating each insurer will waive all rights of recovery consistent with this paragraph. All waivers provided herein shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in any property damaged.

5. **Utilization of Contractor Controlled Insurance Program (CCIP).** Contractor may utilize a Contractor Controlled-Insurance Program (CCIP) to provide any and all of the coverages required above, provided, however, that any Subcontractors and the Contractor must still maintain compliant insurance for any off-site activities and for any coverages not included in the CCIP. Any CCIP, as well as any offsite coverages, must fully comply with the additional insured, primary and non-contributory, waiver of subrogation, separation of insureds and other requirements noted above.
6. **Requirements Not Limiting.** The Parties acknowledge and agree that (i) requirements of specific coverage features or limits contained in this Exhibit are minimum coverages only and not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance policy; (ii) specific reference to a given coverage feature is not intended to be all-inclusive, or to the exclusion of other coverage, or a waiver of any type; and (iii) all insurance coverage and limits provided by Contractor, Subcontractor or by third parties pursuant to obligations of Contractor hereunder, and, in each case, available or applicable to the Project are intended to apply to the full extent of the insurance policies, and nothing contained in the Contract limits, or shall be deemed to limit, the application of such insurance coverage.

It is further understood that the insurance coverage described herein does not limit any obligations or liability of Contractor under the Contract. Furthermore, the insurance limits required hereunder are minimum limits only and not intended to restrict the liability imposed on Contractor or any Subcontractor at any tier, or otherwise to limit or reduce coverage amounts or limits under any insurance policies procured by any such Persons.

7. **Inadequacy of Required Coverages.** VPRA makes no representation that the scope of coverage and limits of liability specified for any insurance policy to be carried pursuant to the Project, or approved variances therefrom, are adequate to protect Contractor against its undertakings under the Contract or its liabilities to any third party. It is the responsibility of Contractor and any and all Subcontractors to determine if any changes or additional coverages are required to adequately protect their interests. No such limits of liability or approved variances therefrom shall preclude VPRA from taking any actions as are available to it under the Contract or otherwise at Law.

EXHIBIT E

Performance and Payment Bonds

Exhibit F
Contract Template

Exhibit G

Forms

APPENDIX 1

ACRONYMS AND DEFINITIONS

The abbreviations used herein shall have the following meanings:

AHJ	Authority Having Jurisdiction
CSBUA	Comprehensive Small Business Utilization Approach
CSXT	CSX Transportation, Inc.
DSBSD	Department of Small Business and Supplier Diversity
FRA	Federal Railroad Administration
ICE	Independent Cost Estimator
OPCC	Opinion of Probable Construction Cost
QA	Quality Assurance
QC	Quality Control
RFP	Request for Proposals
USDOT/DOT	United States Department of Transportation
VRE	Virginia Railway Express
VPRA	Virginia Passenger Rail Authority

Defined terms used in this RFP have the following meanings:

Affiliate	With respect to an entity referenced in this RFP: a) Any Person that directly or indirectly controls, or is controlled by, or is under common control with, such entity; and b) Any other Person that owns 20% or more of the entity's equity interest.
Amtrak	The National Railroad Passenger Corporation
Authorities Having Jurisdiction (AHJ)	Third party agencies that have jurisdiction over any portion of the Project.
Best Value	Shall have the meaning ascribed in the Procurement Rules.
Binding GMP Proposal	CM/GC Contractor's binding submission of a proposed GMP to perform the Construction Work.
CM/GC Contractor	The firm selected pursuant to this procurement to provide the CM/GC services described in this RFP and the Contract.
Commonwealth	The Commonwealth of Virginia.
Construction Cost Estimate	CM/GC Contractor's submission of estimates of the Construction Schedule and costs to perform the Construction Work, including the Opinion of Probable Construction Cost, Binding GMP Proposal, and Final Binding GMP Proposal.
Construction Cost Markup	CM/GC Contractor's <u>percentage</u> markup to the direct costs <u>cost</u> of the Construction Work to account for profit and home office overhead, as identified on Form U.

Construction Manager/General Contractor (CM/GC)	A method of procurement and project delivery in which VPRA procures a construction firm to perform Phase 1 Services, and, subject to successful GMP Negotiations, the Phase 2 Services.
Construction Schedule	CM/GC Contractor's schedule for performance of the Construction Work.
Construction Work	The efforts and services necessary to construct the Project. It comprises the Phase 2 Services.
Contract	The contract providing the terms and condition for the CM/GC Contractor's performance of the Work. The Contract contains the terms for the Phase 1 Services, and, if a Phase 2 Amendment is executed, the Phase 2 Services.
Critical Infrastructure	Critical infrastructure is a system or asset so vital that its incapacity or destruction would (i) have a debilitating impact on public health, safety or security; or (ii) cause significant economic harm or instability.
Design	The final plans, drawings, and other documentation furnished by the Design Consultant for the construction of the Project..
Design Consultant	The engineering firm engaged by VPRA to prepare the Design. The Design Consultant for the Project is Parsons Transportation Group.
Designated Contact	The individual designated by a Proposer as the point of contact for communications with VPRA during the procurement.
DOT Component	The division, office, or mode within the USDOT awarding Federal financial assistance. This includes the FRA.
Early Work	Construction Work that is negotiated separately from the overall Construction Work and may be performed by CM/GC Contractor prior to VPRA delivering to the CM/GC Contractor a Notice to Proceed with the Phase 2 Services.
Early Work Amendment	An amendment to the Contract Documents that adds an Early Work package to the CM/GC Contractor's scope of Work, and includes all terms and conditions for CM/GC Contractor's performance of the Early Work package.
Evaluation Team	The individuals who will perform the evaluation and scoring of Proposals.
Final GMP Proposal	The Guaranteed Maximum Price submitted by CM/GC Contractor at VPRA's request containing the agreed-upon GMP and Construction Schedule to perform the Construction Work and the terms and conditions of the Construction Work.
GMP Negotiations	The process of VPRA's and CM/GC Contractor's negotiation of the GMP, including comparison of the Construction Cost Estimates to the ICE's estimates and the reconciliation of differences in price. GMP Negotiations include negotiation of the Construction Schedule.
Guaranteed Maximum Price (GMP)	The not-to-exceed price to perform the Construction Work.
Guarantor	A Person that guarantees the financial and performance obligations of CM/GC Contractor.
Independent Cost Estimator (ICE)	A Person that prepares an independent cost estimate of the cost to perform the Construction Work.
Joint Venture	A combination of two or more Persons for the purposes of undertaking the construction of the Project. A Joint Venture is not, itself, a distinct business entity, but may be comprised of a

	combination of business entities and/or individuals. If a Joint Venture is the successful Proposer, then joint venturers must each be a signatory to the Contract and must agree to be jointly and severally liable for the performance thereof.
Key Personnel	The individuals specified in <u>Section 4.5.1</u> of this RFP.
Notice of Intent to Award	The written notification provided by VPRA informing a Proposer that it is the Top Ranked Proposer and the party to whom VPRA intends to award the Contract.
Notice to Proceed	A written directive from VPRA to the CM/GC Contractor to proceed with the Work.
Open Book	CM/GC Contractor's provision of information, including pricing, that shows all assumptions, data, and other substantiation supporting the information presented and that allows VPRA to check and verify the accuracy of the material presented. For cost estimates, this entails the provision of all information that CM/GC Contractor used to develop the cost under consideration, including labor, fringe benefits, equipment, materials, productivity, schedule, phasing, estimating factors, allowances, risk, contingency, indirect costs, discount rates, interest rates, inflation, insurance, bonding, fees, overhead, profit, and other items that comprise the cost.
Opinion of Probable Construction Cost	A non-binding cost estimate to perform the Construction Work prepared by the CM/GC Contractor, which shall be based on the Design provided by VPRA.
Organizational Conflict of Interest Policy	VPRA's policy governing conflicts of interest, as described further in <u>Section 1.7</u> of the RFP.
Person	Any individual, firm, corporation, company, joint venturer, voluntary association, partnership, trust, or unincorporated organization, or combination thereof.
Phase 1 Price Component	A Proposer's total estimated direct labor costs to perform the Phase 1 Services, as further described in Section 5.1 of this RFP, and as stated on Form T.
Phase 1 Services	The Phase 1 Services identified in Exhibit C.
Phase 1 Services Fee	The not-to-exceed amount for the CM/GC Contractor's performance of the Phase 1 Services.
Phase 2 Amendment	An amendment to the Contract that adds the Phase 2 Services to the CM/GC Contractor's scope of Work, and includes all terms and conditions for CM/GC Contractor's performance of the Phase 2 Services.
Phase 2 Services	The Construction Work, as specified in further detail in the Phase 2 Amendment.
Point of Contact (POC)	VPRA's single point of contact for the procurement of this Project, identified in <u>Section 1.5</u> of this RFP.
Phase 1 Services	The services and activities undertaken as part of the Phase 1 Services.
Price Proposal	The portion of the Proposal containing the price components specified in this RFP.
Principal Participant	Any of the following entities: the Proposer; individual firms (e.g., corporation, limited liability company, limited liability partnership), general partners, or Joint Venture members of the Proposer; and/or;

	all Persons and legal entities holding (directly or indirectly) a 15% or greater beneficial or ownership interest in the Proposer.
Procurement Rules	The rules of procurement adopted by VPRA that govern VPRA's procurements, available at: Procurement-Rules.pdf (vapassengerrailauthority.org)
Procurement Schedule	The schedule for this procurement detailed in <u>Section 2.1</u> of this RFP.
Project	The Franconia-Springfield Bypass project.
Project Manager	The individual designated by VPRA to oversee the Project and to render decisions as provided for in the Contract.
Project Team	The team consisting of VPRA, CM/GC Contractor, Design Consultant, and ICE.
Proposal	The response to the RFP submitted by a Proposer.
Proposal Score	The total score received for a Proposal, calculated as provided in <u>Section 6.1.4</u> .
Proposal Security	The bond or security provided by the Proposer to VPRA in accordance with the requirements of <u>Section 1.14</u> .
Proposer	An entity that submits a Proposal in response to the RFP. Where context dictates, Proposer shall also mean a potential Proposer.
Quality Assurance ("QA")	All planned and systematic actions performed by VPRA to ensure that all Work complies with the requirements of the Contract and that all materials incorporated in the Work, all equipment used, and all elements of the Work will perform satisfactorily for the purpose(s) intended. Actions include specification reviews, document control reviews, and working plan reviews; construction inspection; materials sampling and testing at the production site and the Project site; oversight of manufacturing/processing facilities and equipment; oversight of on-site equipment; calibration of test equipment; acceptance or rejection of material; and documentation of all activities.
Quality Control ("QC")	The total of all activities that are performed by the production staff of the CM/GC Contractor, Subcontractors, producer, or manufacturer to ensure the Work meets the requirements of the Contract. QC may include checks; inspection of material handling and construction; calibration and maintenance of sampling and testing equipment; working plan review; document control; production process control; any inspection, sampling, and testing done for these purposes; and documentation of QC activities.
Request for Proposals (RFP)	This request for the submission of Proposals from firms interested in serving as CM/GC Contractor for the Project.
Selection Criteria	The criteria set forth in <u>Section 6.1.3</u> .
Site	The parcels of right-of-way on which the Project is to be constructed and areas in the vicinity used by the CM/GC Contractor to facilitate work for the Project.
Subcontractor	A firm under contract with the CM/GC Contractor or another Subcontractor to perform a specified portion of the Work. Subcontractor includes firms under contract at any tier to perform a specified portion of the Work.

Subcontracting Plan	The plan prepared by the CM/GC Contractor during the Phase 1 Services that provides the competitive bidding process for the procurement of Subcontractors. The Subcontracting Plan is subject to VPRA's approval.
Tangible Net Worth	The difference between the (i) the sum of paid-in capital stock plus preferred stock plus retained earnings, less (ii) the sum of treasury stock plus minority interest plus intangible assets, including goodwill, patents, and licenses, all determined in accordance with Generally Accepted Accounting Principles and as interpreted by the Securities and Exchange Commission in connection with financial statements filed pursuant to the Securities Exchange Act of 1934.
Top Ranked Proposer	The Proposer that achieves the highest Proposal Score, or if VPRA terminates negotiations with the highest-ranked Proposer, each successive Proposer with whom VPRA enters negotiations for the Contract.
VPRA	The Virginia Passenger Rail Authority.
VPRA Website	VPRA's website on which VPRA posts information about its ongoing procurements, accessible at: https://vapassengerrailauthority.org/working-with-us/procurement/
Work	The efforts and services to be provided by the CM/GC Contractor to complete its obligations under the Contract. Where dictated by context, Work may refer to the Phase 1 Services, Early Work, Construction Work, or all three.
Work Product	All materials and information generated by or on behalf of CM/GC Contractor in the performance of and to perform the Work.

APPENDIX 2

List of Representative Material Changes

List of Representative Material Changes:

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