

Issue Date: August 18, 2015

VIA Contract #15-376



**REQUEST FOR PROPOSAL**

**FOR**

**FORTY-FOOT LOW-FLOOR HEAVY-DUTY TRANSIT BUSES**

REVISED: MARCH 2015 R1

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**PART 1  
REQUEST FOR PROPOSAL**

- 1.1 Invitation:** VIA Metropolitan Transit (hereinafter "VIA") is seeking proposals from responsible bidders/offerors for the manufacture and delivery of up to five-hundred (500) Forty-Foot Low-Floor Heavy-Duty Transit Buses and related tools and equipment, in accordance with the terms and conditions set forth in this Request for Proposal (RFP) This shall be a firm-fixed contract.

Financial support of this project is provided through financial assistance grants from the Federal Transit Administration (FTA). It is understood and agreed that in the unlikely event of a funding failure, VIA may terminate the contract for convenience without penalty.

The work under this contract consists of the manufacture and delivery of a base order of four-hundred twenty-five (425) transit buses and related tools, equipment, spare parts, training materials and manuals. The contract has a maximum of five-hundred (500) total buses including related tools, equipment, spare parts, training materials and manuals.

- 1.2 Introduction:** VIA is a Metropolitan Transit Authority created according to Chapter 451, Texas Transportation Code ("VIA") to provide public transportation services for the citizens of Bexar County. The system's legal name is VIA Metropolitan Transit (VIA). VIA is a Political Subdivision of the State of Texas and governed by a Board of Trustees who are appointed by its County and Municipal Governments. VIA provides fixed route transit service, paratransit service for mobility-impaired customers, special event and park and ride service. In total, VIA's service area is approximately 1,200 square miles.

VIA's Mission Statement: "To enhance the community's environment and quality of life by providing regional and customer-oriented public transportation that is dependable, cost effective, and enticing to more riders."

VIA's Board-adopted Supplier Diversity Policy:

VIA is committed to enhancing business/supplier diversity opportunities for all who want to do business with VIA. VIA believes it is fundamental to VIA's commitment to the local economy to allow competition in order to grow and develop a portfolio of critical and valued business partners. VIA believes that generating open competition brings value to VIA and an ability to leverage the best resources in the marketplace. Supplier diversity increases VIA's access to creativity and innovation.

VIA believes that it is the responsibility of VIA's Procurement process and the responsibility of every staff member at VIA who secures products and services and who makes purchasing decisions for the Agency to strive to meet this commitment. The VIA Board of Trustees supports VIA's Procurement overall objectives which focus on obtaining the best quality and service at minimum cost and which guard against favoritism and profiteering at public expense. VIA seeks to provide equal opportunities for all businesses to participate. It is integral element of each VIA staff member's responsibility to look to minority-and small-business firms for contracting opportunities. Broadening the supplier pool means better service and value for VIA.

- 1.3 Procurement Schedule:**

- 1.3.1 Summary of Salient Dates:** Following are the salient dates of the procurement process:

<u>Date</u>	<u>Time*</u>	<u>Event</u>
<u>June 22, 2015</u>		Notifications Issued.
<u>August 18, 2015</u>		Request for Proposal Issued.

<u>September 4, 2015</u>	<u>10:00 AM</u>	Pre-proposal Conference in the VIA Admin Board Room, at the address shown under "Inquiry and Questions" below.
<u>October 5, 2015</u>		Last Day to Submit Request for Clarifications and/or Modifications to the Procurement/Contract Documents.
<u>October 23, 2015</u>		VIA's Response to Requests for Clarifications and/or Modifications.
<u>November 17, 2015</u>	<u>4:45 PM</u>	Deadline for submitting Proposal Package.

\*Unless a specific time is indicated, the time shall be 4:45 (VIA's close-of-business).

- 1.3.2 Inquiry and Questions:** Proposal Packages should be submitted to, and any requests and all questions should be directed to:

Procurement Department  
VIA Metropolitan Transit  
800 W. Myrtle  
P.O. Box 12489  
San Antonio, Texas 78212  
Attention: Terry Dudley  
E-mail: terry.dudley@viainfo.net

- 1.3.3 Pre-proposal Conference:** A Pre-proposal Conference shall be held at the date and time and place as indicated above. All prospective proposers are encouraged to attend.

- 1.3.4 Request for Clarification and/or Modifications:** Proposers must submit requests for changes to or approval of equals, clarifications and modifications of the specifications in writing as provided in Section 4.2.2., Proposers Requests and Appeals, of the contract documents. The Request for Proposal documents (which will ultimately form the Contract) can only be modified in writing. The Contracting Officer must receive requests for changes to, or approval of equals, clarifications or modifications to the request for proposal no later than 4:45 p.m., on the date indicated above. Those requests may be faxed to (210) 362-2588. The Contracting Officer will issue a response to those requests to all proposers by regular mail no later than the date indicated above. VIA assumes no responsibility for delayed or lost responses. Proposers should contact the Contracting Officer if they believe a response is missing or lost.

Proposers are expected to agree with the terms contained or referenced herein. The Proposer should therefore not make any changes to these terms, nor restate any provisions in their Proposal or supporting material. Proposals that include exceptions or modifying conditions will not be accepted and will be rejected as non-responsive.

- 1.3.5 Receipt of Proposal:** Prior to the time and date indicated above, (in the section entitled, "Summary of Salient Dates") all Proposal Packages shall be delivered to the Contracting Officer at the address indicated above, (in the section entitled "Inquiry and Questions"). Proposal Packages received after the above time and date shall not be considered, except as provided in the section entitled "Late Submissions."

- 1.3.6 Submittal of Proposals:** Proposers shall submit 1 original (marked clearly as such), 10 unbound copies of the technical proposal, and 10 Compact Disks of the Technical Proposal (each containing an electronic PDF copy of the technical proposal). In case of any discrepancies, the original will be considered by VIA in evaluating the technical proposal, and the electronic version is provided for VIA's administrative convenience only. Proposers will also submit one unbound original of the price proposal. Technical and price proposals shall be submitted in separate sealed packages. The technical proposal package shall be labeled "**Technical Proposal – Forty-Foot Low-Floor**"



**Heavy-Duty Transit Buses**” and the price proposal envelope shall be labeled **Price Proposal – Forty-Foot Low-Floor Heavy-Duty Transit Buses**” and addressed as indicated above (in the section entitled "Inquiry and Questions").

The hard-copy Proposals shall be prepared double-sided on 8½ × 11 inch paper in at least 11-point font. The hard copies shall be contained in three-ring binders, the contents of which must be identified on the outside. Use of 11 × 17 inch foldout sheets for large tables, charts or diagrams is permissible but should be limited. Elaborate formatting is not necessary. Do not provide promotional or advertising information, unless this information is requested and/or is necessary to support the technical submittal.

**Technical Proposal Package:** The technical proposal package shall include the following at a minimum:

1. Letter of Transmittal
2. Technical Proposal
3. Offer and Certifications Form
4. Acknowledgement of Addenda
5. List of Similar Contracts/References
6. Certification of Restrictions on Lobbying
7. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
8. Certification of Compliance with FTA's Bus Testing Requirements
9. Buy America Certificate
10. Business Questionnaire
11. Conflict of Interest Questionnaire
12. DBE/SBE Schedule of Participation
13. Manufacturer's Certification
14. Safety Certification
15. Motor Vehicles Pollution Certification
16. TVM Certification
17. Pre-Award Audit of Buses for Specification and Buy America Compliance
18. Federal Motor Vehicle Safety Standards Certification
19. DBE Approval Certification
20. Contractor Service and Parts Support Data
21. Form for Proposal Deviation (without price data)
22. Vehicle Questionnaire
23. Engineering organization chart, engineering change control procedure, field modification process
24. Manufacturing facilities plant layout, other contracts, staffing
25. Production and delivery schedule and other Contract commitments for the duration of this Contract
26. Management Plan

**Price Proposal Package:** The price proposal package shall include the following at a minimum:

1. Letter of Transmittal
2. Pricing Schedule, (including but not limited to such pricing elements as option buses, spare parts package, manuals, training, special tools and test equipment).

**1.3.7 Amendment and/or Postponement:** VIA reserves the right to postpone, for its own convenience, the deadline for submitting proposals. Further, VIA reserves the right to unilaterally revise or amend the scope of services up to the time set for submitting proposals. Such revisions and addenda, if any, shall be announced by addenda to this solicitation. Copies of such addenda shall be furnished to all prospective proposers. The deadline for submitting proposals shall be at least five (5) working days after the last addendum and the addendum shall include an announcement of the new date, if applicable, for submitting proposals. Any Proposer whose proposal has already

been submitted to VIA when the decision to postpone is made shall be afforded the opportunity to revise or withdraw their proposal.

**1.4 Acceptance Period:** Proposals shall remain valid for a period of one-hundred twenty (120) calendar days from the date of submission. If a Best and Final Offer has been requested of the Offeror/Proposer, the Proposal shall remain valid for a period of up to sixty (60) additional days from the date of submission of the Best and Final Offer.

**1.5 Evaluation and Selection of Proposals:**

**1.5.1 General:**

**1.5.1.1 Separate Packages:** Proposers are required to respond to this RFP with two separate packages: a technical proposal and a price proposal. VIA's Evaluation Committee will first evaluate the technical proposals and determine which are technically acceptable. These will be ranked within a technical competitive range. Price proposals will be opened only for those firms within the technically competitive range.

**1.5.1.2 Responsiveness:** In order for a Proposer to be eligible to be awarded the Contract, the Proposal must be responsive to the Request for Proposal, and VIA must be able to determine that the proposer is responsible to perform the Contract satisfactorily. Responsive Proposals are those complying in all material aspects of the solicitation. Proposals which do not comply with all the terms and conditions of this solicitation may be rejected as nonresponsive. A Proposer may, at any time after the submission of the Proposal, be requested to submit further written evidence verifying that the firm(s) meets the criteria necessary to be determined a responsible Proposer. Refusal to provide requested information may result in the Proposer being declared nonresponsive, and the Proposal may be rejected.

Following are the requirements for qualifying responsible Proposers. All of these requirements must be met. Therefore, they are not listed in any particular order of importance. Any Proposal that VIA finds does not meet these requirements, and cannot be made to meet these requirements, may be determined by VIA to be non-responsible and the Proposal rejected. The requirements are as follows:

- 1 Sufficient financial strength, resources and capability to finance the Work to be performed and to complete the Contract in a satisfactory manner, as measured by the following:

Proposer's financial statements prepared in accordance with generally accepted accounting principles of the jurisdiction in which the Proposer is located, and audited by an independent certified public accountant; or a statement from the Proposer regarding how financial information may be reviewed by VIA.

Proposer's ability to secure financial guarantees, if required, as evidenced by a letter of commitment from an underwriter, surety or other guarantor confirming that the Proposer can provide the required guarantee.

Proposer's ability to obtain required insurance with coverage values that meet minimum requirements, evidenced by a letter from an underwriter confirming that the Proposer can be insured for the required amount.

2. Evidence that the human and physical resources are sufficient to perform the Contract as specified and to ensure delivery of all equipment within the time specified in the Contract, to include the following:

Engineering, management and service organizations with sufficient personnel and requisite disciplines, licenses, skills, experience and equipment to complete the

Contract as required and to satisfy any engineering or service problems that may arise during the warranty period.

Adequate manufacturing facilities sufficient to produce and factory-test equipment on schedule.

A spare parts procurement and distribution system sufficient to support equipment maintenance without delays and a service organization with skills, experience and equipment sufficient to perform all warranty and on-site Work.

3. Evidence that Proposer is qualified in accordance with the provisions of "Section 4: Quality Assurance" of the technical specifications.
4. Evidence of satisfactory performance and integrity on contracts in making deliveries on time, meeting specifications and warranty provisions, parts availability and steps Proposer took to resolve any judgments, liens, Fleet Defects history or warranty claims. Evidence shall be by client references.

**1.5.1.3 Organization of Technical Proposal Materials:** To enhance the comparability and facilitate evaluation, all proposals must be organized addressing each of the evaluation criteria as set forth in the following section entitled "Evaluation of Technical Proposal." VIA shall appoint an Evaluation Committee to evaluate all proposals submitted for this project.

## **1.5.2 Evaluation of Technical Proposal:**

**1.5.2.1 Initial Evaluation:** All proposals will be initially evaluated and ranked based on weighted evaluation criteria listed below or that may be issued in addenda. Evaluation criterion is deemed to include any unstated "sub-criterion" that logically might be included within the scope of the stated criterion.

**1.5.2.2 Review:** The technical submittals shall be reviewed and evaluated by the Evaluation Committee on the basis of the 100 point rating system. The technical evaluation shall be based on the responsiveness of the technical submittal to the needs of VIA and to the requirements of the technical specifications with a maximum numerical rating as indicated herein.

**1.5.2.3 Evaluation Form:** Each member of the Evaluation Committee shall complete an evaluation form for each technical proposal submitted. The final technical rating for each proposal shall be based on the average of the total score compiled by members of the Evaluation Committee.

**1.5.2.4 Proposal Evaluation Criteria:** The following are the complete criteria by which Proposals from responsible Proposers will be evaluated and ranked for the purposes of determining any Competitive Range and to make any selection of a Proposal for a potential award.

<b>CRITERIA</b>	<b>WEIGHT</b>
<b>A. Understanding:</b> Demonstrated understanding of the requirements of the technical specifications.	25
<b>B. Schedule:</b> Ability to meet the schedule requirements of VIA.	20
<b>B. Experience:</b> Capabilities and past experience of the firm and staff to provide like vehicles for like purposes.	20
<b>D. Vehicle:</b> Design and appearance of vehicle.	35

**1.5.2.5 Technical Evaluation:** Following an initial evaluation and ranking of the technical proposals submitted, VIA will identify those firms technically qualified to perform the work regardless of price. If VIA determines that a Proposal is not technically sufficient or a Proposer is not technically qualified, that Proposal will not be evaluated further. VIA will return the unopened Price Proposal to the Proposer after award (See Part 1.5.3.1 below).

**1.5.2.6 Further Discussions/clarification:** After determining which of the technical proposals are within the competitive range, the Committee shall determine whether acceptance of the most favorable initial proposal without discussion is appropriate and in the best interest of VIA or whether negotiation should be conducted with all proposers within the competitive range. If the Committee determines it is in the best interest of VIA to enter into negotiations with the proposers in the competitive range, the committee may submit, only to the proposers in the competitive range, questions regarding their proposals which it feels are appropriate for discussion or which need additional clarification. Proposers shall be prepared to respond, in writing, to all questions within the time frame provided by the Technical Evaluation Committee. If deemed necessary by the Committee, oral interviews and discussions with the proposers may be required.

**1.5.2.7 Re-evaluation (if necessary):** When discussions (if conducted) have been completed, the technical proposals from the proposers in the competitive range shall be re-evaluated and ranked on the basis of documented changes and modifications to the proposals. All changes or modifications to the proposal must be documented in writing to be considered in the re-evaluation.

**1.5.3 Evaluation of Price Proposal:**

**1.5.3.1 Opening of Price Proposal:** VIA will only open and evaluate the Price Proposals of those firms who are determined to be technically acceptable to perform the work and ranked within the technically competitive range. All other price proposals shall be returned unopened and will be returned after award upon the request of the proposer. VIA will shred all unopened price proposals that are not requested within 14 days of notification of contract award.

**1.5.3.2 Scoring:** The Selection Committee’s recommendation for award of this contract shall be based on the highest total points for each submittal. This number shall be arrived at by adding the average total rating for the Technical Proposal to the point rating determined for the Price Proposal:

$$\frac{\text{Lowest Price}}{\text{Firm's Price}} \times 100 \text{ points} = \text{Price Score}$$

The price score of Firm B is shown in the following example:

<u>Firm</u>	<u>Price Proposal</u>	<u>Price Score</u>
A	\$100	100.00 points
B	\$125	80.00 points
C	\$115	86.95 points

$$\frac{\$100.00 \text{ (Lowest Price, Firm A)}}{\$125.00 \text{ (Firm B Price)}} \times 100 \text{ points} = 80 \text{ points}$$

**1.5.4 Combined Proposal Scoring:** The sum total points scored on both the technical (100-point maximum) and price (100-point maximum) will be considered in the determination of the overall competitive range and contract award.

An example of the combined scoring follows:

<u>Firm</u>	<u>Technical Score</u>	<u>Price Score</u>	<u>Total Score</u>
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A	89 points	100.00 points	189.00 points
B	86 points	80.00 points	166.00 points
C	93 points	86.95 points	179.95 points

In this example, Firm A is the highest rated firm in the overall competitive range.

### 1.5.5 Interviews, Discussions, and Negotiations:

**1.5.5.1 Interviews:** The committee will determine whether acceptance of the most favorable initial proposal without discussion is appropriate, or whether interviews and/or discussions should be conducted with all Proposers within the competitive range. VIA personnel may visit the Contractor's work facility during the evaluation period.

**1.5.5.2 Negotiations:** The committee or designated members of the committee may negotiate with each Proposer whose proposal falls within the overall competitive range. Each Proposer remaining within the overall competitive range at the close of negotiations may be allowed to submit a final supplement called a "best and final offer."

**1.5.6 Best and Final Offer:** The best and final offer will contain all information and documents necessary to state the Proposer's entire proposal without reference to the original proposal or to any supplements that may have been submitted during negotiations. All Proposers that submit best and final offers will be evaluated by the committee, or designated committee members, based upon those best and final offers.

**1.5.7 Contract Award:** Award will be made to the responsible firm whose proposal is most advantageous to VIA. Accordingly, VIA may not necessarily make an award to the Proposer with the highest technical ranking nor award to the Proposer with the lowest Price Proposal if doing so would not be in the overall best interest of VIA.

### 1.6 Late Submissions:

**1.6.1 Receipt Prior to Award:** Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it:

- (a) was sent by registered or certified mail and postmarked not later than the fifth calendar day before the date specified for receipt of proposals (e.g., a proposal submitted in response to a solicitation requiring receipt of proposals by the 20th of the month must have been postmarked on or before the 15th); or
- (b) was sent by courier service which guaranteed delivery by the submittal deadline; or
- (c) is the only proposal received.

**1.6.2 Postmark:** The only acceptable evidence to establish the postmark date of a proposal or modification sent by registered or certified mail is the U.S. or Canadian Postal Service postmark on the wrapper or on the original receipt from the U.S. or Canadian Postal Service.

**1.6.3 Courier Delivery Date:** The only acceptable evidence to establish the courier service guaranteed delivery date is a receipt or other documentary evidence which will establish that the proposal or modification was sent by a courier service to be timely delivered.

**1.6.4 Time/date Stamp:** The only acceptable evidence to establish the time and date of receipt at VIA is the time/date stamp on the proposal wrapper or other documentary evidence of receipt maintained by VIA.

**1.7 Price Proposal Submission:** Proposers must submit their Price Proposals utilizing the forms provided in this document as **Part 9, Price Schedule**.

**1.8 Disadvantaged Business Enterprise Goal/Target:**

The DBE goal for this procurement is 0%. Please see the section entitled "Disadvantaged Business Enterprise" or contact VIA's DBE office at 210-362-2077 for information regarding VIA's DBE program.

**1.9 Proof of Insurability:** Proposer shall submit a copy of their current certificate of insurance (COI). If the current COI does not include the required coverage and minimum limits as specified in the RFP, proposer shall also submit a letter from their insurance provider stating the provider's commitment to insure the proposer, if awarded the contract, for the types of coverage and at the limits specified in the RFP.

**PART 2**  
**SCOPE OF WORK, TERMS AND CONDITIONS**

**2.1 Contract:** Submission of a proposal constitutes an offer to perform the work specified and to be bound by the terms contained or referenced herein. Upon acceptance of the offer, and upon award of the Contract to the successful offeror (if any), this procurement solicitation document (entitled "Request for Proposal") together with the completed and executed forms required herein, and all attachments hereto, together with the documents listed below (incorporated into this Contract by reference) shall collectively constitute the Contract. In case of any conflict among these documents where the intended resolution is not clear, the order of precedence shall be:

- 1) Change Orders or Contract Modifications
- 2) Best and Final Offer
- 3) Negotiation Memorandum (if any)
- 4) Addenda to the RFP
- 5) VIA's Technical Specifications
- 6) Contractor's original proposal

**2.2 Contract Period:**

**2.2.1 Commencement:** Contractor agrees to commence work within ten (10) business days from the date the Contract is awarded.

**2.2.2 Performance Deadlines:** Subject to any delays by strikes, fires, or other casualties, and any other causes of delay over which the Contractor may have no control, Contractor agrees to use due diligence in completing the work set out in the scope of work

**2.2.3 Term:** The term of the contract is five (5) years. The effective date of the Contract shall be the effective date set forth in the Notice to Proceed (NTP). The Contractor shall commence work after the effective date of the Contract, upon receipt of the NTP.

VIA estimates purchasing a minimum of four hundred and twenty-five (425) forty-foot low-floor heavy-duty transit buses. However, VIA may order a maximum of up to five-hundred (500) forty-foot low-floor heavy-duty transit buses. The Contract delivery date for the vehicles, in accordance with the delivery schedule set forth in "Delivery Schedule," is estimated to be as follows:

Contract year 1	up to	135 Buses
Contract year 2	up to	135 Buses
Contract year 3	up to	135 Buses
Contract year 4	up to	50 Buses
Contract year 5	up to	45 Buses

**2.2.4 Assignability:** If VIA does not purchase the maximum quantity of five-hundred (500) forty-foot low-floor heavy-duty transit buses, VIA will have the right to assign the remaining buses to other grantees of FTA funds in accordance with FTA Circular 4220.1F.

**2.2.5 Financial Support:** Financial support of this project is provided through financial assistance grants from the Federal Transit Administration (FTA). It is understood and agreed that in the unlikely event of a funding failure, VIA may terminate the contract for convenience without penalty.

**PART 3  
GENERAL TERMS**

- 3.1 Relationship and Work in General:** Contractor, an independent contractor, covenants and agrees to perform for the stated compensation, all of the services described in Part 2, entitled "Scope of Work, Terms and Conditions" of this Contract. Contractor agrees to complete the work in a professional and workmanlike manner with a high degree of care to ensure the accuracy and timeliness thereof.
- 3.1.1 Assignment of Personnel:** Contractor agrees to assign qualified staff members including a Project Director who shall be responsible for the task administration and work performance.
- 3.1.2 Employment of Personnel:** Contractor agrees to employ, at its own expense, all personnel required in performing the services under this contract. Personnel employed by Contractor shall not be employees of, nor have any contractual relationship with VIA. All personnel engaged in the work shall be fully qualified and shall be authorized or licensed to perform such work as required.
- 3.1.3 Subcontracts:**
- 3.1.3.1 Use of Subcontractors:** The Contractor may utilize the services of specialty subcontractors on those parts of the work which, under normal contracting practices, are performed by specialty subcontractors.
- 3.1.3.2 Written Approval of VIA:** No work or services under this Contract shall be subcontracted without the prior written approval of VIA and then only by written contract or agreement. To obtain approval, Contractor must submit to VIA a written statement concerning the proposed award to the subcontractor that includes, at a minimum, the following:
- (a) A description of the supplies or services to be called for by the subcontract; and
  - (b) Identification of the proposed subcontractor.
- 3.1.3.3 Responsibility for Subcontractor(s) Acts:** VIA's approval of a subcontract notwithstanding, VIA shall not be obligated to any third party, including any subcontractor retained by Consultant, for payment of any work or services performed under this Contract, or to provide any work or services as compensation for any work or services performed under this contract. The Contractor is and shall be fully responsible to VIA for acts and omissions of Contractor's subcontractors and any person directly or indirectly employed by the subcontractor.
- 3.1.3.4 Binding of Subcontractors:** Unless specific waiver is granted in writing by VIA, subcontractor shall be subject to each and every relevant and applicable provision of this Contract. Compliance by subcontractors with this Contract shall be sole responsibility of the Contractor.
- 3.1.3.5 Lack of Privity:** Nothing contained in this contract shall create any contractual relation between any subcontractor and VIA.
- 3.1.3.6 Consent Not Acceptance of Price or Waiver:** Neither consent by the Contract Administrator to any subcontract nor any provisions thereof nor approval of the Contractor's procurement system shall be construed to be a determination of the acceptability of any subcontract price or of any amount paid under any subcontract or to relieve the Contractor of any responsibility for performing this contract, unless such approval or consent specifically provides otherwise.
- 3.1.3.7 Cost-Plus Subcontract:** The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost-basis.
- 3.1.3.8 Substitution of Subcontractors:** Any Subcontractor receiving approval in accordance with this paragraph 3.1 must be utilized by the Contractor for the portion of the Work for which they



were approved. VIA will generally not entertain substitutes for any such Subcontractor in the absence of compelling circumstances to do so.

**3.1.3.9 INDEMNITY:** BY SUBMISSION OF A BID/PROPOSAL/STATEMENT OF QUALIFICATIONS (AS THE CASE MAY BE) THE CONTRACTOR AGREES THAT HE/SHE/IT WILL INDEMNIFY AND SAVE VIA HARMLESS FROM ALL CLAIMS GROWING OUT OF THE LAWFUL DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIAL MEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, AND ALL SUPPLIES, INCLUDING COMMISSARY, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. THE CONTRACTOR SHALL, AT VIA'S REQUEST, FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED BE PAID, DISCHARGED, OR WAIVED. IF THE CONTRACTOR FAILS TO DO SO, THEN VIA MAY, AFTER HAVING SERVED WRITTEN NOTICE, DIRECT, OR WITHHOLD FROM THE CONTRACTOR'S UNPAID COMPENSATION A SUM OF MONEY DEEMED REASONABLY EFFICIENT TO PAY ANY AND ALL SUCH CLAIMS UNTIL SATISFACTORY EVIDENCE IS FURNISHED THAT ALL LIABILITIES HAVE BEEN FULLY DISCHARGED WHEREUPON PAYMENT TO THE CONTRACTOR SHALL BE RESUMED, IN ACCORDANCE WITH THE TERMS OF THIS CONTRACT, BUT IN NO EVENT SHALL THE PROVISIONS OF THIS SENTENCE BE CONSTRUED TO IMPOSE ANY OBLIGATIONS UPON VIA TO EITHER THE CONTRACTOR OR HIS SURETY.

## 3.2 Termination of Contract:

**3.2.1 Termination Without Cause:** VIA may elect to terminate this contract in whole or in part at any time by providing Contractor thirty (30) days written notice. In the event of termination under this paragraph, the Parties agree Contractor shall be paid fees and expenses for work performed up to and including the day of termination, Contractor agrees to and shall promptly dispose of any property belonging to VIA in the manner and means directed by VIA.

### 3.2.2 Termination For Cause:

**3.2.2.1 Default:** Notwithstanding any other provision in this Contract, VIA may terminate this Contract for any of the following reasons:

- a. Neglect or failure by Contractor to perform or observe any of the terms, conditions, covenants or guarantees of this Contract.
- b. Finding by VIA that Contractor:
  - (1) is in such unsatisfactory financial condition as to endanger performance under this Contract, including, but not limited to:
    - (i) The apparent inability of Contractor to meet its financial obligations, including but not limited to payroll;
    - (ii) Items that reflect detrimentally on the credit worthiness of Contractor, including but not limited to, liens, encumbrances, etc. on the assets of Contractor.
  - (2) is delinquent, in the ordinary course of business, in the payment of taxes or in the payment of costs of performance of this Contract;
- c. Inability by Contractor to conform to changes in local, state and federal rules, regulations and laws; and
- d. Violation by Contractor of any rule, regulation or law to which Contractor is bound or shall be bound under the terms of this Contract.

**3.2.2.2 Notice:** Upon a decision to terminate by VIA, written notice of such, and the effective date thereof, shall be immediately provided to Contractor. The effective date shall not be for less than ten (10) business days unless otherwise provided in this Contract.

**3.2.2.3 Termination of Subcontracts:** Upon receipt of notice to terminate under paragraph 3.2.2.2, Contractor shall cancel, withdraw, or otherwise terminate any outstanding orders or subcontracts which relate to the performance of this Contract. To this effect, VIA shall not be liable to Contractor nor Contractor's creditors for any expense, encumbrances or obligations whatsoever incurred after the date of termination.

**3.2.2.4 Compensation and Liability:** Within thirty (30) days of the effective date of termination (unless an extension is authorized in writing by VIA), Contractor shall submit to VIA its claim for the monies owed by VIA for services performed through the effective date of termination. In addition to said claim, Contractor shall also submit to VIA all records, data, reports and other such materials pertaining to the Project completed through the effective date of termination. VIA shall then reimburse all reasonable and eligible expenses and professional fees incurred by Contractor prior to the effective date of termination, provided however, that such payment does not exceed the maximum amount of this Contract.

### **3.3 Breaches and Dispute Resolution:**

**3.3.1 Disputes:** Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the Contracting Officer. This decision shall be final and conclusive unless within ten (10) working days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Vice President of Fiscal Management. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Vice President of Fiscal Management shall be binding upon the Contractor and the Contractor shall abide by the decision.

**3.3.2 Performance During Dispute:** Unless otherwise directed by VIA, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

**3.3.3 Remedies:** Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between VIA and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Texas.

**3.3.4 Rights and Remedies:** The duties and obligations imposed by the Contract and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by VIA or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**3.4 Inspection of Work:** VIA shall have the right to review and inspect the progress of the work described herein at all times.

**3.5 Copyright:** No reports, maps, or other documents produced in whole or in part under this contract shall be the subject of an application for copyright by or on behalf of the Contractor. All reports, maps, and other documents produced under this contract shall become the property of VIA. The Contractor shall, at its expense, defend all suits or proceedings instituted against VIA and pay any award of damages assessed against VIA in such suits or proceedings, insofar as the same are based on any claim that materials furnished or work performed under the contract constitutes an infringement of any patent, trade secret, copyright, or any other proprietary right.

**3.6 Proprietary Rights:** Contractor agrees not to release data or information about the results of the project to any person outside of VIA without first obtaining written authorization to release such information from VIA.

**3.7 Indemnification:** CONTRACTOR covenants and agrees to **FULLY INDEMNIFY and HOLD HARMLESS**, VIA, the Board of Trustees, and its employees, officers and representatives, individually or collectively,

from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal bodily injury, death and property damage, made upon VIA, directly or indirectly arising out of, resulting from or related to CONTRACTOR'S activities under this Agreement, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this Agreement, all without, however, waiving any governmental immunity available to VIA under Texas law and without waiving any defenses of the PARTIES under Texas law. **IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY, AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF VIA, THE BOARD OF TRUSTEES, EMPLOYEES, OFFICERS, AND/OR REPRESENTATIVES OF VIA, UNDER THIS AGREEMENT.** The provisions of this INDEMNITY are solely for the benefit of the PARTIES hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONTRACTOR shall promptly advise VIA in writing of any claim or demand against VIA or CONTRACTOR known to the CONTRACTOR related to or arising out of CONTRACTOR'S activities under this Agreement and shall see to the investigation and defense of such claim or demand at CONTRACTOR'S cost. VIA shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph. **IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS AGREEMENT, THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION 3.7, IS AN INDEMNITY EXTENDED BY CONTRACTOR TO INDEMNIFY, PROTECT AND HOLD HARMLESS VIA FROM THE CONSEQUENCES OF VIA'S OWN NEGLIGENCE, PROVIDED HOWEVER, THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION SHALL APPLY ONLY WHEN THE NEGLIGENT ACT OF VIA IS A CONTRIBUTORY CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE, AND SHALL HAVE NO APPLICATION WHEN THE NEGLIGENT ACT OF VIA IS THE SOLE ACTIVE CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE. CONTRACTOR FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE, AND ON BEHALF OF VIA AND IN THE NAME OF VIA, ANY CLAIM OR LITIGATION BROUGHT AGAINST VIA AND ITS BOARD OF TRUSTEES, EMPLOYEES, AGENTS, OFFICERS, AND REPRESENTATIVES, IN CONNECTION WITH ANY SUCH INJURY, DEATH, OR DAMAGE FOR WHICH THIS INDEMNITY SHALL APPLY, AS HEREIN SET FORTH.**

- 3.8 Ownership of Documents:** The parties agree and understand that any and all documents produced under this Contract are the sole and exclusive property of VIA and VIA retains ownership of all such documentation including, but not limited to, studies, plans, specifications, and all related documents. To the extent necessary, CONTRACTOR HEREBY ASSIGNS AND TRANSFERS ANY AND ALL COPYRIGHTS TO VIA.
- 3.9 CONTRACTING AUTHORITY PROTECTION: ANY AND ALL OF CONTRACTOR'S EMPLOYEES WHILE ENGAGED IN THE PERFORMANCE OF ANY WORK REQUIRED BY VIA UNDER THIS AGREEMENT SHALL BE CONSIDERED EMPLOYEES OF CONTRACTOR ONLY AND NOT OF VIA, AND ANY AND ALL CLAIMS THAT MAY ARISE FROM THE WORKERS COMPENSATION ACT ON BEHALF OF SAID EMPLOYEES WHILE SO ENGAGED, AND ANY AND ALL CLAIMS MADE BY ANY THIRD PARTY AS A CONSEQUENCE OF ANY ACT OR OMISSION ON THE PART OF CONTRACTOR'S EMPLOYEES WHILE SO ENGAGED IN ANY OF THE WORK OR SERVICES PROVIDED TO BE RENDERED HEREIN, SHALL BE THE SOLE OBLIGATION AND RESPONSIBILITY OF CONTRACTOR. TO THE EXTENT ALLOWED BY LAW, CONTRACTOR INDEMNIFIES, SAVES, AND HOLDS HARMLESS VIA AGAINST ALL CLAIMS, DEMANDS, ACTIONS, OR CAUSES OF ACTION OF WHATSOEVER NATURE OR CHARACTER, AS PERMITTED BY LAW, ARISING OUT OF ANY REASON OF THE EXECUTION OR PERFORMANCE OF THE WORK PROVIDED FOR HEREIN AND FURTHER AGREES TO DEFEND, AT ITS SOLE COST AND EXPENSE, ANY ACTION OR PROCEEDING COMMENCED FOR THE PURPOSE OF ASSERTING ANY CLAIM OF WHATSOEVER CHARACTER ARISING HEREUNDER.**
- 3.10 Maintenance of Records:** Contractor must maintain records to show actual time involved in performance of the Work, or each Task Order issued (if this is an Indefinite Quantities Contract) by VIA and costs incurred.

- 3.11 Progress Reports:** The Contractor shall submit to VIA monthly progress reports. Such reports shall outline the Contractor's work accomplished during the previous month. The Contractor is responsible for managing the project and maintaining Contractor Services within budget. Monthly progress reports submitted will include, but not be limited to, the percentage of completion of the work and each work task, special problems or delays encountered or anticipated, changes in the estimated value of each task, comparison of actual Contractor expenditures and charges to originally budgeted amounts, the anticipated work activities for the next work period, any necessary corrective action by the Contractor to accomplish project services within established cost limits, and a brief description of work accomplished, methodologies used, and conclusions reached, if any, for each task.
- 3.12 Effect of Extensions of Time:** Granting of or acceptance of extensions of time to complete the work or furnish the labor or materials will not operate as a release to the Contractor from the covenants and conditions of the Contract.
- 3.13 Changes and Modifications:**
- 3.13.1 Changes by Contractor:** If, during the performance of Work under the Contract, the Contractor finds it impracticable to comply strictly with the specifications, the Contractor will notify the Contract Administrator immediately in writing.
- 3.13.2 Written Acceptance by VIA:** Any proposals by Contractor that vary or add to this Contract shall be construed as additional terms or modifications and shall not become part of the Contract unless accepted in writing, by the Contract Administrator.
- 3.13.3 Change Orders/Contract Modifications:** All changes in the work contemplated herein, or the work otherwise specified in Task Orders issued hereunder (if this is an Indefinite Quantities Contract), shall be made only with the prior approval of the Contracting Officer and only by appropriate written Change Order or Contract Modification as appropriate. The Contracting Officer may, at any time, by a written Change Order or Contract Modification, and without notice to the Surety (if any), make changes within the general scope of this Contract. If the change affects the Contractor's costs, then the Contracting Officer shall also make an equitable adjustment in the Contractor's compensation, after compliance by the Contractor with the Price Request procedure provided below. Charges or credits for the work covered by such approved Change Orders or Contract Modifications shall be determined by one or more, or a combination, of the following methods:
- (a) Unit prices previously approved.
  - (b) An agreed lump sum.
  - (c) The actual cost of:
    - 1) Labor, including foremen;
    - 2) Materials entering permanently into the work;
    - 3) The ownership or rental cost of construction plant and equipment during the time of use on extra work;
    - 4) Power and consumable supplies for the operation of power and equipment;
    - 5) Insurance;
    - 6) Social Security and old age and unemployment contributions;
    - 7) An equitable allowance for profit.
- 3.13.4 Price Requests:** Where the Contracting Officer foresees issuing a Change Order affecting Contractor's costs, a Price Request will be issued to the Contractor. Unless otherwise specified therein, the Contractor shall fully respond to the Price Request within 10 days of issuance.
- 3.14 Assignment:** The Contractor shall not assign, transfer, convey, sublet or otherwise dispose of the whole or any part of this Contract or his right, title or interest in or to any monies due or to become due under this Contract without VIA's express written consent. If such consent is given, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due the Contractor shall be subject to prior claims of all persons, firms and

corporations for services rendered or materials supplied for the performance of the work called for in this Contract.

- 3.15 Whole Agreements:** The Contract constitutes the whole of the agreement between the parties hereto and neither thereof has been induced to make or enter into the Contract by reason of any promise, agreement, representation, statement, or warranty other than contained herein.
- 3.16 Partial Invalidity:** If any term, provision, covenant, or condition of this agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.
- 3.17 Titles and Headings for Convenience Only:** As used throughout this Contract, titles and headings of sections are for convenience only, and shall not be used to aid in interpretation of the provisions contained herein.
- 3.18 Notice, Waiver and Applicable Law:**
- 3.18.1 Notices:** Notice given to Contractor and VIA shall be given to the parties in writing by certified mail at the respective designated addresses.
- 3.18.2 Waiver:** Waiver by VIA of a breach by Contractor of any provision of this Contract shall not be deemed a waiver of future compliance therewith, and such provision, as well as other provisions hereunder, shall remain in full force and effect.
- 3.18.3 Applicable Law and Venue:** The rights and duties of the parties hereto shall be determined by the laws of the State of Texas, and to that end venue shall lie, and this agreement shall be considered and construed as a contract made and to be performed in San Antonio, Bexar County, Texas. All work performed, materials and supplies and/or construction furnished pursuant to this solicitation and Contract shall be in compliance with the laws and regulations of the State of Texas and the United States of America and local rules and ordinances as may be applicable. Contractor shall, if requested by VIA, supply certification and evidence of such compliance.
- 3.19 Access to Records and Reports:**
- 3.19.1 Audits:** Upon three (3) days written notice, Contractor agrees to and shall provide VIA or any VIA representative, access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as determined by VIA or its representative.
- 3.19.2 Maintenance of Records:** The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period as required by the appropriate retention statutes but in no case less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until VIA has disposed of all such litigation, appeals, claims or exceptions related thereto.
- 3.20 Materials and Workmanship:** The Contractor shall be responsible for all materials and workmanship in the construction of the bus and all accessories used, whether the same are manufactured by the Contractor or purchased from a Supplier. This provision excludes any equipment leased or supplied by VIA, except insofar as such equipment is damaged by the failure of a part or component for which the Contractor is responsible, or except insofar as the damage to such equipment is caused by the Contractor during the manufacture of the buses.
- 3.21 Conformance with Specifications and Drawings:** Materials furnished and Work performed by the Contractor shall conform to the requirements of the Technical Specifications and other Contract

documents. Notwithstanding the provision of drawings, technical specifications or other data by VIA, the Contractor shall have the responsibility of supplying all parts and details required to make the bus complete and ready for service even though such details may not be specifically mentioned in the drawings and specifications. Items that are installed by VIA shall not be the responsibility of the Contractor unless they are included in this Contract.

Omissions from the Contract specifications, or the inaccurate description of details of Work that are manifestly necessary to carry out the intent of the Contract specifications, or that are customarily performed, shall not relieve the Contractor from performing such omitted Work or inaccurately described details of the Work, and they shall be performed as if fully and correctly set forth and described.

### **3.22 Inspection, Testing and Acceptance:**

**3.22.1 General:** VIA's Representative shall at all times have access to the Work, the Contractor and, through the Contractor, its Suppliers. The Contractor and its Suppliers shall furnish every reasonable facility for ascertaining that the materials and the workmanship are in accordance with the requirements of the Contract Documents. All Work done shall be subject to VIA Representative's inspection and approval in accordance with the approved Work products developed as a result of the Contract Documents.

The pre-delivery tests and inspections shall be performed at the Contractor's plant; they shall be performed in accordance with the procedures defined in "Section 8: Quality Assurance"; and they may be witnessed by the resident inspector. When a bus passes these tests and inspections, the resident inspector shall authorize release of the bus.

Within fifteen (15) calendar days after arrival at the designated point of delivery, the bus shall undergo VIA tests defined in "Post-Delivery Tests." If the bus passes these tests or if VIA does not notify the Contractor of non-acceptance within 15 calendar days after delivery, then acceptance of the bus by VIA occurs on the 15th day after delivery. If the bus fails these tests, it shall not be accepted until the repair procedures defined in "Repairs after Non-Acceptance" have been carried out and the bus retested until it passes. Acceptance occurs earlier if VIA notifies the Contractor of early acceptance or places the bus in revenue service.

**3.22.2 Risk of Loss:** VIA shall assume risk of loss of the bus on delivery, as defined in "Bus Delivery." Prior to this delivery, the Contractor shall have risk of loss of the bus, including any damages sustained during the delivery regardless of the status of title or any payments related to the bus. Drivers shall keep a maintenance log en route, and it shall be delivered to VIA with the bus. If the bus is released back to the Contractor for any reason, then the Contractor has the risk of loss upon such release.

**3.23 Title and Warranty of Title:** Adequate documents for registering the bus in Bexar County, Texas shall be provided to VIA not less than 10 business days before delivery to VIA. Upon acceptance of each bus, the Contractor warrants that the title shall pass to VIA free and clear of all encumbrances.

**3.24 Intellectual Property Warranty:** VIA shall advise the Contractor of any impending patent suit related to this Contract against VIA and provide all information available. The Contractor shall defend any suit or proceeding brought against VIA based on a claim that any equipment, or any part thereof, furnished under this Contract constitutes an infringement of any patent, and the Contractor shall pay all damages and costs awarded therein, excluding incidental and consequential damages against VIA. In case said equipment, or any part thereof, is in such suit held to constitute infringement and use of said equipment or parts is enjoined, the Contractor shall, at its own expense and at its option, either procure for VIA the right to continue using said equipment or part, or replace same with non-infringing equipment, or modify it so it becomes non-infringing.

The Contractor's obligations under this section are discharged and VIA shall hold the Contractor harmless with respect to the equipment or part if it was specified by VIA and all requests for substitutes were rejected, and the Contractor advised VIA under "Questions, Clarifications and Omissions" of a potential infringement, in which case the Contractor shall be held harmless.

**3.25 Access to Onboard Operational Data:** VIA grants to the Contractor the right to inspect, examine, download, and otherwise obtain any information or data available from components provided by the Contractor, including, but not limited to, any electronic control modules or other data-collection devices, to the extent necessary to enable the Contractor to perform reliability maintenance analysis, corrective action and/or other engineering type Work for the bus. This right expressly excludes access to information or data collected on any equipment not provided and installed by the Contractor.

**3.26 Suspension of Work:**

**3.26.1** VIA may at any time and for any reason within its sole discretion issue a written order to the Contractor suspending, delaying or interrupting all or any part of the Work for a specified period of time.

**3.26.2** The Contractor shall comply immediately with any such written order and take all reasonable steps to minimize costs allocable to the Work covered by the suspension during the period of work stoppage. Contractor shall continue the Work that is not included in the suspension and shall continue such ancillary activities as are not suspended. The Contractor shall resume performance of the suspended Work upon expiration of the notice of suspension, or upon direction from VIA.

**3.26.3** The Contractor shall be allowed an equitable adjustment in the Contract price (excluding profit) and/or an extension of the Contract time, to the extent that cost or delays are shown by the Contractor to be directly attributable to any suspension. However, no adjustment shall be made under this section for any suspension, delay or interruption due to the fault or negligence of the Contractor, or for which an equitable adjustment is provided for, or excluded under any other term or condition of the Contract. As soon as reasonably possible but no later than forty-five (45) calendar days, or any other period of time agreed to by the parties, after receipt of the written suspension of work notice, the Contractor shall submit to the Contracting Officer a detailed price and schedule Proposal for the suspension, delay or interruption.

**3.27 Excusable Delays:**

**3.27.1** If the Contractor is delayed at any time during the progress of the Work by the neglect or failure of VIA or by a cause as described below, then the time for completion and/or affected delivery date(s) shall be extended by VIA subject to the following cumulative conditions:

- a. The cause of the delay arises after the Notice of Award and neither was nor could have been anticipated by the Contractor by reasonable investigation before such award. Such cause may also include force majeure events such as any event or circumstance beyond the reasonable control of the Contractor, including but not limited to acts of God; earthquake, flood and any other natural disaster; civil disturbance, strikes and labor disputes; fires and explosions; war and other hostilities; embargo; or failure of third parties, including Suppliers or Subcontractors, to perform their obligations to the Contractor;
- b. The Contractor demonstrates that the completion of the Work and/or any affected deliveries will be actually and necessarily delayed;
- c. The Contractor has taken measures to avoid and/or mitigate the delay by the exercise of all reasonable precautions, efforts and measures, whether before or after the occurrence of the cause of delay; and
- d. The Contractor makes written request and provides other information to VIA as described in paragraph below.

A delay in meeting all of the conditions of this section shall be deemed an excusable delay. Any concurrent delay that does not constitute an excusable delay shall not be the sole basis for denying a request hereunder.

**3.27.2** None of the above shall relieve the Contractor of any liability for the payment of any liquidated damages owing from a failure to complete the Work by the time for completion that the Contractor is required to pay pursuant to "Liquidated Damages for Late Delivery of the Bus" for delays occurring prior to, or subsequent to the occurrence of an excusable delay.

**3.27.3** VIA reserves the right to rescind or shorten any extension previously granted, if subsequently VIA determines that any information provided by the Contractor in support of a request for an extension of time was erroneous; provided, however, that such information or facts, if known, would have resulted in a denial of the request for an excusable delay. Notwithstanding the above, VIA will not rescind or shorten any extension previously granted if the Contractor acted in reliance upon the granting of such extension and such extension was based on information that, although later found to have been erroneous, was submitted in good faith by the Contractor.

**3.27.4** No extension or adjustment of time shall be granted unless: (1) written notice of the delay is filed with VIA within fourteen (14) calendar days after the commencement of the delay and (2) a written application therefore, stating in reasonable detail the causes, the effect to date and the probable future effect on the performance of the Contractor under the Contract, and the portion or portions of the Work affected, is filed by the Contractor with VIA within thirty (30) calendar days after the commencement of the delay. No such extension or adjustment shall be deemed a waiver of the rights of either party under this Contract. VIA shall make its determination within thirty (30) calendar days after receipt of the application.

**3.28 Compliance with Laws and Regulations:** The Contractor shall at all times comply with all applicable laws, regulations, policies, procedures and directives (together, the "Law"), including without limitation, FTA regulations, policies, procedures and directives, including those listed directly or by reference in the agreement between VIA and FTA that funds any part of this Contract, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

**3.29 Changes of Law:** Changes of Law that become effective after the Proposal Due Date may result in price changes. If a price adjustment is indicated, either upward or downward, it shall be negotiated between VIA and the Contractor, and the final Contract price will be adjusted upward or downward to reflect such changes in Law. Such price adjustment may be audited, where required.

**3.30 Governing Law and Choice of Forum:** This Contract shall be governed by the laws of Texas without regard to conflict of law rules. The Contractor consents to the jurisdiction of the identified state, County of Bexar.

**3.31 Liquidated Damages:**

**3.31.1 Amount per Day:** The Contractor agrees that VIA will be substantially damaged in amounts that will be difficult or impossible to determine if the work is not completed within the time allowed. Therefore, if the Contractor shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by VIA, then the Contractor does hereby agree, as a part consideration for the awarding of this Contract, to pay to VIA Liquidated Damages, at the rate of five hundred dollars (\$500.00) for every calendar day the contract work is not completed beyond the time specified in the section entitled, "Contract Completion," above, or as amended by Change Order. VIA and Contractor agree that the liquidated damages rate is reasonable and that the payment by Contractor of liquidated damages is in lieu of actual damages for such failure to complete the work and not as a penalty. In consideration thereof, Contractor waives any defense as to the validity of any liquidated damages agreed to herein as they may appear on the grounds that such liquidated damages are void as penalties or are not reasonably related to actual damages. Further, Contractor agrees that VIA may withhold accrued liquidated damages from final payment.

**3.31.2 Subsequent Delay:** It is further agreed that Contractor's payment of, or agreement to pay, liquidated damages and VIA's acceptance of such payment or acceptance of the agreement to pay liquidated damages for any specific period of delay, as Contractor and VIA may agree, shall in no way



affect VIA's rights to terminate the Contract for default for any subsequent delay or to otherwise pursue any available legal remedies and recovery of damages, such rights being expressly reserved.

### 3.32 General Definitions:

"Appeal" means a formal request for reconsideration of a determination rendered by the Contract Administrator in respect of:

- (a) a request, prior to contract award, as set forth in the section entitled, "Bidders' Requests," herein; or
- (b) a dispute concerning a question of fact, arising after contract award as set forth in the section entitled "Disputes," herein.

"Apprentice" (in the context of construction contracts) means (a) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training or with a State apprenticeship agency recognized by the Bureau; or (b) a person in his first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship council (where appropriate) to be eligible for probationary employment as an apprentice.

"Authorized Signature" is the written authorization of the person who is executing this Contract on behalf of the Bidder/Contractor and who is authorized to bind the Bidder/Contractor.

"Bidder" is the person or legal entity responding to this procurement solicitation. The term also includes "Proposer," "Offeror" and/or "Contractor."

"Contract Administrator" is that person designated by VIA to enter into and administer this Contract and make determinations and findings up to his/her level of authority, in regard to the Contract on behalf of VIA. For the purpose of this Contract, the Contract Administrator is the individual identified in the section entitled "Inquiry and Questions" or otherwise designated by VIA.

"Contracting Officer" is that person designated by VIA to make determinations and findings in regard to the Contract on behalf of VIA. The Contracting Officer will be identified at the time of Contract Award.

"Contractor" means the person or legal entity prior to contract award, submitting a response to a procurement solicitation (IFB, RFQ or RFP); it also means the successful Bidder to whom the Contract is ultimately awarded. Any reference to "Bidder," "Proposer," or "Offeror," also applies to Contractor after award. It is generally intended that these terms be interchangeable.

"Day" unless otherwise defined, shall be defined as a calendar day.

"DEO" means Diversity and Economic Opportunity department for VIA Metropolitan Transit.

"Disadvantaged Business Enterprise" or "DBE" means a for-profit small business concern –

- (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it

"Small Business Concern" means a for profit small business as defined pursuant to Section 3 of the Small Business Act and Small Business Administration regulations implementing the Small Business Act, except

that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of \$17,420,000 over the previous three fiscal years.

"Socially and Economically Disadvantaged Individuals" (in the context of Disadvantaged Business Enterprise provisions) means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is –

- (1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
- (2) Any individual in the following groups, members of which are reputedly presumed to be socially and economically disadvantaged:
  - (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
  - (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
  - (iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
  - (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
  - (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
  - (vi) Women;
  - (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

"Final Acceptance" (used in the context of construction contracts) means all provisions of the Contract have been completed to VIA's satisfaction, including punch list items.

"FTA" means Federal Transit Administration a division of the United States Department of Transportation.

"Liquidated Damages" means the amount assessed in lieu of actual damages, for the failure to complete the work in a timely manner and not as a penalty, at the agreed rate per calendar day expressed herein in the section entitled "Liquidated Damages."

"Indefinite Quantities Contract" or "IDQ" refers to those service Contracts providing for a specific term and fixed labor rates, pursuant to which specific Task Orders may be issued as the need arises.

"Invitation for Bid" or "IFB" means the formal procurement issued by VIA (see also, "Procurement") and, where the context allows, also includes "Requests for Qualifications" (RFQs) and "Requests for Proposal" (RFPs).

"Notice of Award" is the written notice sent by VIA notifying the selected Bidder of the award of contract, and acceptance of Bidder's offer to perform under the terms contained herein. In the absence of a formal Notice of Award, the receipt of a Notice to Proceed or Purchase Order issued by VIA shall serve as notice of the award.

"Notice to Proceed" (in the context of construction contracts) is the written notice sent by VIA after the Contractor has complied with the submission of the required DBE information, a Performance Bond, Payment Bond, Warranty Bond and/or Insurance as required by VIA, and which notifies the Contractor to commence performance under the Contract. For contracts not requiring a Performance Bond, Payment

Bond, Warranty Bond and/or Insurance, VIA will issue a Purchase Order. Issuance of a Purchase Order shall serve as a Notice to Proceed.

"Plans" (in the context of construction contracts) are the parts of the Contract which show the characteristics and scope of the work to be performed and which have been prepared or approved by the Architect/Engineer and/or Contract Administrator.

"Procurement" means the formal solicitation issued by VIA, for services, goods, supplies, or work, and includes Invitations for Bid (IFBs), Requests for Qualifications (RFQs) and/or Requests for Proposal (RFPs), as applicable.

"Protest" means a formal request contesting:

- (a) a final ruling issued by the Contract Administrator in the case of a request for clarification of the specifications or a request for approval of an equal or modification of the specifications;
- (b) any alleged impropriety or other similar situation arising prior to bid opening; or,
- (c) the award of contract.

"Protest Committee" is the three (3) member group established by VIA for the purpose of reviewing protests submitted by a Bidder or supplier.

"Provide" means to furnish and install completely and ready for use.

"Purchase Order" means the written order sent by VIA on its form ordering the equipment or supplies in accordance with the terms and conditions of the Procurement.

"Request for Proposals" or "RFP," see "Procurement."

"Request for Qualifications" of "RFQ," See "Procurement."

"Reserved" is a term utilized to delete standard terms and conditions that are not applicable to a specific procurement.

"Specifications" means the written description and statement of necessary requirements of the equipment, construction, services and/or supplies to be provided, including the technical specifications, if any.

"South Central Texas Regional Certification Agency" or "SCTRCA" means that agency whose membership consists of various local governmental entities, including VIA; the purpose of which is to provide a unified resource for firms to seek DBE certification and information on doing business with DBE-certified firms. SCTRCA may be reached at (210) 362-2077.

"Subcontractor" means any person, firm or corporation supplying services, labor and/or materials under separate contract or agreement with, the Contractor.

"Subject Data" is recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Contract. The term includes graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term does not include financial reports, cost analyses, and similar information incidental to contract administration.

"Supplier" means any manufacturer, company, or agency providing units, components, or subassemblies for inclusion.

"Task Order" (in the context of Indefinite Quantity Contracts (IDQs)) means the specific scope-of-work for a particular assigned project issued at VIA's discretion.

"Technically Competitive Range" – The range of prospective contractors that demonstrates a technically satisfactory approach and has satisfactory qualifications as well as a reasonable chance of being selected for award of a contract.

"Texas Open Records Act" or "TORA" means Chapter 552, Texas Government Code.

"VIA" means VIA Metropolitan Transit, San Antonio, Texas. References to "grantee," "recipient" or "purchaser" shall also mean "VIA."

"Work" is any and all labor, supervision, services, materials, machinery, equipment, tools, supplies, and facilities called for by the Contract and necessary to the completion thereof.

"Work On (At) the Project" means work to be performed at the location of the project including the transportation of materials and supplies to or from the location of the project by employees of the Contractor and any subcontractor.

**PART 4  
GENERAL SOLICITATION POLICY PROVISIONS**

- 4.1 Covenant Against Contingent Fees:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, VIA shall have the right to annul this Contract without liability or at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
- 4.2 Proposers' Requests and Appeals:**
- 4.2.1 Appointments:** Proposers may make appointments with the Contracting Officer to discuss any question a Proposer may have concerning the specifications, which may impact upon proposal submission.
- 4.2.2 Pre-proposal Approvals:** The Contracting Officer's written approval must be obtained prior to proposal submission for:
- a. any clarification of the specifications; or
  - b. any brand name or product proposed as equal to the one specified, unless the technical specifications explicitly permit approval after award; or
  - c. any sample or engineering detail which the technical specifications required to be submitted before proposing, including substitution of any required proposal or contract form; or
  - d. any modification to the specifications which the Proposer maintains are restrictive and which the Proposer proposes be altered, amended or changed.
- 4.2.3 Submission:** Submissions under Section 4.2.2, Pre-proposal Approvals, must be in writing and received by the Contracting Officer no later than the date specified in Section 1.3.4, Requests for Clarification and/or Modifications, of the Request for Proposal; and
- a. supported by evidence such as technical data, test results, and/or other pertinent information that demonstrates that the substitute offered is equal to or better than the specification requirement; or
  - b. in the instance of submission of a request for modification of the specifications, must contain a draft of the recommended language relating to the specification(s) which is/are proposed to be altered, amended or changed.
- 4.2.4 Appeal:** Any appeal of the Contracting Officer's determination in response to a request for pre-proposal approval must be submitted in writing and received by the Contracting Officer within seven (7) working days of the date issuance of the Contracting Officer's determination.
- 4.2.5 Final Ruling:** After receipt of an appeal, if any, a final ruling will be issued by the Contracting Officer and provided contemporaneously to all Proposers. Proposers may protest a final ruling under Section 4.2.2, Proposers' Requests, as provided in Section 4.7, Protest Procedures.
- 4.2.6 Withdrawal:** Proposers may withdraw a request or an appeal at any time prior to the Contract Administrator's issuance of a final ruling. There will be no further review by the Contract Administrator of a request or an appeal after a final ruling is issued.

**4.2.7 Denial:** Any pre-proposal request for approval is denied unless such request is approved by the Contracting Officer in writing prior to proposal submission.

**4.3 Non-collusive Affidavit:** The Contractor represents and warrants that its proposal is genuine and not sham or collusive or made in the interest or in behalf of any person not therein named, and that the Contractor has not, directly or indirectly, induced or solicited any other person to submit a sham proposal, or any other person, firm, or corporation to refrain from submitting a proposal, and that the Contractor has not in any manner sought by collusion to secure itself an advantage over any other proposer.

**4.4 Penalty for Collusion:** If at any time it shall be found that the person, firm, or corporation to whom a contract has been awarded has, in presenting any proposal, colluded with any other party or parties, then the contract so awarded shall be voidable by VIA; and the Contractor shall be liable to VIA for all loss or damage which VIA may suffer thereby.

**4.5 Conflicts of Interests Covenant against Gratuities:** The Contractor is prohibited from engaging in any practice that may be considered a conflict of interest under existing VIA policies and/or Federal, State or Local law. The Contractor warrants that it has not offered or given gratuities (in the form of entertainment, gifts, or otherwise) to any official or employee of VIA with a view toward securing favorable treatment in the awarding, amending, or evaluating performance of this Contract. For breach of this warranty, VIA shall have the right to annul this Contract without liability and/or employ any other remedy it may have at law.

**4.5.1 Local Government Code 176.006:**

Any person who seeks to contract for the sale or purchase of property, goods or services with VIA shall file a completed conflict of interest questionnaire promulgated by the Texas Ethics Commission as required by the law (See Part 9, Forms).

**4.6 Code of Ethics:** On July 11, 1995, the VIA Board of Trustees adopted a *Code of Ethics and Conduct Related to Business Transactions*, establishing general standards of ethical conduct for VIA employees, Board members, Contractors and vendors. Contractor agrees to and warrants that it will comply and has complied with the *Code of Ethics and Conduct Related to Business Transactions* and any amendments thereto. For breach of this warranty, VIA shall have the right to annul this Contract without liability and/or employ any other remedy it may have at law. Upon request, a copy of the *Code of Ethics and Code of Conduct Related to Business Transactions* shall be made available to Contractor.

Vendors and Contractors shall pay particular attention to Section IV.C. of the *Code of Ethics and Code of Conduct Related to Business Transactions* (as amended) which prohibits any business contracting or attempting to contract with VIA from communicating with a Board member or VIA employee (other than VIA's Contracting Officer designated for this procurement in the Contract or an individual designated in writing by the Contracting Officer) regarding details of a procurement or other contract opportunity or extension or change to an existing contract.

**4.7 Procurement Protest Procedure:**

**4.7.1 Protest:** In the event VIA receives a protest according to the terms referenced herein, specifically 4.7.2. Timeliness, VIA will suspend the procurement process until the protest is resolved. A protest, if any, shall be in writing, received within the time limits set forth below (see "Timeliness") and shall be supported by sufficient information to enable the protest to be considered. Protests containing mere allegations or unsubstantiated expressions of suspicion without actual evidence to support the claim may be considered by VIA to be insufficiently supported. Protests (if any) must be submitted to VIA's Contracting Officer for referral to VIA's Director of Internal Audit, who will determine whether the protest is timely and otherwise meets the minimum requirements of this section and, if so, will transmit the protest for consideration by VIA's Protest Committee. If a protest is deemed by the Director of Internal Audit or the Protest Committee to be insufficient, the protester will be notified. A determination of insufficiency is final and may not be appealed; however, the protest deficiencies may be corrected and the protest re-filed, provided the protest is re-filed in a timely manner (see, "Timeliness," below) and no additional time shall be allowed

without good cause shown (such determination to be in VIA's sole discretion). Protests shall (at a minimum) include the following information:

- (a) name, address, and fax and telephone numbers of the protester;
- (b) solicitation or contract number;
- (c) detailed statement of the legal and factual grounds for the protest, to include a description of resulting prejudice to the protester;
- (d) copies of relevant documents;
- (e) statement as to the form of relief requested;
- (f) all information establishing that the protester is an interested party for the purpose of filing a protest; and
- (g) all information establishing the timeliness of the protest.

A protest, if any, must be based upon one or more of the following:

- (a) substantial allegations of restrictive procedures, alleged improprieties or other similar situations arising prior to bid opening (in procurements utilizing the Invitations for Bid "IFB" process) or in all other cases, arising prior to contract award;
- (b) substantial allegations of the issuance of an improper or clearly incorrect final ruling relating to requests for changes to or approval of equals, clarifications and modifications of the specifications; or
- (c) substantial allegations of an improper award of contract or alleged impropriety arising after bid opening (in procurements utilizing the Invitations for Bid "IFB" process) or in all other cases, arising after contract award.

**4.7.2 Timeliness:** To be effective, a protest must be submitted so that it is received by the Contracting Officer by the following deadlines:

- (a) a protest based upon substantial allegations of restrictive procedures, alleged improprieties or other similar situations arising prior to bid opening (in procurements utilizing the Invitations for Bid "IFB" process) or in all other cases, arising prior to contract award, must be submitted so that it is received by VIA's Contracting Officer no later than seven (7) working days prior to the specified bid opening date (in procurements utilizing the Invitations for Bid "IFB" process) or in all other cases, no later than seven (7) working days prior to the date of contract award, and may only be protested once;
- (b) a protest based upon substantial allegations establishing the issuance of an improper or clearly incorrect final ruling relating to a request for changes to or approval under the specifications must be submitted so that it is received by VIA's Contracting Officer within seven (7) working days following the issuance of the Contracting Officer's final ruling; and
- (c) a protest of an allegedly improper award of contract or alleged impropriety arising after bid opening (in procurements utilizing the Invitations for Bid "IFB" process) or in all other cases, arising after the date of contract award, must be submitted so that it is received by VIA's Contracting Officer within seven (7) working days following the earlier of the date (1) on which the Bidder knew, or (2) the date on which a diligent Bidder would have known, of the allegedly improper award or alleged impropriety. Notwithstanding the above, unless allowed by VIA in its sole discretion (upon good cause shown), a protest of an allegedly improper award of contract or alleged impropriety arising after bid opening (in procurements utilizing the Invitations for Bid "IFB" process) or in all

other cases, arising after the date of contract award, must be filed within seven (7) days after contract award.

**4.7.3 Final Determination:** VIA's Protest Committee will use its best efforts to issue, within seven (7) working days of receipt, a final determination of the protest.

**4.7.4 Withdrawal:** A Bidder may withdraw its protest at any time prior to VIA's Protest Committee issuing a final determination. There will be no further review by VIA of a protest after a final determination is issued.

**4.7.5 FTA Review:** In accordance with 49 CFR 18.36, reviews of protests by the Federal Transit Administration ("FTA") may be requested only after exhaustion of all administrative remedies with VIA and will be limited to:

- (i) violations of Federal law or regulations; and/or,
- (ii) violations of VIA's protest procedures for failure to review a complaint or protest in accordance therewith.

A copy of any such request for review submitted to FTA must be provided contemporaneously to VIA.

**4.8 Release of Information:** Contractor agrees and understands that access to government records is governed by the Texas Public Information Act more commonly referred to as the Texas Open Records (TORA). Any proprietary information, trade secrets or confidential commercial and financial information which a Contractor believes should be exempted from disclosure to a third party **shall be specifically identified and marked as such by Contractor at the time Contractor submits its bid/proposal.** Blanket-type identification by designating whole pages or sections as containing proprietary information, trade secrets or confidential commercial and financial information is not sufficient to establish confidentiality. **The specific proprietary information, trade secrets or confidential communication and financial information must be clearly identified as such.** Upon request for records from a third party regarding this procurement, VIA will notify, in writing, in the manner required under TORA, the Contractor if and only if the information requested was identified by Contractor, as required under this paragraph. VIA may determine in its sole discretion whether sufficient legal justification exists for withholding the records and whether an opinion should be requested from the Texas Attorney General. **TO THE FULLEST EXTENT ALLOWED BY LAW, CONTRACTOR AGREES TO AND HEREBY DOES INDEMNIFY VIA FOR ITS COSTS ASSOCIATED WITH CONTRACTOR'S REFUSAL TO PRODUCE SUCH IDENTIFIED INFORMATION FOR PURPOSES OF TORA.** Further, Contractor agrees to fully cooperate with VIA and to provide VIA full and complete access to any and all records requested under TORA regarding this Contract at no cost to VIA.

**4.9 Rejection of Proposals:** VIA reserves the right to reject any and all proposals that are not responsive or unreasonably priced, or impose modifying conditions. VIA may reject the proposal of any party who has been determined to be non-responsible in any former contract with VIA. VIA reserves the right to reject any or all proposals, and to waive technical defects as the interest of VIA may require. Each Proposer shall be notified if all proposals are rejected.

**4.10 Preparation Costs:** All costs related to responding to this procurement solicitation, including (if applicable) the cost of any oral presentations required, shall be the sole responsibility of and shall be borne by each proposer.



## PART 5 INSURANCE

- 5.1 General Insurance Requirements:** The Contractor shall purchase and maintain in full force and effect during the entire period of this Contract, including any maintenance period thereof, insurance of the following types and in amounts not less than the amounts stated below. Such insurance shall protect Contractor from any and all claims and damages, which may arise out of or result from, Contractor's operations whether such operations are performed by Contractor or by its subcontractor or by anyone for whose acts the Contractor may be liable. All costs associated with these insurance coverages are the sole responsibility of the Contractor. The Contractor must adhere to the following requirements:
- 5.1.1 Additional Insured:** The Commercial General Liability and Commercial Automobile Liability policies shall be endorsed to name VIA and its officers, trustees and employees as additional insured regarding Contractor's operations as well as completed operations in performance of this Contract.
- 5.1.2 Waiver of Subrogation:** The Commercial General Liability, Commercial Automobile Liability, Workers' Compensation and Employer's Liability, shall be endorsed to provide a waiver of subrogation in favor of VIA, its officers, trustees, and employees. If Contractor is an approved self-insurer, Contractor will waive all rights of recovery against VIA, its officers, trustees, and employees for any and all claims.
- 5.1.3 Coverage Primary:** Such insurance as is provided herein shall be primary and non-contributing with any other valid and collectible insurance available to VIA. The limits of liability required herein may be provided by a single policy of insurance or by a combination of primary, excess or umbrella policies; but, in no event shall the total limits of liability available for any one occurrence or accident be less than the amounts required.
- 5.1.4 No Commencement without Coverage:** The Contractor shall not commence work under this Contract until all required insurance is obtained and approved by VIA. Approval of the insurance by VIA shall not relieve or decrease the liability of the Contractor hereunder.
- 5.1.5 Certificates:** Two (2) copies of all required endorsements and completed certificates of insurance evidencing coverage shall be furnished to the VIA Contracting Officer prior to commencement of work and within ten (10) calendar days after the date of Notice of Award. Certificates and endorsements shall be provided by contractor and anyone involved in the performance of work under this contract by and through contractor (not otherwise included under contractor's coverage), including all subcontractors. All certificates must be issued reflecting VIA Metropolitan Transit as the certificate holder. All Certificates of Insurance shall reflect the VIA project number, name of the Contracting Officer and be signed by a person authorized by that insurer to bind coverage on its behalf. Failure to furnish the required certificates of insurance and accompanying endorsements within the time allowed shall not be considered cause for modification of any contractual time limits. All certificates, endorsements and/or policies of insurance presented as proof of compliance with the above requirements shall be on forms and with insurance companies approved by VIA. All such insurance documents shall be provided by insurance companies authorized to do business in the State of Texas and having a Best's rating of A- (VII) rating or greater, as shown in the most current issue of A.M. Best's Key Rating Guide. Policies of insurance issued by insurance companies not rated by Best's or have a Best's rating lower than A- (VII) will not be accepted as complying with the insurance requirements of the Contract unless such insurance companies are approved in writing by VIA prior to the award of the Contract. Certificates of Insurance and if applicable, any endorsements shall contain transcripts from the proper office of the insurer, evidencing in particular those insured, the extent of the insurance, the location and the endorsements as required below. If any of the foregoing insurance coverages are required to remain in force after the final payment and are reasonably available, an additional certificate with endorsement evidencing continuation of such coverage shall be submitted with Contractor's final invoice for payment.

- 5.1.6 No Lapse or Cancellation:** The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse. Except as otherwise may be provided in this contract, all insurance policies shall include an endorsement that the policy shall not be canceled, non-renewed, reduced, restricted, or limited without 30 days written notice. In the event of cancellation or lapse of insurance, the Contractor shall notify VIA immediately, in writing, by certified or registered mail, return receipt requested. Contractor shall also provide written notification to VIA, within ten (10) days, of any cancellation due to non-payment of premium, notice of expiration, cancellation, nonrenewal or material change in coverage it receives from its insurer. In addition to any other remedies VIA may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, VIA shall have the right to order Contractor to stop work hereunder and/or withhold payment(s) which become due to Contractor until Contractor demonstrates compliance hereof and unless otherwise directed by VIA, shall cease work until evidence of acceptable insurance coverage is supplied to VIA.
- 5.1.7 Breach:** Failure to maintain insurance coverage, as required herein, constitutes a material breach of this Contract.
- 5.1.8 Self Insurance: RESERVED.**
- 5.1.9 Responsibility of Payments:** Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this Agreement.
- 5.1.10 Own Equipment and/or Property:** Contractor and its subcontractors are responsible for all damage to their own equipment and/or property.
- 5.1.11 Other Obligations:** It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.
- 5.1.12 Changes:** VIA reserves the right to review the insurance requirements of this Contract during the effective date of the Contract and at renewal or any extension hereof and to modify insurance coverages and limits when deemed necessary and prudent based upon changes in statutory law, court decisions, or circumstances surrounding this Contract.

**5.2 Specific Insurance Requirements:**

**5.2.1 Workers' Compensation Insurance:** Coverage is required for workers' compensation providing Statutory Benefits in accordance with the Workers' Compensation Act of the State of Texas and/or any other state or Federal law as may be applicable to the work being performed under this Contract.

**5.2.2 Employer's Liability Insurance:** Coverage is required for employer's liability with limits of liability not less than:

\$ 500,000.	Each Accident
\$ 500,000.	Policy Limit for Disease
\$ 500,000.	Each Employee for Disease

**5.2.3 Commercial General Liability Insurance:** Coverage is required for general liability, including coverage for the following where exposure exists and for amounts not less than:

- 1) Premises/Operations
- 2) Independent Contractors
- 3) Products/Completed Operations
- 4) Personal Injury

- 5) Contractual Liability
- 6) Explosion/Collapse/Underground Property Damage (where applicable):

\$ 2,000,000.	General Aggregate
\$ 2,000,000.	Products/Completed Operations Aggregate
\$ 1,000,000.	Personal Injury per occurrence
\$ 1,000,000.	Each Occurrence

**5.2.4 Commercial Automobile Liability Insurance:** Coverage is required for automobile liability, covering all owned/leased, hired and non-owned motor vehicles including fuel transports used in connection with the work being performed under the Contract with limits of liability not less than:

\$ 500,000.	Combined Single Limit
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**5.2.5 Subcontracts:** Contractor agrees to require, by written contract, that all subcontractors providing goods or services hereunder, purchase and maintain, during the term of the Contract, the same minimum levels of applicable insurance coverages that are necessary and appropriate for the work performed and as required of Contractor herein. Contractor shall provide to VIA certificates of insurance and endorsements Contractor receives from its subcontractor(s) that name the Contractor and VIA as additional insured. Contractor shall provide VIA with said certificates and endorsements prior to the commencement of any work by that subcontractor.

**PART 6  
BILLING AND PAYMENT**

**6.1 Discounts:**

**6.1.1 Evaluation of Offers:** Discounts for early payment shall not be considered in the evaluation of offers, except in the case of a tie bid provided that a minimum of ten (10) days is offered in which to take the discount.

**6.1.2 Binding:** Discounts that are included in offers become a part of the resulting contracts and are binding on the Contractor for all orders placed under the Contract. Discounts offered only on individual invoices will be binding on the Contractor only for the particular invoice on which the discount is offered.

**6.1.3 Time Computation:** Time will be computed, for discount computation purposes, from:

- (a) the date of delivery to and acceptance by VIA; or
- (b) the date a proper invoice is received in the office specified by VIA, if the latter date is later than the date of delivery.

**6.1.4 Payment Date:** Payment will be deemed to have been made on the date which appears on payment checks.

**6.2 Billing:** Invoice(s) shall be submitted in duplicate to the Contracting Officer, VIA Metropolitan Transit, 1720 N. Flores St., P.O. Box 12489, San Antonio, Texas 78212. Each invoice shall contain the following information: purchase order number, item number, brief description of supplies, sizes, serial numbers, quantities, unit prices, total and applicable project numbers.

**6.3 Payment to Contractor:**

**6.3.1 Receipt and Acceptance:** Terms shall be net thirty (30) calendar days after receipt of an invoice and after acceptance of the equipment by VIA, whichever date is later; however, the Contractor may offer prompt payment discounts, as provided in Section 6.1.2. Binding above.

**6.3.2 Late Payment:** In the event payment has not been made within thirty (30) calendar days after receipt of invoice and acceptance by VIA, whichever date is later, the Contractor shall submit a reminder invoice marked "past due."

**6.3.3 Inclusion of DBE Subcontractors:** The prime Contractor shall include as part of its invoice a list of all DBE Subcontractors and the amounts to be paid to each of the DBE subcontractors from the invoice. This requirement is in accordance with FTA Circular 4716.1A.

**6.3.4 Payments by VIA:** In paying any unpaid bills of the Contractor, VIA shall be deemed the agent of the Contractor, and any payment so made by VIA shall be considered as a payment under the contract by VIA to the Contractor, and VIA shall not be liable to the Contractor for any such payment made in good faith.

**6.3.5 Payments by Contractor:** The Contractor agrees to pay each subcontractor under this contract for satisfactory performance of its contract no later than ten (10) calendar days from the receipt of each payment from VIA. The Contractor agrees further to release retainage payments to each subcontractor within thirty (30) calendar days after the subcontractor's work is satisfactorily completed and all required closeout documentation is accepted. Failure to comply with this provision may be considered cause to terminate the contract for default.

The Contractor shall comply with all requirements of the Texas Government Code, Subtitle F, State and Local Contracts, Chapter 2251 regarding times and methods of payment to subcontractors and suppliers.

**6.3.6 Final Payment:** The acceptance by the Contractor of final payment shall be and shall operate as a release to VIA of all claims and all liability to the Contractor for all things done or furnished in connection with this work. No payment, however, final or otherwise, shall operate to release the Contractor from any obligation under this contract.

**6.4 Retainage:** To ensure proper performance of the Contract, VIA may retain ten percent (10%) of the amount of each Request for Payment until final completion and acceptance of all work covered by the Contract subject to legal offsets (if any). VIA will deposit the retainage in an interest bearing account (for any contract \$400,000.00 or more requiring a retainage greater than 5%) pursuant to Texas Government Code 2252.032. The interest earned on such retainage funds if any, shall be paid in compliance with said provision of the Government Code.

**PART 7**  
**FEDERAL PROVISIONS**  
**[THESE PROVISIONS APPLY TO THE EXTENT APPLICABLE]**

- 7.1 Fly America Requirements:** The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international transportation.
- 7.2 Buy America Requirements: (Applies to construction contracts, and acquisition of goods or rolling stock, valued at more than \$100,000).** The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.
- A bidder or offeror must submit to VIA the appropriate Buy America certification with all proposals on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification may be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.
- 7.3 School and Charter Bus Requirements. RESERVED.**
- 7.4 Cargo Preference – Use of United States-Flag Vessels: (Applies to contracts involving equipment, materials, or commodities which may be transported by ocean vessels):** The Contractor agrees: (a) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; (b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to VIA (through the contractor in the case of a subcontractor's bill-of-lading.) (c) to include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.
- 7.5 Seismic Safety Requirements. RESERVED.**
- 7.6 Energy Conservation Requirements:** The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321).
- 7.7 Clean Water Requirements:** (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* The Contractor agrees to report each violation to the Purchaser (VIA) and understands and agrees

that VIA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**7.8 Bus Testing: (Applies to contracts for acquisition of rolling stock/turnkey).** The Contractor [Manufacturer] agrees to comply with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

- 1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.
- 2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- 3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- 4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

**7.9 Pre-Award and Post Delivery Audits Requirements: (Applies to contracts for acquisition of rolling stock/turnkey).** The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

- (1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
- (2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the proposal specifications.
- (3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

**7.10 Lobbying:** Contractor shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to VIA.

**7.11 Access to Records and Reports:** Contractor agrees to provide VIA, the FTA Administrator and DOT officials, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract

for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 CFR 633.17 to provide the FTA Administrator or his authorized representatives including any PMO contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until VIA, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

**7.12 Federal Changes:** Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement between VIA and FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

**7.13 Bonding Requirements: (Refer to section entitled "Guarantees and Bonds").**

**7.14 Clean Air:** (i) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.* The Contractor agrees to report each violation to VIA and understands and agrees that VIA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(ii) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**7.15 Recycled Products: (Applies to all contracts for items designated by the EPA, when procurement is made of \$10,000 or more of one of these items during a fiscal year, using Federal funds).** The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

**7.16 Davis-Bacon and Copeland Anti-Kickback Acts. RESERVED.**

**7.17 Contract Work Hours and Safety Standards Act: (Applies to construction contracts over \$2,000 and turnkey, rolling stock and operational contracts - excluding contracts for transportation services - over \$2,500)**

**7.17.1 Overtime Requirements:** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**7.17.2 Violation; Liability for Unpaid Wages; Liquidated Damages:** In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek



of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

**7.17.3 Withholding for Unpaid Wages and Liquidated Damages:** VIA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

**7.17.4 Subcontracts:** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

**7.18 RESERVED.**

**7.19 No Government Obligation to Third Parties:** (1) VIA and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to VIA, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. (2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**7.20 Program Fraud and False or Fraudulent Statements and Related Acts:** (1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, (31 U.S.C. 3801 *et seq.*) and U.S. DOT regulations, "Program Fraud Civil Remedies," (49 CFR Part 31) apply to its actions pertaining to this Project. Upon execution of the underlying Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate. (2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. 5307, the Government reserves the right to impose the penalties of 18 U.S.C. 1001 and 49 U.S.C. 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate. (3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**7.21 Termination: (Refer to the section entitled "Termination of Contract").**

**7.22 Government-Wide Debarment and Suspension:**

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by VIA. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to VIA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**7.23 Privacy Act:** The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

**7.23.1 General:** The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

**7.23.2 Subcontracts:** The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

**7.24 Civil Rights Requirements**

**7.24.1 Nondiscrimination:** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12132, and Federal transit law at 49 U.S.C. 5332, the Contractor and any subcontractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor and any subcontractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue including, but not limited to, 49 CFR Part 26 and Circular C4704.1, Equal Employment Opportunity Program Guidelines for Grant Recipients.

**7.24.2 Equal Employment Opportunity:** During the performance of this Contract, the Contractor and any subcontractor agrees as follows:

**7.24.2.1 Race, Color, Creed, National Origin, Sex:** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. 2000e, and Federal transit laws at U.S.C. 5332, the Contractor and any subcontractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et o u seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor and any subcontractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, or sex,. Such action shall include, but not be limited to, the following: employment,

upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**7.24.2.2 Age:** In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C 623 and Federal transit law at 49 U.S.C 5332, the Contractor and any subcontractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor and any subcontractor agrees to comply with any implementing requirements FTA may issue.

**7.24.2.3 Disabilities:** In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. 12112, the Contractor and any subcontractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor and any subcontractor agree to comply with any implementing requirements FTA may issue.

**7.24.3 Inclusion of Subcontracts:** The Contractor and any subcontractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal Assistance provided by FTA, modified only if necessary to identify the affected.

**7.24.4 Non-Compliance:** Failure by the Contractor or any subcontractor to comply with any of the provisions of 7.24 Civil Rights Requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as VIA deems appropriate.

**7.25 Breaches and Dispute Resolution: (Refer to "General Terms").**

**7.26 Patents and Rights in Data. RESERVED.**

**7.27 Transit Employee Protective Agreements. RESERVED.**

**7.28 General Disadvantaged Business Enterprise (DBE) Provisions: (Refer to Section 8 for provisions specific to this Contract).**

**7.28.1 DBE Program:** As a condition to financial assistance, VIA has submitted and the DOT has approved, a Disadvantaged Business Enterprise program ("VIA's DBE Program") which VIA has agreed to perform. VIA's DBE Program is incorporated into this Contract by reference and made a part hereof. Failure of the Contractor to comply with such terms will constitute a breach of contract. A copy of VIA's DBE Program may be obtained from VIA's DBE office.

**7.28.2 General Policy:** It is the policy of VIA that Disadvantaged Business Enterprises "DBEs" as defined in 49 CFR Part 26, shall have the maximum opportunity to participate in the performance of contracts. Consequently, the DBE requirements of 49 CFR Part 26, apply to this Contract. If the Contractor is found to have failed to exert good faith efforts (as defined in 49 CFR 26.5) to meet the DBE contract goal, VIA may declare the Contractor noncompliant and in breach of contract.

**7.28.2.1 DBE Obligation:** Contractor agrees to ensure that DBEs as defined in 49 CFR Part 26, have the maximum opportunity to participate in the performance of contracts and subcontracts under this Contract. In this regard, Contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 26, and VIA's DBE Program, to ensure that DBEs have the maximum opportunity to compete for and perform contracts.

**7.28.2.2 Contractor/Subcontractor Obligation:** The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of [this] Contract[s]. Failure by the Contractor to carry out these requirements is a

material breach of this Contract, which may result in the termination of this Contract or such other remedy as VIA deems appropriate.

**7.29 National ITS Architecture Compliance. RESERVED.**

**7.30 Incorporation of Federal Transit Administration (FTA) Terms:** The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any VIA requests which would cause VIA to be in violation of the FTA terms and conditions.

**7.31 Drug and Alcohol Testing. RESERVED.**

**7.32 - 7.39 Reserved for future expansion:**

**7.40 Additional Environmental and Resource Conservation Requirements:**

**7.40.1 Environmental Protection:** Contractor agrees to comply with the requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S. C. 4321 *et seq.*; Section 14 of the Federal Transit Act, as amended, 49 U.S.C. app. 1610; the Council on Environmental Quality regulations, 40 CFR Part 1500 *et seq.*; and the joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," at 23 CFR Part 771 and 49 CFR Part 622.

**7.40.2 Air Pollution:** The Contractor agrees to comply with the joint FHWA/FTA regulations, "Air Quality Conformity and Priority Procedures for Use in Federal-Aid Highway and 49 CFR Part 623. The Contractor assures that any facilities or equipment acquired, constructed, or improved as part of the Project are or will be designed and equipped to limit air pollution as provided in accordance with the following EPA regulations: "Control of Air Pollution from Motor Vehicles and Motor Vehicles Engines," 40 CFR Part 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicles Engines: Certification and Test Procedures," 40 CFR Part 86; and "Fuel Economy of Motor Vehicles," 40 CFR Part 600; in accordance with applicable Federally-approved State Implementation Plan(s) (in particular, the Transportation Control Measures); and in accordance with applicable Federal regulations, directives and other standards.

**7.40.3 Historic Preservation:** The Contractor agrees to assist the Government to comply with Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, involving historic and archaeological preservation by:

- (a) Consulting the State Historic Preservation Officer on the conduct of investigations, in accordance with Advisory Council on Historic Preservation regulations, "Protection of Historic and Cultural Properties," 36 CFR Part 800, to identify properties and resources listed in or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, and notifying VIA and the Government (FTA) of the existence of any such properties; and
- (b) Complying with all Federal requirements to avoid or mitigate adverse effects upon such properties

**7.40.4 Mitigation of Adverse Environmental Effects:** Should the performance under this Contract cause adverse environmental effects, the Contractor agrees to take all reasonable steps to minimize such effects pursuant to 49 U.S.C. app. 1610, all other applicable statutes, and the procedures set forth in 23 CFR Part 771 and 49 CFR Part 622. The Contractor agrees to undertake all environmental mitigation measures that may be identified as commitments in applicable environmental documents (such as environmental assessments, environmental impact statements,

memoranda of agreements, and statements required by 49 U.S.C. 303) and with any conditions imposed by the Government as part of a finding of no significant impact or a record of decision; all such mitigation measures are incorporated in and made part of this Contract by reference.

**7.41 Access Requirements for Individuals with Disabilities:** The Contractor agrees to comply with, and assure that any subcontractor, or third party contractor under this Project complies with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 *et seq.* and 49 U.S.C. 322; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. app. 1612; and the following regulations and any amendments thereto:

- (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37;
- (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefitting from Federal Financial Assistance," 49 CFR Part 27;
- (c) U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 CFR Part 38;
- (d) Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR Part 35;
- (e) DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;
- (f) General Services Administration regulations, "Construction and Alteration of Public Buildings," "Accommodations for the Disabled," 41 CFR Part 101-19;
- (g) Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630;
- (h) Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64, Subpart F;
- (i) FTA regulations, "Transportation for Elderly and Disabled Persons," 49 CFR Part 609;
- (j) Architectural and Transportation Barriers Compliance Board regulations, "Minimum Guidelines and Requirements for Accessible Design," 36 CFR part 1190;
- (k) Architectural and Transportation Barriers Compliance Board regulations, "Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities," 26 CFR Part 1191; and
- (l) Architectural and Transportation Barriers Compliance Board regulations, "Americans With Disabilities Act (ADA) Accessibility Guidelines for Transportation Vehicles," 36 CFR 1192.

**PART 8**  
**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**  
**(Includes the SB Element 49 CFR 26.39 Provisions)**

**8.1 Definitions:**

- a) Disadvantaged Business Enterprise or DBE means a for-profit small business concern:
  - 1) that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
  - 2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- b) Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in Section 26.65(b).
- c) Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:
  - 1) Any individual who a recipient finds to be a socially and economically disadvantage individual on a case-by-case basis.
  - 2) Any individual in the following groups, members of which are refutably presumed to be socially and economically disadvantaged:
    - i. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
    - ii. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
    - iii. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
    - iv. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia, Philippines, Brunel, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
    - v. "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
    - vi. Women;
    - vii. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

**8.2 Offerors Obligation:**

Each subcontract the Contractor signs with a subcontractor must include the following assurance:

"The Contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 FR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material

breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.”

### 8.3 Submission of DBE Forms:

Offerors shall submit with their offer a completed Schedule of Participation (SOP) form (listing all proposed subcontractors, DBE, SBE and non-DBE) and an executed intent to Perform as a DBE or SBE Subcontractor form for each DBE or SBE subcontractor listed on the SOP. As required in Section 5 of this Exhibit, complete Good Faith Effort documentation (if necessary) must be submitted at this same time. The listing of a DBE or an SBE by an Offeror shall constitute a representation by the Offeror to the Agency that it believes such DBE firm to be technically and financially qualified and available to perform the work. It shall also represent a commitment by the Offeror that if it is awarded the contract it will enter into a subcontract with such DBE (provided that the DBE is certified) for the work described and at the price set forth in both the Schedule of Participation and the Intent to Perform as a DBE or SBE Subcontractor form. If the price changes after the forms have been submitted but prior to award of the contract, the Offeror will immediately notify VIA's Procurement Department of changed amount and the reason(s) for the change. No substitutions of DBE firms may be effected without the prior written approval by the DBE Officer. If an offeror is a DBE and wishes to count its participation on the project towards the goal, it is required to perform that portion with its own work force.

### 8.4 Credit Applied to Goals:

- a) No credit toward meeting DBE goals or SB Targets will be allowed unless VIA's certifying agency partner and will be allowed unless VIA's certifying agency partner and VIA EE-BO staff have determined that the DBE or SBE is eligible. Offeror are strongly encouraged to contact VIA's EE-Bo Department well in advance of the date set for receipt of offers in order to enable review of the proposed DBEs or SBEs eligibility to participate in VIA's DBE Program. The dollar value of work performed under a contract with a firm after it has ceased to be certified cannot count toward a contract goal. Participation of a DBE or SBE subcontractor cannot count toward the prime contractor's DBE achievements until the amount being counted has been paid to the DBE.
- b) Only expenditures to DBEs that perform a commercially Useful Function may be counted towards goals. A DBE perform a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiation price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it is not performing a commercially useful function.
- c) The Contractor may count only the value of the work actually performed by the DBE toward DBE goals or SB Targets. The Contractor may count the entire amount of that portion of a construction contract that is performed by a DBE's or SBE's own forces. The Contractor may include the cost of supplies and materials obtained by the DBE or SBE for the work of the contract, including supplies purchased or equipment leased by the DBE or SBE (except supplies and equipment the DBE or SBE subcontractor purchases or leases from the prime contractor or its affiliate). The Contractor may count the entire amount of fees or commissions charged by a DBE or SBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals or SB Targets, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services. When a DBE or SBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals or SB Targets only if the DBE's or SBE's subcontractor is itself a DBE. Work that a DBE or SBE subcontracts to a non-DBE firm does not count toward DBE goals or SB Targets.

- d) When a DBE or SBE performs as a participant in a joint venture, the Contractor may count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE or SBE performs with its own forces toward DBE goals or SB Targets.
- e) The Contractor may credit towards the DBE goal or SB Target the full expenditures for materials and supplies provided that the DBE or SBE is a manufacturer. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications. (also, produces materials from raw materials, or substantially alters materials before resale)
- f) The Contractor may credit towards the DBE goal or SB Target only 60% of the total dollar cost for material and supplies purchased from DBEs that are regular dealers and not manufacturers. A regular dealer is an established firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. A person may be regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the person both owns and operates distribution equipment for the products. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers.
- g) A Contractor may count toward its DBE goals or SB Targets the following expenditures to DBE or SBE firms that are not manufacturers or regular dealers.
  - i. The fees or commissions charged for a bona fide services such as professional, technical, consultant, or managerial services and assistance in the procurement of essential personnel, facilities, equipment materials or supplies required for performance of the contract, provided that the fee is determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  - ii. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in, the materials and supplies.
  - iii. The fees charged for providing any bonds or insurance specifically required for the performance of the contract.
  - iv. The fees charged for assistance in the procurement of the materials and supplies provided that the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.

## **8.5 Demonstration of Good Faith Effort:**

- a) If an Offeror does not meet the DBE goal or SB Targets, it shall nevertheless be eligible for award of the contract if it can demonstrate to the satisfaction of VIA that it has made a good faith effort to meet the DBE goal or SB Target. In evaluating an Offeror's good faith effort submission, VIA will only consider those documented efforts that occurred prior to receipt of competitive sealed bids (IFB) or competitive sealed proposals (RFP).

In the event that a firm submitted by an Offeror is not able to be confirmed as certified by VIA, the Offeror will be notified and given an opportunity to substitute that firm with another DBE firm or SBE firm. The Offeror will be given a deadline to accomplish the substitution. In the event the Offeror is unable to contract with another substitute DBE or SBE firm, the good faith efforts that the Offeror made in attempting to contract with the substitute DBE or SBE firm must be documented to VIA's EE-BO Department. Documentation submitted in accordance with this subparagraph is the only exception to the requirements in subparagraph "a" above pertaining to the good faith efforts that VIA will consider in determining whether the Offeror shall be otherwise eligible for award of the contract.



- b) In making a determination that the Offeror has made a good faith effort to meet the DBE goal or SB Target, VIA shall consider among other things it deems relevant, the criteria set forth below. Additionally, in determining whether a proposer has made a good faith efforts, VIA will take into account the performance of other proposers in meeting the contract goal or target. The Offeror shall furnish as part of its DBE or SBE utilization information provided under Section 5(a) such specific documentation concerning the steps it has taken to obtain DBE or SBE participation, with a consideration of, by way of illustration and not limited to the following:
- i. Whether the Offeror solicited through all reasonable and available means (e.g. attendance at pre-proposal meetings, advertising and/or written notices) the interest of all certified DBEs or SBEs who have the capability to perform the work of the contract. The proposer must solicit this interest within sufficient time to allow the DBEs or SBEs to respond to the solicitation. The proposer must determine with certainty if the DBEs or SBEs are interested by taking appropriate steps to follow up initial solicitations.
  - ii. Whether Offeror selected portion of the work to be performed by DBEs or SBEs in order to increase the likelihood that the DBE goal or SB Target will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE or SBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
  - iii. Whether the Offeror provided interested DBEs and SBEs with adequate information about the plans, specifications, and requirements of the contract in timely manner to assist them in responding to a solicitation.
  - iv. Whether the Offeror negotiated in good faith with interested DBEs and SBEs. It is the proposer's responsibility to make a portion of the work available to DBE or SBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE or SBE subcontractors and suppliers, so as to facilitate DBE or SBE participation. Evidence of such negotiation includes the names, addresses, and telephone number of DBEs and SBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs or SBEs to perform the work. A proposer using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE or SBE subcontractors, and would take a firm's price and capabilities as well as contract goals or SB Targets into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs or SBEs is not in itself sufficient reason for a proposer's failure to meet the contract DBE goal or SB Target, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the proposer of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs or SBEs if the price difference is excessive or unreasonable.
  - v. Whether the Offeror rejected DBEs or SBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of proposals in the contractor's efforts to meet the project goal.
  - vi. Whether the Offeror made efforts to assist interested DBEs and SBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

- vii. Whether the Offeror made efforts to assist interested DBEs or SBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
  - viii. Whether the Offeror effectively used the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs and SBEs.
- c) In determining whether an Offeror has demonstrated good faith, VIA will look not only at the different kinds of efforts that the Offeror has made, but also the quantity and intensity of those efforts. Efforts that are mere pro forma are not good faith efforts to meet the DBE goal or SB Target (even if they are sincerely motivated) if, given all relevant circumstances, the Offeror's efforts could not reasonably be expected to produce a level of DBE or SBE participation sufficient to meet the goal or target set on a contract.

#### 8.6 Certification of DBEs and SBEs:

- a) VIA is a participating entity under the Texas Unified Certification Program (TUCP). This means that VIA will accept certifications from any of the certifying agencies that have agreed to perform the certification of DBEs and SBEs within the state of Texas under the Texas Unified Certification Program (TUCP). The participating agencies are:
- **Texas Department of Transportation**
  - **North Central Texas Regional Certification Agency**
  - **South Central Texas Regional Certification Agency**
  - **City of Houston**
  - **City of Austin and**
  - **Corpus Christi Regional Transportation Authority.**
- b) The South Central Texas Regional Certification Agency (SCTRCA) will serve as the certifying agency for the San Antonio region, which includes Bexar County. All prospective DBEs and SBEs must submit appropriate forms, available through the SCTRCA, to prove actual ownership and control by DBEs and SBEs. All such firms shall cooperate in supplying additional information as requested by SCTRCA staff, which will determine the certification of eligible DBEs and SBEs. Blank forms may be obtained by contacting the SCTRCA. Vendors may also contact the VIA EE-BO Office at (210) 362-2077 to obtain information.
- c) In the event VIA determines that a firm identified by the Offeror as a potential DBE or SBE does not qualify as a DBE or SBE, the Offeror shall be informed and will be provided with an opportunity to substitute firms meeting the certifying agency's DBE or SBE eligibility criteria for VIA's consideration.
- d) Information concerning DBEs and SBEs currently certified can be obtained by contacting the VIA EE-BO Office. Offerors are reminded that only certified DBEs or SBEs may participate in Agency contracts in such capacities. **If Offerors propose using a DBE or SBE not currently certified with any of the other recipients in the Texas Unified Certification Program (TUCP), the DBE or SBE Application must be approved by the South Central Texas Regional Certification Agency no later than the date and time established for the receipt of proposals.** Any extensions to the due date by amendment to the solicitation shall automatically extend the due date of the application.

#### 8.7 DBE/SBE Modification or Substitution:

In the event that an Offeror wishes to modify its Schedule of Participation (SOP) after its offer is submitted and/or a contract awarded, the Offeror/Contractor must notify VIA in writing and request approval of the modification. This will include any changes to items of work, material, services or DBE or SBE firms which differ from those identified on the Schedule of Participation on file. The Offeror/Contractor must cooperate in supplying VIA with additional information with respect to the requested modification. If the modification involves a substitution and if it is approved by VIA's DBE Officer, the Offeror/Contractor must make every good faith effort to replace the DBE or SBE with another comparable and certified DBE or SBE. In the

event that the Offeror/Contractor is unable to contract with another DBE or SBE firm, such good faith efforts must be documented to VIA's EE-BO Department. The substitute DBE or SBE firm must be confirmed as certified by VIA in order for the Offeror/Contractor to receive credit towards fulfilling its DBE participation goal or SB Target for the contract.

**8.8 Payment Documentation:**

Currently with the submission of the invoice or each request for a progress payment under this contract, the Contractor shall provide on the Vendor Payment Report Form a breakdown of the amounts paid to date to DBEs or SBEs identified by the Contractor to participate on the contract. As provided elsewhere in the contract, VIA may withhold all or part of any progress payment otherwise due the Contractor if the Contractor fails to submit the Vendor Payment Report Form and make prompt payment to its subcontractors, suppliers and laborers.

**8.9 Banks and Financial Institutions:**

The Contractor is encouraged to utilize the services of disadvantaged, minority and woman-owned banks and financial institutions.

**8.10 Sanctions for Noncompliance with the Agency's DBE Program Provisions:**

Failure of the Contractor to carry out VIA's DBE Program (including the SBE Element 49 CFR 26.39) provisions shall constitute a breach of contract and may result in termination of the contract for default or such remedy as VIA may deem appropriate. The willful making of false statements or providing incorrect information will be referred for appropriate legal action.

**PART 9  
FORMS**

**9.1 Forms to be Submitted with Proposal:**

**9.1.1 Offer and Certifications Form:**

The undersigned Bidder/offeror having read and examined the Procurement (see section entitled "Definitions") documents, and which will ultimately comprise the Contract for the above designated Work, and thoroughly familiarized himself/herself with the factors which will affect the execution of the Work and the cost thereof, does hereby offer to furnish all materials and labor to complete the work set forth in this offer. All prices stated herein are firm and shall not be subject to escalation provided this offer is accepted within one hundred twenty (120) days after the official opening of the proposal.

Furthermore, the undersigned hereby declares that he has thoroughly reviewed all the Procurement documents (which will ultimately comprise the Contract) and has found no discrepancies with the information or accuracy of the documents that might affect either the cost or the time of the work.

The following certifications are made in connection with the bid/offer and the performance of the Contract (the references to "Bidder/offeror" shall also mean and apply to "Contractor" upon acceptance of the Bid/offer):

**9.1.1.1 Good Faith Offer:**

The Bidder/offeror hereby declares that only the persons or firms interested in the offer as principal or principals are named herein and that no other persons or firms then herein mentioned have any interest in this offer or in the contract to be entered into; that this offer is made without connection with any other person, company, or parties likewise submitting a bid or offer; and that it is in all respects for and in good faith.

**9.1.1.2 Contractor Compliance with VIA's Drug/Alcohol-Free Workplace Policy:**

The Bidder/offeror certifies that it will comply with VIA's Policies and Procedures for maintaining a drug and alcohol free work environment, the essence of which is as follows:

1. While operating as a contractor or subcontractor performing work on VIA's premises, neither the Bidder/offeror or its subcontractor(s) will engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conduct of any contracting activity paid for by VIA. (Authority -- 49CFR 29.600 Subpart F)
2. At its sole option, VIA may elect to subject Contractor and/or subcontractor personnel to random testing for the presence of controlled substances when such employees are performing safety sensitive work on VIA's premises. (A copy of VIA's Drug and Alcohol Policy is available upon request.) (Authority -- 49CFR 40.1)
3. Upon determination of one or more confirmed instances of the presence of a controlled substance involving Contractor or subcontractor personnel, VIA may elect to take punitive action against Contractor including, but not limited to Termination for Default.

**9.1.1.3 Affidavit of Non-Collusion:**

The Bidder/Offeror certifies that:

The attached Bid/offer has been arrived at by the bidder independently, and has been submitted without collusion with, and without agreement, understanding, or planned common course of action with, any other vendor of materials, supplies, equipment, services described in the Procurement documents, designed to limit independent bidding or competition; and the contents of the Bid/offer have not been communicated by the bidder/offeror or its employees or agents, to any person not an employee or agent of the bidder/offeror or its surety on any bond furnished with the bid/offer, and will not be communicated to any such person prior to the official opening of the bid or consideration of the proposal.

#### **9.1.1.4 Certification of Restrictions on Lobbying:**

The Bidder/offeror certifies that:

1. No Federally appropriated funds have been or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions (as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1431 (1/19/96)).
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed for making or entering into this transaction imposed by 31 U.S.C. 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

THE BIDDER/OFFEROR CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND DISCLOSURE, IF ANY. IN ADDITION, THE BIDDER/OFFEROR UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 U.S.C. 3801 ET. SEQ., APPLY TO THIS CERTIFICATION AND DISCLOSURE, IF ANY.

#### **9.1.1.5 Bid/offer:**

By execution below, the Bidder/offeror agrees to faithfully and diligently complete the work as bid/proposed herein, and as specified in VIA's Procurement documents including those described in the section entitled "Contract" under Part 2, "Scope of Work, Terms and Conditions." Bidder/offeror understands and agrees that by execution below, it is offering to be bound by the terms contained or referenced in the section entitled "Contract" under Part 2, "Scope of Work, Terms and Conditions" and that, in the event VIA accepts this offer, such documents will form and constitute a legally binding contract.

By execution below, Bidder/offeror provides all the certifications and assurances described in this Bid/offer, and further certifies that all information provided or otherwise contained in its response to VIA's Procurement Solicitation is true and correct, including but not limited to the information contained in the following forms:

1. Letter of Transmittal
2. Acknowledgement of Addenda
3. List of Similar Contracts/References
4. Certification of Restrictions on Lobbying
5. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
6. Certification of Compliance with FTA's Bus Testing Requirements
7. Buy America Certificate
8. Business Questionnaire
9. Conflict of Interest Questionnaire
10. DBE/SBE Schedule of Participation
11. Manufacturer's Certification

12. Safety Certification
13. Motor Vehicles Pollution Certification
14. TVM Certification
15. Pre-Award Audit of Buses for Specification and Buy America Compliance
16. Federal Motor Vehicle Safety Standards Certification
17. DBE Approval Certification
18. Contractor Service and Parts Support Data
19. Form for Proposal Deviation (without price data)
20. Vehicle Questionnaire

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

PROPOSED CONTRACTOR (Bidder/offeror)

\_\_\_\_\_ d/b/a  
 (Name should be the same as the response to question #1 "Business Questionnaire").

\_\_\_\_\_ (individual or officer authorized to sign on behalf of  
 Bidder/offeror)

\_\_\_\_\_ (title, or legal capacity - attach power of attorney, if any)

ATTEST: (if Bidder/offeror is a corporate entity)

By \_\_\_\_\_ [Affix CORPORATE SEAL here]  
 \_\_\_\_\_ (Title - usually, "corporate secretary")

ACKNOWLEDGED, SWORN TO and SUBSCRIBED before me, the undersigned authority, on this  
 \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, to certify which, witness my hand and seal of office.

\_\_\_\_\_  
 Notary Public

**AWARDED**, executed and effective this \_\_\_\_\_ day of \_\_\_\_\_.

VIA Metropolitan Transit

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

**9.1.2 ACKNOWLEDGMENT OF ADDENDA**

The undersigned acknowledges receipt of the following addenda to the solicitation Documents:

ADDENDUM NO. \_\_\_\_\_, DATED \_\_\_\_\_

ADDENDUM NO. \_\_\_\_\_, DATED \_\_\_\_\_

ADDENDUM NO. \_\_\_\_\_, DATED \_\_\_\_\_

ADDENDUM NO. \_\_\_\_\_, DATED \_\_\_\_\_

ADDENDUM NO. \_\_\_\_\_, DATED \_\_\_\_\_

NOTE: Failure to acknowledge receipt of all addenda may cause the bid/offer to be considered nonresponsive to the solicitation. Acknowledged receipt of each addendum must be clearly established and included with the bid/offer.

\_\_\_\_\_  
Name of Firm

\_\_\_\_\_  
Signature of Authorized Person

\_\_\_\_\_  
Address

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
City                      State                      Zip Code

\_\_\_\_\_  
Position and/or Title

\_\_\_\_\_  
Type of Entity

\_\_\_\_\_  
Date

**9.1.3 LIST OF SIMILAR CONTRACTS/REFERENCES (All Formal Solicitations)**

1. Project:  
Contact Person:  
Company Name:  
Telephone Number:  
Fax Number:  
E-mail Address:

2. Project:  
Contact Person:  
Company Name:  
Telephone Number:  
Fax Number:  
E-mail Address:

3. Project:  
Contact Person:  
Company Name:  
Telephone Number:  
Fax Number:  
E-mail Address:

4. Project:  
Contact Person:  
Company Name:  
Telephone Number:  
Fax Number:  
E-mail Address:

\_\_\_\_\_  
Name of Firm

\_\_\_\_\_  
Signature of Authorized Person

\_\_\_\_\_  
Address

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
City State Zip Code

\_\_\_\_\_  
Position and/or Title

\_\_\_\_\_  
Type of Entity

\_\_\_\_\_  
Date



**9.1.4 CERTIFICATION OF RESTRICTIONS ON LOBBYING**

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of the fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

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

By: \_\_\_\_\_  
(Signature of company official)

\_\_\_\_\_  
(Title of company official)

**9.1.5 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION (Pursuant to 49 CFR Part 29, Appendix B)**

1. By signing and submitting this bid or proposal, the Bidder/proposer is providing the signed certification set out below.
2. The certification referred to in this paragraph clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, VIA may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to VIA if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered participant,” “persons,” “lower tier covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this paragraph, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549, 49 CFR Part 29. You may contact VIA for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by VIA.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause entitled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and all solicitations for lower-tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under subparagraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, VIA may pursue available remedies including suspension and/or debarment.

**CERTIFICATION**

The prospective lower tier participant certifies, by submission of this offer, that neither it nor its “principals,” [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.

When the prospective lower tier participant is unable to certify to the statements in this certification, prospective lower tier participant shall attach an explanation to this proposal.

Signature \_\_\_\_\_

Typed or Printed Name \_\_\_\_\_

Title \_\_\_\_\_

Company \_\_\_\_\_

Date \_\_\_\_\_

**9.1.6 CERTIFICATION OF COMPLIANCE WITH FTA'S BUS TESTING REQUIREMENTS**

The undersigned [Contractor/Manufacturer] certifies that the vehicle offered in this procurement complies with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

**9.1.7 BUY AMERICA CERTIFICATE OF COMPLIANCE WITH FTA REQUIREMENTS FOR BUSES, OTHER ROLLING STOCK, OR ASSOCIATED EQUIPMENT:**

**Certificate of Compliance**

The bidder/offeror hereby certifies that it will comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C), Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 C.F.R. 661.11:

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

**Certificate of Non-Compliance**

The bidder/offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C) and Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirements consistent with 49 U.S.C. Sections 5323(j)(2)(B) or (j)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 C.F.R. 661.7.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

### 9.1.8 BUSINESS QUESTIONNAIRE

This questionnaire must be submitted for all potential Contractors and subcontractors listed on the Schedule of Participation.

1. Name of Proposed Contractor ("Business", herein): \_\_\_\_\_

Doing Business As: \_\_\_\_\_  
Other business name, if applicable)

EIN# \_\_\_\_\_

2. Business Mailing Address: \_\_\_\_\_  
Street Address

City State Zip Code

3. Business Telephone Number: ( ) \_\_\_\_\_ Fax Number: ( ) \_\_\_\_\_

E-mail address: \_\_\_\_\_

4. Business Type:  Individual  Corporation  Partnership  Joint Venture

5. Number of Years in Business: \_\_\_\_\_

6. Annual Gross Revenue: (M represents Millions)  
 \$1M or less  \$1M-\$5M  \$5M-\$10M  \$10M-\$16M  \$16M or Over

7. Number of Employees:  
 Less than 50  50-100\*  101-750  751-1,000  1,001 or over

8. Is Business Owned by Minority Ethnicity?  Yes  No

9. Ethnic Group:  African American  Hispanic American  Native American  
 Asian Pacific American  Subcontinent Asian American  Caucasian  
 Other (Please Specify) \_\_\_\_\_

10. Female Owned Business?  Male Owned Business?

11. Physically Challenged?  Yes  No

12. Type of Work Performed:  Construction  Wholesale/Distributor  Manufacturing  
 Professional Service  General/Technical Service  Retail

13. Please provide a brief description of your materials and/or services:  
\_\_\_\_\_  
\_\_\_\_\_

14. Is the Business a subsidiary of another entity?  Yes  No

15. Has the Business, or any officer or partner thereof, failed to complete a contract?  Yes  No

16. Is any litigation pending against the Business?  Yes  No

17. Has the Business ever been declared "not responsible"?  Yes  No

18. Has the Business been debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded or otherwise disqualified from bidding, proposing or contracting?  Yes  No

19. Has the Business been a defaulter, as principal, surety or otherwise?  Yes  No

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20. Has the government or other public entity requested or required enforcement of any of its rights under a surety agreement on the basis of a default or in lieu of declaring the Business in default? Yes No
21. Is the Business in arrears upon a contract or debt? Yes No
22. Are there any proceedings pending relating to the Business' responsibility, debarment, suspension, voluntary exclusion or qualification to receive a public contract? Yes No
23. Have liquidated damages or penalty provisions been assessed against the Business for failure to complete the work on time or for any other reason? Yes No
24. If a "yes" response is given under questions 14 through 23, please provide a detailed explanation including dates, references to contract information, contacts, etc. (attach additional pages as necessary). VIA reserves the right to inquire further with respect thereto.
25. List the name and business address of each person or legal entity that has a 10% or more ownership or control interest in the Business (attach additional pages as necessary).
- \_\_\_\_\_

26. Name of principal financial institution for financial responsibility reference.

Name of Bank: \_\_\_\_\_

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

City and State: \_\_\_\_\_

Officer familiar with bidders/offerors account: \_\_\_\_\_

Federal Taxpayer I.D. number: \_\_\_\_\_

27. Please check all classifications that apply to your business:

\_\_\_\_\_ AABE    \_\_\_\_\_ ACDBE    \_\_\_\_\_ DIBE    \_\_\_\_\_ DBE    \_\_\_\_\_ MBE    \_\_\_\_\_ SBE  
 \_\_\_\_\_ VBE    \_\_\_\_\_ WBE    \_\_\_\_\_ ESBE    \_\_\_\_\_ & (A)    \_\_\_\_\_ AIBE

28. How were you notified of this solicitation? (Check all that apply—your response to this will help improve our outreach efforts.)

- |                                      |   |   |
|--------------------------------------|---|---|
| <input type="checkbox"/> Newspaper   | <input type="checkbox"/> VIA Website      | <input type="checkbox"/> TX Marketplace         |
| <input type="checkbox"/> Direct Mail | <input type="checkbox"/> E-mail           | <input type="checkbox"/> VIA Outreach           |
| <input type="checkbox"/> Telephone   | <input type="checkbox"/> Networking Event | <input type="checkbox"/> Other (Identify) _____ |

I, individually and on behalf of the business named above, do by my signature below certify that the information provided in this questionnaire is true and correct. I understand that if the information provided herein contains any false statements or any misrepresentations: 1) VIA will have the grounds to terminate any or all contracts which VIA has or may have with the business; 2) VIA may disqualify the business named above from consideration for contracts and may remove the business from VIA's bidders list; or/and 3) VIA may have grounds for initiating legal action under federal, state or local law. **Note: This questionnaire is also a certification form; the information requested will be used to determine small business status as per 13 CFR Part 121. Additionally, this information will allow VIA to report the amount of subcontracting activity with all businesses that offer the commodities and services used by VIA.**

\* Contractors that employ 50 or more transit related employees will be required to submit a copy of their EEO program.

Printed Name: \_\_\_\_\_ Title \_\_\_\_\_

Signature of Owner: \_\_\_\_\_ Date: \_\_\_\_\_

(Owner, CEO, President, Majority Stockholder or Designated Representative)

Questions about this document should be directed to the Contract Administrator REV 2/15/13

**9.1.9 CONFLICT OF INTEREST QUESTIONNAIRE (All Formal Solicitations)**  
**For vendor or other person doing business with local government entity**

FORM CIQ

This questionnaire is being filed in accordance with chapter 176 of the Local Government code by a person doing business with the governmental entity.

By law this questionnaire must be filed with the records administrator of the local government not later than the 7<sup>th</sup> business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor

OFFICE USE ONLY

Date Received

1 Name of person doing business with local governmental entity.

2  Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7<sup>th</sup> business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3 Name of local government officer with whom filer has affiliation or business relationship.

\_\_\_\_\_  
Name of Officer

This section, item 5 including subparts A, B, C & D, must be completed for each officer with whom the filer has affiliation or business relationship. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income from the filer of the questionnaire?

YES  NO

B. Is the filer of the questionnaire receiving or likely to receive taxable income from or at the direction of the local government officer named in this section AND the taxable income is not from the local governmental entity?

YES  NO

C. Is the filer of this questionnaire affiliated with a corporation or other business entity that the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

YES  NO

D. Describe each affiliation or business relationship.

4.

\_\_\_\_\_  
Signature of person doing business with the governmental entity

\_\_\_\_\_  
Date

**9.1.10 DBE/SBE SCHEDULE OF PARTICIPATION**

**CONFIDENTIAL INFORMATION  
REQUIRED SUBMITTAL**

VIA METROPOLITAN TRANSIT  
Schedule of Participation



Instructions: Offerors must complete this form by listing: 1) Names of all proposed subcontractors; 2) Contact Information; 3) Description of work to be performed/product to be provided; 4) Status as a DBE, SBE or non-certified; 5) Ethnic Code of firm; 6) Age of the firm; 7) Dollar value of commitment; and 8) DBE, SBE Target or SBE(%) participation. Subcontractors that are listed on this form as DBEs or SBEs must be certified as a DBE or SBE with a participating Texas Unified Certification Program (TUCP) certifying agency at the time of the bid/proposal submission. The DBE or SBE certification must be complete by the time bids/proposals are submitted. Additionally, subcontractors that are listed on this form as DBEs or SBEs must complete an Intent to Perform as a DBE or SBE Subcontractor agreeing to the information listed here. A **DBE prime** must perform 30% of the contract to demonstrate a **Commercially Useful Function CFR part§26.55**”How is DBE participation counted towards goals?”

Ethnic Code: A=African American Male; B=African American Female; C=Asian-Indian Male; D=Asian-Indian Female; E= Asian-Pacific Male; G=Asian-Pacific Female; H=Hispanic Male; I= Hispanic Female; J=Native American Male; K=Native American Female; L=White Female; M= Other

1) Name of Contractor/Subcontractors	2) Address, Telephone firm (including name of contact person)	3) Description of Work, services provided. Where applicable, specify “supply” or “install” or both	4) DBE, S BE or Non-certified	5) Ethnic Code	6) Age of Firm	7) Dollar value of commitment	8) DBE, SB Target or SB Participation %
<b>SUB-CONTRACTORS</b>	(Please indicate below)						

This schedule must be completed as instructed above and include the prime and all subcontractors proposed on this project, including dollars and % of work committed. The undersigned will enter into a formal agreement with the DBE or SBE contractors for work listed in this schedule upon execution of a contract with VIA. The contractor agrees to the terms of this schedule by signing below and submitting the Intent to perform as completed by the DBE or SBE subcontractors.

\_\_\_\_\_  
Signature of Authorized Representative of Offeror

\_\_\_\_\_  
Date Signed



1) Name of Subcontractors	2) Address, Telephone # of DBE firm (including name of contact person)	3) Description of Work, services provided. Where applicable ,specify "supply" or "install" or both	4) DBE, SBE or Non-certified	5) Ethnic Code	6) Age of Firm	7) Dollar value of commitment	8) DBE, SB Target or S B Participation %
<b>SUB-CONTRACTORS</b>	(Please indicate below)						

This schedule must be completed as instructed above and include the prime and all subcontractors proposed on this project, including dollars and % of work committed. The undersigned will enter into a formal agreement with the DBE or SBE contractors for work listed in this schedule upon execution of a contract with VIA. The contractor agrees to the terms of this schedule by signing below and submitting the Intent to perform as completed by the DBE or SBE subcontractors.

\_\_\_\_\_  
Signature of Authorized Representative of Offeror

\_\_\_\_\_  
Date Signed

Version 2 of 2

**DBE/SBE PARTICIPATION FOR PAYMENT**

This is to certify that for the month of \_\_\_\_\_ the following subcontractor(s) and supplier(s) will be paid:

Name of subcontractor(s) or supplier(s)	Amount
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

\_\_\_\_\_  
Name of Authorized Person

\_\_\_\_\_  
Signature of Authorized Person

\_\_\_\_\_  
Date

**9.1.11 MANUFACTURER'S CERTIFICATION**

The \_\_\_\_\_ hereby certifies that the  
(Name of Bidder)  
vehicles offered in this bid have been designed, manufactured, assembled, tested and found suitable for  
the intended purpose as specified in the bid documents.

\_\_\_\_\_  
Name of Firm

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

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

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

**9.1.12 SAFETY CERTIFICATION**

The \_\_\_\_\_ hereby certifies that  
(Name of Bidder)  
the vehicles offered in this bid comply with the Motor Vehicle Safety Standard as established by the Department of Transportation and with requirements of the laws of the State of Texas, all as are in effect at the time of delivery of the vehicles, as to lighting equipment and all warnings, operating and safety devices.

\_\_\_\_\_  
Name of Firm

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

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

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

**9.1.13 MOTOR VEHICLES POLLUTION CERTIFICATION**

The \_\_\_\_\_ hereby certifies that he/she  
(Name of Bidder)

is in compliance with Section 508 of the Clean Water Act and all current Clean Air Act legislation, and that:

- a) The horsepower of the vehicle is adequate for the speed, range and terrain in which it will be required to operate and also to meet the demands of all auxiliary power and equipment.
- b) The vehicle must meet or exceed all \_\_\_\_\_ Vehicle Federal, CARB and State Emission limits.

\_\_\_\_\_  
Name of Firm

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

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

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

**9.1.14 TVM CERTIFICATION**

The Bidder, if a transit vehicle manufacturer, hereby certifies that it has complied with the requirement of 49 CFR Section 23.67 by submitting an annual DBE/WBE goal to the Federal Transit Administration (FTA). The goal has either been approved or disapproved by FTA.

The Bidder, if a non-manufacturer supplier, hereby certifies that the manufacturer of the transit vehicle to be supplied has complied with the above referenced requirement of 49 CFR Section 23.67.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Bidder

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Person Authorized to Sign  
(Type or Print)

\_\_\_\_\_  
Signature

**9.1.15 PRE-AWARD AUDIT OF BUSES FOR SPECIFICATION AND BUY AMERICA COMPLIANCE**

Bidder hereby agrees to make available in its office, at all reasonable times, all records and documents pertaining to this solicitation in sufficient detail to permit VIA's Auditor and Quality Control Inspector to perform Pre-award audits of the buses offered in response to this Solicitation, for compliance with the specification and Buy America requirements, pursuant to the Federal Transit Administration's Final Rule as published in the Federal Register.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company

\_\_\_\_\_  
Date

**9.1.16 FEDERAL MOTOR VEHICLE SAFETY STANDARDS CERTIFICATION.**

The Proposer and (if selected) Contractor shall submit (1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or (2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

Company name: \_\_\_\_\_

Name of signer: \_\_\_\_\_

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

---

Authorized signature

Date



**9.1.17 DBE APPROVAL CERTIFICATION.**

I hereby certify that \_\_\_\_\_ has complied with the requirements of 49 CFR 26, Participation by Disadvantaged Business Enterprises in DOT Programs, and that its goals have not been disapproved by the Federal Transit Administration.

Name and title of the Proposer's authorized official:

---

Authorized signature

Date

## PROPOSER'S CHECKLIST.

**Technical Proposal Package.** The technical proposal package shall include the following at a minimum:

1. Letter of Transmittal
2. Technical Proposal
3. Offer and Certifications Form
4. Acknowledgement of Addenda
5. List of Similar Contracts/References
6. Certification of Restrictions on Lobbying
7. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
8. Certification of Compliance with FTA's Bus Testing Requirements
9. Buy America Certificate
10. Business Questionnaire
11. Conflict of Interest Questionnaire
12. DBE/SBE Schedule of Participation
13. Manufacturer's Certification
14. Safety Certification
15. Motor Vehicles Pollution Certification
16. TVM Certification
17. Pre-Award Audit of Buses for Specification and Buy America Compliance
18. Contractor Service and Parts Support Data
19. Form for Proposal Deviation (without price data)
20. DBE Approval Certification
21. Federal Motor Vehicle Safety Standards Certification
22. Vehicle Questionnaire
23. Engineering organization chart, engineering change control procedure, field modification process
24. Manufacturing facilities plant layout, other contracts, staffing
25. Production and delivery schedule and other Contract commitments for the duration of this Contract
26. Management Plan

**Price Proposal Package:** The price proposal package shall include the following at a minimum:

1. Letter of Transmittal
2. Pricing Schedule, (including but not limited to such pricing elements as option buses, spare parts package, manuals, training, special tools and test equipment).

**REQUEST FOR PRE-OFFER CHANGE OR APPROVED EQUAL.**

This form must be used for requested clarifications, changes, substitutes or approval of items equal to items specified with a brand name and must be submitted as far in advance of the Due Date, as specified in "Questions, Clarifications and Omissions."

VIA Metropolitan Transit  
Forty-Foot Low-Floor Heavy-Duty Transit Buses  
VIA Project #15-376

<b>Request #:</b>
<b>Proposer:</b>
<b>RFP Section:</b>
<b>Page:</b>
<b>Questions/clarification or approved equal:</b>
<b>VIA action:</b> <input type="checkbox"/> Approved <input type="checkbox"/> Denied <input type="checkbox"/> See addendum <input type="checkbox"/> See response below
<b>VIA response:</b>

**9.1.18 CONTRACTOR SERVICE AND PARTS SUPPORT DATA.**

– **Location of nearest Technical Service Representative to VIA**

Name:

Address:

Telephone:

Describe technical services readily available from said representative:

– **Location of nearest Parts Distribution Center to VIA:**

– Name:

–

Address:

Telephone:

Describe the extent of parts available at said center:

– **Policy for delivery of parts and components to be purchased for service and maintenance:**

– Regular method of shipment:

Cost to VIA:

**9.1.19 FORM FOR PROPOSAL DEVIATION.**

This form shall be completed for each condition, exception, reservation or understanding (i.e., Deviation) in the Proposal according to “Conditions, Exceptions, Reservations or Understandings.” One copy without any price/cost information is to be placed in the Technical Proposal as specified in “Technical Proposal Requirements,” and a separate copy with any price/cost information placed in the Price Proposal as specified in “Price Proposal Requirements.”

<b>Deviation No.:</b>	<b>Contractor:</b>	<b>RFP section:</b>	<b>Page:</b>
<b>Complete description of Deviation:</b>			
<b>Rationale (pros and cons):</b>			

**9.1.20 PRICE SCHEDULE OPTION A (CNG).**

All prices are to be in United States Dollars		
	– Unit Price	– Extension
40' CNG Transit Buses		
– Manuals	– Lump Sum	
– Training	– Lump Sum	
– Test equipment and special tools not identified elsewhere that are unique for this vehicle		
One complete engine and transmission module, to include all accessories and exhaust system. Mounted on a heavy duty frame, suitable for lifting with a fork lift. Design to be similar to module used for APTA Bus Mechanic Rodeo.		
One complete multiplexing system on a board, simulating the complete vehicle components. This is for training and is to be on a "board."		
One complete air conditioning module, with an electric drive to simulate actual unit. This will be used for training.		
One complete Brake Board that replicates the air brake system on the bus. Designed to be used for training.		
Laptop, with cords, adapters, software, operating manual, and training for the Transmission. One complete system for every 20 buses.		
Laptop, with cords, adapters, software, operating manual, and training for the engine. One complete system for every 20 buses.		
Laptop, with cords, adapters, software, operating manual, and training for the brake/ABS system. One complete system for every 20 buses.		
Laptop, with cords, adapters, software, operating manual, and training for the air conditioning system. One complete system for every 20 buses.		
Laptop, with cords, adapters, software, operating manual, and training for the multiplexing system . One complete system for every 20 buses.		
– Extended Warranty -Engine	\$	\$
– Extended Warranty - Transmission	\$	\$
– Sales tax (if applicable)	\$	\$
– Delivery charges	\$	\$
<b>– TOTAL PROPOSED PRICE</b>		<b>\$</b>

\* This form is to be completed and included in the Price Proposal Package.

VIA will choose only one of the options (Option A or B) listed on the Price Schedule. VIA will choose the option that is considered most advantageous to VIA in terms of cost, availability and other factors. A contract will be awarded to the lowest responsive and responsible bidder for the option that is chosen.

**9.1.21 PRICE SCHEDULE OPTION B (DIESEL).**

		All prices are to be in United States Dollars	
		– Unit Price	– Extension
40' CNG Transit Buses			
– Manuals		– Lump Sum	
– Training		– Lump Sum	
– Test equipment and special tools not identified elsewhere that are unique for this vehicle			
One complete engine and transmission module, to include all accessories and exhaust system. Mounted on a heavy duty frame, suitable for lifting with a fork lift. Design to be similar to module used for APTA Bus Mechanic Roadeo.			
One complete multiplexing system on a board, simulating the complete vehicle components. This is for training and is to be on a "board."			
One complete air conditioning module, with an electric drive to simulate actual unit. This will be used for training.			
One complete Brake Board that replicates the air brake system on the bus. Designed to be used for training.			
Laptop, with cords, adapters, software, operating manual, and training for the Transmission. One complete system for every 20 buses.			
Laptop, with cords, adapters, software, operating manual, and training for the engine. One complete system for every 20 buses.			
Laptop, with cords, adapters, software, operating manual, and training for the brake/ABS system. One complete system for every 20 buses.			
Laptop, with cords, adapters, software, operating manual, and training for the air conditioning system. One complete system for every 20 buses.			
Laptop, with cords, adapters, software, operating manual, and training for the multiplexing system . One complete system for every 20 buses.			
– Extended Warranty -Engine		\$	\$
– Extended Warranty - Transmission		\$	\$
– Sales tax (if applicable)		\$	\$
– Delivery charges		\$	\$
– <b>TOTAL PROPOSED PRICE</b>		<b>\$</b>	<b>\$</b>

\*This form is to be completed and included in the Price Proposal Package.

VIA will choose only one of the options (Option A or B) listed on the Price Schedule. VIA will choose the option that is considered most advantageous to VIA in terms of cost, availability and other factors. A contract will be awarded to the lowest responsive and responsible bidder for the option that is chosen.

**9.1.22 VEHICLE TECHNICAL INFORMATION.**

This form must be completed and included in the Technical Proposal.

**GENERAL COACH DATA SHEET**

[insert bus type]

<b>Bus manufacturer:</b>	
Bus model:	
<b>Understructure manufacturer:</b>	
Model number:	

**Basic Body Construction**

Type:

**Tubing or frame member thickness and dimensions**

Over structure	
Understructure	

**Skin thickness and material**

Roof	
Sidewall	
Skirt panel	
Front end	
Rear end	

**Dimensions**

<b>Overall length</b>	Over bumpers	<input type="text"/>	foot	<input type="text"/>	inch
	Over body	<input type="text"/>	foot	<input type="text"/>	inch
<b>Overall width</b>	Over body excluding mirrors	<input type="text"/>	foot	<input type="text"/>	inch
	Over body including mirrors—driving position	<input type="text"/>	foot	<input type="text"/>	inch
	Over tires front axles	<input type="text"/>	foot	<input type="text"/>	inch
	Over tires center axle	<input type="text"/>	foot	<input type="text"/>	inch
	Over tires rear axles	<input type="text"/>	foot	<input type="text"/>	inch

<b>Overall height (maximum)</b>	<input type="text"/>	foot	<input type="text"/>	inch
<b>Overall height (main roof line)</b>	<input type="text"/>	foot	<input type="text"/>	inch

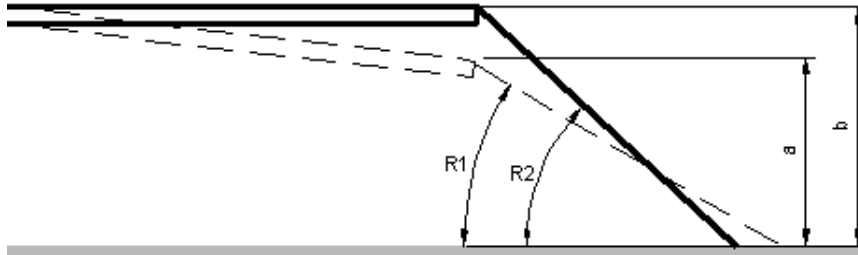
<b>Angle of approach</b>	<input type="text"/>	degree
<b>Breakover angle</b>	<input type="text"/>	degree
<b>Breakover angle (rear)</b>	<input type="text"/>	degree
<b>Angle of departure</b>	<input type="text"/>	degree

<b>Doorway Dimensions</b>	<b>Front</b>	<b>Rear</b>
Width between door posts	<input type="text"/> inch	<input type="text"/> inch
Door width between panels	<input type="text"/> inch	<input type="text"/> inch
Clear door width	<input type="text"/> inch	<input type="text"/> inch



Doorway height  inch  inch  
 Knuckle clearance  inch  inch

Step height from ground measured at center of doorway



	Front doorway, empty	Ramp angle	Rear Doorway, empty
Kneeled	a. <input type="text"/> inch	R1 <input type="text"/> deg	a. <input type="text"/> inch
Unkneeled	b. <input type="text"/> inch	R2 <input type="text"/> deg	b. <input type="text"/> inch

**Interior head room (center of aisle)**

Front axle location  inch  
 Center axle location  inch  
 Rear axle location  inch

Aisle width between transverse seats  inch

**Floor height above ground (centerline of bus)**

At front door  inch  
 At front axle  inch  
 At drive axle  inch  
 At rear door  inch

**Minimum ground clearance (between bus and ground, with bus unkneeled)**

Excluding axles  inch  
 Including axles  inch

**Horizontal turning envelope** (see diagram below)

Outside body turning radius, TR0 (including bumper)

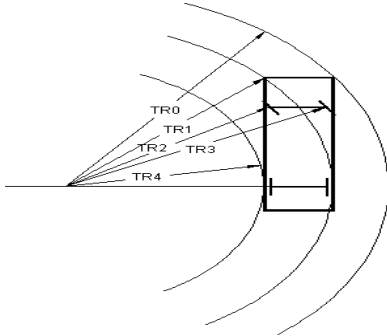
Front inner corner radius, TR1

Front wheel inner turning radius, TR2

Front wheel outer turning radius, TR3

Inside Body Turning Radius innermost point, TR4 (including bumper)

<input type="text"/>	foot	<input type="text"/>	inch
<input type="text"/>	foot	<input type="text"/>	inch
<input type="text"/>	foot	<input type="text"/>	inch
<input type="text"/>	foot	<input type="text"/>	inch
<input type="text"/>	foot	<input type="text"/>	inch



**Wheel base**

Front  inch

Rear  inch

**Overhang, centerline of axle over bumper**

Front  inch

Rear  inch

**Floor**

Interior length  foot  inch

Interior width (excluding covering)  foot  inch

Total standee area (approximately)  foot<sup>2</sup>

Minimum distance between wheelhouses: Front  inch

Rear  inch

Center  inch

Maximum interior floor slope (from  deg horizontal)

**Passenger capacity provided**

Total maximum seating

Standee capacity

Minimum hip to knee room  inch

Minimum foot room  inch

**Weight**

	No. of people	Front axle			Center axle			Rear axle			Total bus
		Left	Right	Total	Left	Right	Total	Left	Right	Total	
Empty bus, full fuel and farebox	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Fully seated, full fuel and farebox												
Fully loaded standee and fully seated, full fuel and farebox												
Crush load (1.5x fully loaded)												
GVWR												
GAWR												

**Engine, main**

Manufacturer

Type and weight rating

Model number

Bore  inch

Stroke  inch

Displacement  inch<sup>3</sup>

Compression ratio

Injector type and size

Net SAE horsepower  hp at  RPM

Net SAE torque  lb./fo at  RPM

Crankcase oil capacity

New engine, dry  gal

New engine, wet  gal

Turbocharger make and model

Maximum speed, no load  RPM

Maximum speed, full load  RPM

Speed at idle  RPM

Speed at fast idle  RPM

**Engine information/graphs to be attached with this form:**

- Engine speed vs. road speed
- Torque vs. engine speed
- Horsepower vs. engine speed
- Fuel consumption vs. engine speed
- Vehicle speed vs. time (both loaded and unloaded)
- Vehicle speed vs. grade (both loaded and unloaded)
- Acceleration vs. time
- Change of acceleration vs. time

**Hybrid drive or transmission**

Manufacturer

Type

Speeds

Gear ratios Forward:  Reverse:

Shift speeds

1st-2nd  mph

2nd-3rd  mph

3rd-4th  mph

4th-5th (if applicable)  mph

5th-6th (if applicable)  mph

Fuel capacity (including heat exchanger and filters)

**Voltage regulator**

Manufacturer

Model

**Voltage equalizer**

Manufacturer

Model

**Alternator**

Manufacturer

Type

Model

Output at idle  amps

Output at maximum speed  amps

Maximum warranted speed  rpm

Speed at idle (approximately)  rpm

Drive type

**Starter motor**

Manufacturer

Type

Model

**Air compressor**

Manufacturer

Type

Rated capacity  CFM

Capacity at idle (approximately)  CFMs

Capacity at maximum speed (engine)  CFM

Maximum warranted speed  rpm

Speed idle  rpm

Drive type

Governor:

Cut-in pressure  psi

Cut-out pressure  psi

**Axles**

**First**

Manufacturer		
Type		
Model number		
Gross axle weight rating	<input type="text"/>	lbs.
Axle load	<input type="text"/>	lbs.

**Second**

Manufacturer		
Type		
Model number		
Gross axle weight rating	<input type="text"/>	lbs.
Axle load	<input type="text"/>	lbs.

**Third**

Manufacturer		
Type		
Model number		
Gross axle weight rating	<input type="text"/>	lbs.
Axle load	<input type="text"/>	lbs.
Axle ratio	<input type="text"/>	

**Suspension system**

Manufacturer		
Type:	First:	<input type="text"/>
	Second:	<input type="text"/>
	Third:	<input type="text"/>
Springs:	First:	<input type="text"/>
	Second:	<input type="text"/>
	Third:	<input type="text"/>

**Joint**

Manufacturer		
Type		
Model number		

**Wheels and tires**

**Wheels**

Make		
Size		
Capacity		
Material		

**Tires**

Manufacturer	
Type	
Size	

Load range/air pressure  psi

**Steering, power**

**Pump**

Manufacturer and model number	
Type	
Relief pressure	<input type="text"/> psi

**Booster/gear box**

Manufacturer and model number	
Type	
Ratio	

Power steering fluid capacity  gal

Maximum effort at steering wheel  lbs. (unloaded stationary coach on dry asphalt pavement)

Steering wheel diameter  inch

**Brakes**

Make of fundamental brake system

Brake chambers vendor size and part number:	First:	
	Second:	
	Third:	

Brake operation effort

**Slack adjuster's vendor's type and part numbers**

First:	Right:	
	Left:	
Second:	Right:	
	Left:	
Third:	Right:	
	Left:	
Length:	First take-up:	
	Second take-up:	
	Third take-up:	

**Brake drums/discs**

First:	Manufacturer	
	Part number	
	Diameter	<input type="text"/> inch
Second:	Manufacturer	
	Part number	

Third:	Diameter	<input type="text"/>	inch
	Manufacturer	<input type="text"/>	
	Part number	<input type="text"/>	
	Diameter	<input type="text"/>	inch

Brake lining manufacturer Type	<input type="text"/>
	<input type="text"/>

**Brake lining identification**

First:	Forward	<input type="text"/>
	Reverse	<input type="text"/>
Second:	Forward	<input type="text"/>
	Reverse	<input type="text"/>
Third:	Forward	<input type="text"/>
	Reverse	<input type="text"/>

**Brake linings per shoe**

First	<input type="text"/>
Second	<input type="text"/>
Third	<input type="text"/>

**Brake lining widths**

First	<input type="text"/>	inch
Second	<input type="text"/>	inch
Third	<input type="text"/>	inch

**Brake lining lengths**

First	<input type="text"/>	inch
Second	<input type="text"/>	inch
Third	<input type="text"/>	inch

Brake lining thickness  inch

**Brake lining per axle**

First	<input type="text"/>	square. inch
Second	<input type="text"/>	square. inch
Third	<input type="text"/>	square. inch

**Cooling system**

**Radiator/charge air cooler**

Manufacturer	<input type="text"/>
Type	<input type="text"/>
Model number	<input type="text"/>
Number of tubes	<input type="text"/>

Tubes outer diameter  inch/  inch

Fins per inch  fins

Fin thickness  inch

Total cooling and heating system capacity  gal

Radiator fan speed control

Surge tank capacity  quarts

Engine thermostat temperature setting: Initial opening (fully closed)  °F

Fully open  °F

Overheat alarm temperature sending unit setting  °F

Shutdown temperature setting  °F

**Air reservoir capacity**

Supply reservoir  inch<sup>3</sup>

Primary reservoir  inch<sup>3</sup>

Secondary reservoir  inch<sup>3</sup>

Packing reservoir  inch<sup>3</sup>

Accessory reservoir  inch<sup>3</sup>

Other reservoir type  inch<sup>3</sup>

**Heating, ventilation and air conditioning equipment**

Heating system capacity  BTU/hr

Air conditioning capacity  BTU

Ventilating capacity  CFM

**Compressor**

Manufacturer

Model

Number of cylinders

Drive ratio

Maximum warranted speed  rpm

Operating speed  rpm (recommended)

Weight  lbs.

Oil capacity Dry  gal

Wet  gal

Refrigerant: Type  lbs.

**Condenser**

Manufacturer

Model

Number of fins/inch

Outer diameter of tube  inch

Fin thickness  inch



**Condenser fan**

Manufacturer		
Model		
Fan diameter		inch
Speed maximum		rpm
Flow rate (maximum)		CFM

**Receiver**

Manufacturer		
Model		
Capacity		lbs.

**Condenser fan drive motors**

Manufacturer		
Model		
Type		
Horsepower		hp
Operating speed		rpm

**Evaporator fan drive motors**

Manufacturer		
Model		
Type		
Horsepower		hp
Operating speed		rpm

**Evaporator(s)**

Manufacturer		
Model		
Number of rows		
Number of fins/inch		
Outer diameter of tube		inch
Fin thickness		inch
Number of evaporators		

**Expansion valve**

Manufacturer		
Model		

**Filter-drier**

Manufacturer		
Model		

**Heater cores**

Manufacturer		
Model		
Capacity		Btu/hr
Number of rows		
Number of fins/inch		
Outer diameter of tube		inch
Fin thickness		inch
Number of heater cores		

**Floor heater blowers**

Front	
Rear	

**Controls**

Manufacturer	
Model	

**Driver's heater**

Manufacturer		
Model		
Capacity		Btu/hr

**Ventilation system**

Type	
------	--

**Coolant heater**

Make		
Model		
Capacity		Btu

**Interior lighting**

Manufacturer		
Type		
Number of fixtures		
Size of fixtures		
Power pack		

**Doors**

**Front**

Manufacturer	of	operating	
equipment			
Type of door			
Type of operating equipment			

**Rear**

Manufacturer of operating equipment  
 Type of door  
 Type of operating equipment


**Passenger windows**

**Front**

Manufacturer  
 Model  
 Type


Number: Side  
 Rear


Sizes:


Glazing:

Type  
 Thickness  
 Color of tint  
 Light transmission


**Mirrors**

	Size	Type	Manufacturer	Part no.	Model no.
Right side exterior					
Left side exterior					
Center rearview					
Front entrance area					
Upper-right corner					
Rear exit area					

**Seats**

**Passenger**

Manufacturer  
 Model  
 Type


**Operator**

Manufacturer  
 Model and part number  
 Type


**Paint**

Manufacturer  
 Type


**Wheelchair ramp equipment**

Manufacturer  
 Model number


Capacity		lbs.
Width of platform		inch
Length of platform		inch
System fluid capacity		quarts
Type of fluid used		
Operating pressure	hydraulic	psi
Hydraulic cylinders:	Size	
	Number	

**Wheelchair securement equipment**

Manufacturer	
Model number	

**Destination signs**

Manufacturer	
Type	

**Character length**

Front destination		inch
Front route		inch
Curbside destination		inch
Rear route		inch

**Character height**

Front destination		inch
Front route		inch
Curbside destination		inch
Rear route		inch

**Number of characters**

Front destination	
Front route	
Curbside destination	
Rear route	

**Message width**

Front destination		inch
Front route		inch
Curbside destination		inch
Rear route		inch

**Electrical**

**Multiplex system**

Manufacturer	
Model number	

**Batteries**

Manufacturer	
Model number	
Type	

**Communication system**

**GPS**

Manufacturer	
Model number	

**PA system**

	Manufacturer	Model number	Number
Amplifier			
Microphone			
Internal speakers			
External speaker			

**Energy storage (hybrid drive)**

Type		
Number of cells		V
Battery pack voltage		V
Weight		lbs.

**Security camera system**

Manufacturer		
Model number		
Number of cameras		
Storage capacity		

**Bike racks**

Manufacturer	
Model number	

**Fire detection system**

Manufacturer		
Model number		
Fire detectors		
Type (thermal or optical)		
Number of detectors		

**Automatic voice annunciator system**

Manufacturer	
Model and part number	

**Annunciator LED sign**

Number of signs	
Housing dimensions	

Character length  inch  
 Character height  inch  
 Character width  inch

**GPS antenna**

Manufacturer   
 Model and part number

**Automatic passenger counter**

Manufacturer   
 Model and part a.   
 number   
 b.   
 c.   
 Sensor type

**Real-time bus arrival prediction system**

	Manufacturer	Model number
Router	<input type="text"/>	<input type="text"/>
Cellular modem	<input type="text"/>	<input type="text"/>
Charge protection	<input type="text"/>	<input type="text"/>

**Electronic tire pressure monitoring system**

Manufacturer   
 Model number

**Electronic brake stroke/wear indicator system**

Manufacturer   
 Model number

**NOTE:** All information above is accurate to the timeframe upon submission. VIA reserves the right to update above data if changes occur, upon consultation with the contractor.

## 9.1.22 REFERENCES

SAE #	Title	Date Published
J10	Methods of Test for Paints - Part J10: Determination of Deposition Efficiency of Coating Powders	Sep 15, 1998
J211	Instrumentation for Impact Test—Part 2: Photographic Instrumentation	May 1, 2001
J287	Driver Hand Control Reach	Feb 1, 2007
J366	Exterior Sound Level for Heavy Trucks and Buses	Feb 1, 1987
J382	Windshield Defrosting Systems Performance Requirements - Trucks, Buses, and Multipurpose Vehicles.	Jan 1, 1994
J534	Lubrication Fittings	May 1, 2008
J537	Storage Batteries	Sep 1, 2000
J541	Voltage Drop for Starting Motor Circuits	Oct 1, 1996
J587	License Plate Illumination Devices (Rear Registration Plate Illumination Devices)	Sep 1, 2003
J593	Backup Lamps (Reversing Lamps)	Sep 1, 2005
J673	Automotive Safety Glasses	Oct 1, 2005
J680	Location and Operation of Instruments and Controls in Motor Truck Cabs, Recommended Practice	Sep 1, 1988
J686	Motor Vehicle License Plates	Oct 1, 1999
J689	Curbstone Clearance, Approach, Departure, and Ramp Breakover Angles—Passenger Car and Light Truck	Aug 1, 2009
J833	Human Physical Dimensions	May 1, 2003
J844	Nonmetallic Air Brake System Tubing	Nov 1, 2004
J941	Motor Vehicle Drivers' Eye Locations	Mar 1, 2010
J994	Alarm—Backup—Electric Laboratory Performance Testing	Mar 1, 2009
J1050	Describing and Measuring the Driver's Field of View	Jan 1, 2003
J1113	Electromagnetic Compatibility Component Test Procedure Part 42, Conducted Transient Emissions	Oct 1, 2006
J1127	Low Voltage Battery Cable	Mar 1, 2010
J1128	Low Voltage Primary Cable	Dec 1, 2005
J1149	Metallic Air Brake System Tubing and Pipe	Aug 1, 2007
J1292	Automobile and Motor Coach Wiring	Jan 1, 2008
J1455	Recommended Environmental Practices for Electronic Equipment Design in Heavy-Duty Vehicle Applications	Jun 1, 2006
J1587	Joint SAE/TMC Electronic Data Interchange between Microcomputer Systems in Heavy-Duty Vehicle Applications, Recommended Practice	Jan 1, 1996
J1708	Serial Data Communications Between Microcomputer Systems in Heavy-Duty Vehicle Applications	Oct 1, 2008
J1986	Balance Weight and Rim Flange Design Specifications, Test Procedures, and Performance Recommendations	Jan 1, 2006
J1939	Data Link Layer	Dec 1, 2006
J1995	Engine Power Test Code - Spark Ignition and Compression Ignition - Gross Power Rating, Standard;	Jun 1, 1990
J2402	Road Vehicles—Symbols for Controls, Indicators, and Tell-tales	Jan 1, 2010
J2711	Recommended Practice for Measuring Fuel Economy and Emissions of Hybrid-Electric and Conventional Heavy-Duty Vehicles	Sept 1, 2002

### 9.1.23 ABBREVIATION AND ACRONYMS

<b>A/C</b>	air conditioning
<b>ABS</b>	anti-lock braking system
<b>AC</b>	alternating current
<b>ACQ</b>	alkaline copper quaternary
<b>ADA</b>	Americans with Disabilities Act
<b>Ah</b>	amp hour
<b>ALR</b>	auto-locking retractor
<b>APA</b>	The Engineered Wood Association, formerly the American Plywood Association
<b>APC</b>	automatic passenger counter
<b>APTA</b>	American Public Transportation Association
<b>ASTM</b>	ASTM International, formerly the American Society for Testing and Materials
<b>ATC</b>	automatic traction control
<b>AVL</b>	automatic vehicle location
<b>AWG</b>	American Wire Gauge
<b>BAFO</b>	Best and Final Offer
<b>BMS</b>	Battery Management System
<b>BRT</b>	bus rapid transit
<b>CARB</b>	California Air Resources Board
<b>CCS</b>	climate control system
<b>CCTV</b>	closed-circuit television
<b>cfm</b>	cubic feet per minute
<b>CGA</b>	Compressed Gas Association
<b>CNG</b>	compressed natural gas
<b>dB</b>	decibel
<b>DBE</b>	disadvantaged business enterprise
<b>DC</b>	direct current
<b>DDU</b>	driver display unit
<b>DEF</b>	diesel exhaust fluid
<b>DOT</b>	Department of Transportation
<b>DPF</b>	diesel particulate filter
<b>ECM</b>	Engine Control and Monitoring
<b>ECS</b>	emission control system
<b>ELR</b>	emergency locking retractor
<b>EMI</b>	electromagnetic interference
<b>EPA</b>	Environmental Protection Agency
<b>ESS</b>	energy storage system
<b>FEA</b>	Finite Element Analysis
<b>FEMA</b>	failure mode effects analysis
<b>FMCSA</b>	Federal Motor Carrier Safety Administration
<b>FMCSR</b>	Federal Motor Carrier Safety Regulations
<b>FMVSS</b>	Federal Motor Vehicle Safety Standards
<b>FTA</b>	Federal Transit Administration
<b>GAWR</b>	gross axle weight rated
<b>GPS</b>	global positioning system
<b>GVW</b>	gross vehicle weight
<b>GVWR</b>	gross vehicle weight rated
<b>H-point</b>	hip-point
<b>HDS</b>	hybrid drive system
<b>HMI</b>	human-machine interface
<b>HSC</b>	hybrid system controller
<b>HV</b>	high voltage
<b>HVAC</b>	heating, ventilation and air conditioning
<b>I/O</b>	input/output
<b>IEEE</b>	Institute of Electrical and Electronics Engineers
<b>ISO</b>	International Standards Organization
<b>kJ</b>	kilojoule
<b>LEL</b>	LED emergency light
<b>LV</b>	low voltage
<b>mA</b>	milliamperere
<b>MDT</b>	mobile data terminal



<b>MPa</b>	mega-Pascal
<b>NC</b>	normally closed
<b>NFPA</b>	National Fire Protection Association
<b>NGV</b>	natural gas vehicle
<b>NOx</b>	nitrogen oxide
<b>NO</b>	normally open
<b>NTP</b>	notice to proceed
<b>OEM</b>	original equipment manufacturer
<b>OSI</b>	Open Systems Interconnect
<b>PA</b>	public address
<b>PMO</b>	project management oversight
<b>PPV</b>	price per vehicle
<b>PRD</b>	pressure relief device
<b>psi</b>	pounds per square inch
<b>RF</b>	radio frequency
<b>RFI</b>	radio frequency interference
<b>RTC</b>	real-time clock
<b>SAE</b>	SAE International, formerly the Society of Automotive Engineers
<b>scf</b>	standard cubic feet
<b>SLW</b>	seated load weight
<b>SOC</b>	state of charge
<b>UL</b>	Underwriters Laboratories
<b>UNECE</b>	United Nations Economic Commission for Europe
<b>V DC</b>	volts of direct current
<b>Wh</b>	watt-hours
<b>VIN</b>	vehicle information number



## VIA Metropolitan Transit's Declaration of Agency Sustainability

In support of our mission to enhance the community's environment and quality of life and in order to encourage and maintain a healthy environment on our properties, within our community and for our future, VIA Metropolitan Transit is committed to:

1. Encourage all employees to be environmentally responsible citizens,
2. Consider the integration of green building practices into all facility design and construction,
3. Coordinate transportation and land use decision making in all project development,
4. Promote reduction, conservation and recycling of all resources,
5. Protect and foster natural habitat and wildlife,
6. Strive to reduce emissions and improve air quality by reducing employee's single occupancy vehicle trips, and
7. Procure green products, when feasible.

We are committed to assessment of the environmental impacts associated with our activities and services, and we will develop and track measures of our progress. It is our goal to have VIA Metropolitan Transit recognized as a regional environmental steward as well as a sustainability leader among transit agencies.

A blue ink signature of Jeffrey C. Arndt, written over a horizontal line.

Jeffrey C. Arndt  
President, CEO  
VIA Metropolitan Transit

A blue ink signature of Henry R. Munoz, III, written over a horizontal line.

Henry R. Munoz, III  
Chairman  
VIA Board of Trustees

Signed on July 9, 2013