



REQUEST FOR PROPOSAL

FOR

**COMPRESSED NATURAL GAS (CNG)
REFUELING INFRASTRUCTURE**

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**PART 1
REQUEST FOR PROPOSAL**

1.1 Invitation: VIA Metropolitan Transit (hereinafter "VIA") is seeking proposals from qualified firms for Compressed Natural Gas (CNG) Refueling Infrastructure.

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>October 21, 2015</u>		Letter of Interest Issued.
<u>November 24, 2015</u>		Request for Proposal Issued.
<u>December 4, 2015</u>	<u>10:00 AM</u>	Pre-proposal Conference in the Admin Board Room at the address shown under "Inquiry and Questions" below.
<u>December 30, 2015</u>		Last Day to Submit Request for Clarifications and/or Modifications to the Procurement/Contract Documents.
<u>January 7, 2016</u>		VIA's Response to Requests for Clarifications and/or Modifications.
<u>January 22, 2016</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, Suite 203
P.O. Box 12489
San Antonio, Texas 78212
Attn: David Covell
E-mail: david.covell@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.

- 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." An unbound original and 8 bound copies of the technical proposal, and one unbound original of the price proposal shall be submitted in separate sealed packages. The technical proposal package shall be labeled "**Technical Proposal – Compressed Natural Gas (CNG) Refueling Infrastructure**" and the price proposal envelope shall be labeled "**Price Proposal – Compressed Natural Gas (CNG) Refueling Infrastructure**" and addressed as indicated above, (in the section entitled "Inquiry and Questions").

- 1.3.6 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 sixty (60) 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.

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.

1.5.1.4 Format:

Proposals shall include each of the following required elements with discussion and illustration detailed as necessary to clearly define the Proposer's offer/approach/capability/design. Proposals missing discussion of any one or more of the following required elements may be considered non-responsive and may be eliminated from further evaluation.

Proposals should be typed with a standard 12 point font, double-spaced and submitted on 8 1/2" x 11" size paper, using a single method of fastening. Charts and schedules may be included in 11"x17" format. Proposals should not include any unnecessarily elaborate or promotional material. Lengthy narrative is discouraged and presentations should be brief and concise. Proposals should not exceed fifty (50) pages in length, excluding any appendices.

1.5.1.5 Qualifications, Related Experience and References of Proposer:

This section of the Proposal shall establish the capability of the Proposer to satisfactorily perform the required work by reasons of: experience in performing similar work and services; strength and stability of the firm; staffing capability; work load; record of meeting schedules on similar projects; and supportive client references.

The Technical Proposal shall include the following at a minimum:

- 1) A brief profile of the firm, including the types of services offered; the year founded; form of the organization (corporation, partnership, sole proprietorship); number, size and location of offices; and number of employees.
- 2) A general description of the firm's financial condition and identify any conditions (e.g., bankruptcy, pending litigation, planned office closures, impending merger) that may impede the Proposer's ability to complete the project.
- 3) A description of the Proposer's experience in designing, delivering, assembling, installing/constructing, and maintaining CNG refueling stations in a transit specific application, that are similar in type, scope and scale to that solicited in this RFP over the last five year period. Contact information shall be included for each transit reference. Proposals shall list key personnel assigned to each referenced project.

List the following information for each referenced project:

- a. Owner and project name;
- b. Design capacity in standard cubic feet per minute (SCFM);
- c. Reference contact information for primary procurement representative;

- d. Reference contact information for primary capital-construction representative;
 - e. Reference contact information for primary maintenance representative or other main user group.
- 4) An identification of subcontractors by company name, address, contact person, telephone number and project function. Describe Proposer's experience working with each subcontractor.
 - 5) A minimum three (3) references for the projects cited as related experience, and furnish the name, title, address and telephone number of the person(s) at the client organization who is most knowledgeable about the work performed. Proposer may also supply references from other work not cited in this section as related experience.

1.5.1.6 Proposed Staffing and Project Organization:

This section of the Proposal should establish and accurately describe how the Proposer intends to manage the project. This section shall also be used to identify key personnel to be assigned to the Project.

The Technical Proposal shall include the following at a minimum:

- 1) A listing of education, experience, and applicable professional credentials of Project staff.
- 2) Brief resumes (not more than two [2] pages each) for the proposed Project Manager and other key personnel [Note: Personnel resumes will not be counted toward the 50 page proposal limit.].
- 3) An Indication of labor resources to be expended utilizing a table projecting the labor-hour allocation to the Project by individual task.
- 4) An identification of key personnel proposed to perform the work in the specified tasks and include major areas of subcontract work. Include the person's name, current location, proposed position for this Project, current assignment, level of commitment to that assignment, availability for this Project, and how long each person has been with the firm.
- 5) A Project organization chart, which clearly delineates communication/reporting relationships among the project staff.
- 6) A statement that key personnel will be available to the extent proposed for the duration of the Project acknowledging that no person designated as "key" to the Project shall be removed or replaced without the prior written concurrence of VIA.

1.5.1.7 Description of Proposed Infrastructure Design:

This section of the Proposal should establish and accurately describe the basic design of the Infrastructure to be employed by the Proposer.

The Technical Proposal shall include the following at a minimum:

- 1) A cover letter with summary description of the proposed Infrastructure including performance, compressor technology, dryer technology, modularity, fuel dispensing, storage, controls, defueling capability and system redundancy information.
- 2) A detailed description of the proposed Infrastructure: This description shall include the functional capabilities of each Infrastructure element. Include a list of the individual components, sub components, subassemblies in functional hierarchy, their sizes, and performance ratings. Each proposer shall include preliminary drawings of the Infrastructure along with brochures or cut sheets of the equipment they intend to supply. [Note: Drawings, brochures and cut sheets will not be counted toward the 50 page Proposal limit.]
- 3) A detailed description of the gas dryer and filter technologies employed including energy and maintenance requirements.
- 4) A detailed description of the proposed fuel dispensing and fuel management systems with discussion of capacity.

- 5) A description of Infrastructure modularity [including a description of skid arrangement and total space/footprint to be occupied by the Infrastructure, fencing, protective bollards and all other ancillary equipment including utility provisions].
- 6) Description of Infrastructure capacity [including fuel dispensing rates, duty cycles, operating limits relative to environmental conditions and expected gas inlet pressures].
- 7) Description of Infrastructure safety provisions [descriptions of Infrastructure features designed for the purpose of human safety, Infrastructure features designed to preclude progressive equipment damage in case of operating fault/failure (e.g., automated Infrastructure de-rate and or shut down)].
- 8) Description of Infrastructure lifecycle activities [including detailed descriptions and intervals of all required and recommended preventive maintenance, expected compressor and prime mover (driver) life in operating hours assuming all recommended preventive maintenance, and expected overall station life assuming all recommended preventive maintenance].
- 9) Description of maintenance requirements, engineering support and parts availability.
- 10) A comprehensive Warranty Plan with schedule of warranty terms and a list of approved warranty work providers local to the San Antonio area. The Warranty Plan shall list all Infrastructure items and maintenance activities specifically excluded from warranty coverage.
- 11) Description of Infrastructure energy consumption [including total rate of energy consumed by Infrastructure per unit volume of natural gas dispensed (e.g., KWh/ft³) relative to gas inlet pressure and gas dispensing pressure].
- 12) Description of Infrastructure operating costs [expected costs of recommended preventive maintenance, prime mover (driver) replacement, compressor replacement. Labor hours and costs of necessary parts/materials shall be included.].
- 13) Description of the Infrastructure redundancy including discussion of start and stop of redundancy relative to Infrastructure components and equipment.
- 14) Description of the Infrastructure's backup power generation system including discussion of backup power system's capability in powering Infrastructure without compromise of designed performance.
- 15) Description of Infrastructure environmental considerations relative to VIA's location (including detailed descriptions of Infrastructure operating noise in units of decibels (dB) relative to distance from Infrastructure).

1.5.1.8 Work Plan:

Proposer shall provide a narrative which clearly defines the Proposer's plan to complete the Project. The narrative shall also clearly convey the Proposer's understanding of VIA's objectives and Requirements.

The Technical Proposal shall include the following at a minimum:

- 1) A description of the approach to completing the tasks and Requirements specified in the Scope of Work.
- 2) A sequential outline with milestone chart of the activities that will be undertaken to complete the tasks and Requirements along with an indication of who will perform each activity.
- 3) Description of Infrastructure design, delivery, assembly, installation/construction, testing and acceptance schedule relative to VIA's issue of the Notice to Proceed. Schedule shall be provided in units of calendar days including weekends and holidays.
- 4) A description of the quality control activities and methods to be utilized by the Proposer to ensure the acceptable quality of:
 - a. Project documentation;
 - b. Permit acquisition and regulatory compliance;
 - c. Materials, supplies and equipment sourced by Proposer for inclusion to the Infrastructure;

- d. Off-site assembly of Infrastructure equipment undertaken and or overseen by Proposer;
 - e. On-site assembly of Infrastructure equipment undertaken and or overseen by the Proposer;
 - f. Site preparation work;
- 5) Infrastructure installation/construction.
 - 6) A description of the activities and methods to be used by the Proposer to ensure adherence to Project budget.
 - 7) A description of the activities and methods to be used by the Proposer to ensure Project schedule adherence.
 - 8) An identification of any Project plan and or condition assumptions made by the Proposer with relatively high uncertainty and how the associated risk of assumption error can potentially affect the Project. If encountered, how will the planning and assumption errors be addressed by the Proposer?
 - 9) [Optional] Enhancements and or innovations to the Scope of Work that do not materially deviate from the objectives or required content of the project.

1.5.1.9 Appendices:

Information considered by Proposer to be pertinent to this Project and which has not been specifically solicited in this Request for Proposals may be placed in a separate appendix section. Proposers are cautioned, however, that this does not constitute an invitation to submit large amounts of extraneous materials. Appendices should be relevant and brief.

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.

CRITERIA	WEIGHT
<p>A. Qualifications of the Firm Technical experience in performing work of a closely similar nature and scale in a transit specific application; experience working with public agencies; strength and stability of the firm; strength, stability, experience and technical competence of subcontractors; assessment by client references.</p>	30
<p>B. Work Plan, Staffing, and Project Organization Depth of Proposer's understanding of VIA's requirements and overall quality of work plan; logic, clarity and specificity of work plan; appropriateness of labor distribution among the tasks; ability to meet the project deadline; reasonableness of proposed schedule; utility of suggested technical or procedural innovations.</p>	30

Qualifications of project staff, particularly key personnel and especially the

Project Manager; key personnel's level of involvement in performing related work cited in "Qualifications, Related Experience and References of Proposer" section; logic of project organization; adequacy of labor commitment; concurrence in the restrictions on changes in key personnel.

- C. Infrastructure Design** **20**
 Proposer's demonstrated understanding of VIA requirements based on Proposer's approach and selection of equipment and systems for use with Infrastructure.
- D. Price** **20**
 Please See Part 1.5.3 Below

TOTAL 100

1.5.2.4 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).

1.5.2.5 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.

1.5.2.6 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:

$$\frac{\text{Lowest Price}}{\text{Firm's Price}} \times 20 \text{ points} = \text{Price Score}$$

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	20.00 points

B	\$125	16.00 points
C	\$115	17.39 points

$$\frac{\$100.00 \text{ (Lowest Price, Firm A)}}{\$125.00 \text{ (Firm B Price)}} \times 20 \text{ points} = 16 \text{ points}$$

1.5.4 Combined Proposal Scoring: The sum total points scored on both the technical (80-point maximum) and price (20-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>
A	69 points	20.00 points	89.00 points
B	66 points	16.00 points	72.00 points
C	73 points	17.39 points	90.39 points

In this example, Firm C 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 Documents to be Submitted with Technical Proposal: The following documents/forms (attached hereto in the sections indicated) will be completed by the Offeror and must be submitted with the Technical Proposal:

1.7.1 Forms:

- 9.1.1** Offer and Certifications Form
- 9.1.2** Acknowledgment of Addenda
- 9.1.3** List of Similar Contracts/References **(This form must be submitted for all Subcontractors)**
- 9.1.4** Certifications of Restrictions on Lobbying
- 9.1.5** Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion **(This form must be submitted for all Subcontractors)**
- 9.1.6** Business Questionnaire **(This form must be submitted for all Subcontractors)**
- 9.1.7** Schedule of Participation **(Proposed DBE firms must be certified with VIA by the proposal due date)**
- 9.1.8** Conflict of Interest Questionnaire
- 9.1.9** DBE or /SBE Participation
- 9.1.10** DBE or/SBE Unavailability Certification
- 9.1.11** DBE or/SBE Participation for Payment

1.8 Price Proposal Submission: Proposers must submit their Price Proposals utilizing the forms provided in this document as **Part 10, Price Proposal**.

1.9 Disadvantaged Business Enterprise Goal/Target:

The DBE goal for this procurement is **14%**. 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.

VIA encourages bidders/proposers to seek means of obtaining this goal. The DBE firms listed on the Schedule of Participation must be certified with VIA in accordance with provisions of Part 8 of this document by the date of the bid opening/deadline to submit proposals

1.10 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 Scope of Work, Terms and Conditions
- 6) Contractor's original proposal

2.2 Scope of Work: The Contractor will provide VIA with Compressed Natural Gas (CNG) Refueling Infrastructure, more particularly described in the Scope of Work (attached).

2.3 Contract Period:

2.3.1 Contract Commencement Date: The Contract commencement date shall be the date of the "Notice to Proceed." VIA may issue a Notice to Proceed to the Contractor within a reasonable time after the Contractor has delivered the required bonds, certificates of insurance, construction progress schedules, and any other required data. Any preliminary work started or materials ordered or purchased before receipt of the Notice to Proceed shall be at the risk and expense of the Contractor. Within five (5) calendar days after the effective date specified in the Notice to Proceed, the Contractor shall commence work and diligently prosecute the work to completion within the time limit herein specified.

2.3.2 Time for Completion:

2.3.2.1 Contract Completion: The Contract shall be fully completed as evidenced by Final Acceptance by VIA, within three hundred (300) calendar days from the date of the Notice to Proceed or Purchase Order, as applicable.

2.3.2.2 Time Period: The date of beginning and the time for completion as specified herein are reasonable and ESSENTIAL CONDITIONS of this Contract, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality. Further, time is of the essence of each and every portion of this Contract for which a definite length of time is fixed, and where under the Contract additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this Contract.

2.3.2.3 Diligent Work: The Contractor agrees that said work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified.

2.3.2.4 Delay Consideration: If the Contractor notifies VIA in writing within ten (10) calendar days from the beginning of a delay specified in the section entitled, "Eligible Delays," below, and if VIA (within its sole discretion) after ascertaining the facts and considering them, notifies the Contractor of VIA's determination regarding the cause and extent of any acceptable delay, then to that extent the Contractor shall not be charged with liquidated damages or any excess cost.

2.3.2.5 Eligible Delays: The Contractor may request VIA to waive delays under the section entitled, "Delay Consideration," above, when the delay in completion of the work is due solely:

- (a) To any preference, priority or allocation order duly issued by the Government;
- (b) To unforeseeable cause beyond the control and wholly without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of VIA that a reasonable contractor would not provide for, acts of another contractor in the performance of a contract with VIA if VIA's liquidated and other damages attributable to the delay are paid by the other contractor, injunctions, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and adverse weather conditions;
- (c) To any delays of the Contractors' subcontractors or suppliers occasioned by any of the causes specified above; and
- (d) To causes, not including the fault of the Contractor, for which the Contractor's reasons are acceptable to VIA.

2.3.3 RESERVED.

2.3.4 Weather and Unavoidable Delay:

2.3.4.1 Extensions for Adverse Weather: Extension of time for adverse weather conditions not reasonably able to be anticipated as provided in the section entitled, "Eligible Delays," above, may be granted for any work only to the extent that the number of days of precipitation (.01 inches or more) exceeds the mean for that month. Time extensions may be granted for adverse weather days in any month when the total amount of adverse weather days exceeds the number expected as shown on the Adverse Weather Days Table (below) provided the adverse weather prevented the execution of planned/scheduled major items of work on that particular normal working day and provided that other work may not be adequately substituted during the period of adverse weather.

<u>MONTH</u>	<u>AVERAGE RAIN DAYS</u>
January	8
February	8
March	7
April	7
May	8
June	6
July	4
August	5
September	7
October	7
November	7
December	7

2.3.4.2 No Damages for Delay: SHOULD VIA BE PREVENTED OR ENJOINED FROM PROCEEDING WITH WORK OR FROM AUTHORIZING ITS PROSECUTION EITHER BEFORE OR AFTER ITS PROSECUTION, THE CONTRACTOR SHALL NOT BE ENTITLED TO MAKE OR ASSERT A CLAIM FOR DAMAGE BY REASON OF SAID DELAY, BUT TIME FOR COMPLETION OF THE WORK MAY BE EXTENDED TO SUCH REASONABLE TIME AS VIA MAY DETERMINE WILL COMPENSATE FOR TIME LOST BY SUCH DELAY. ANY SUCH DETERMINATION BY VIA WILL BE AT ITS SOLE DISCRETION AND SET FORTH IN WRITING.

2.3.4.3 Protection of Work and Materials: In the event of temporary suspension of work, or during inclement weather, or whenever the Contract Administrator shall direct, the Contractor will, and will cause his subcontractors to, protect carefully his and their work and materials against damage or injury from the weather. If, in the opinion of the Contract Administrator, any work or materials shall have been damaged or injured by reason of failure on the part of the Contractor or

any of his subcontractors to so protect his work, such materials shall be removed and replaced at the expense of the Contractor.

2.4 RESERVED.

2.5 Specific Terms and Conditions:

2.5.1 Project Meetings:

2.5.1.1 Pre-construction Conference: After receipt of Notice of Award of the Contract, and prior to the start of construction, the Contractor or his representative and his principal subcontractors shall attend a pre-construction conference with representatives of VIA. The conference will serve to acquaint the participants with the general plan of contract administration and requirements under which the construction operation is to proceed, and will inform the Contractor, in detail, of the obligations imposed on him and his subcontractors by, among other things, state and federal statutes and regulations.

2.5.1.2 Periodic Construction Conferences: The Contractor shall attend, along with his principal subcontractors, periodic construction conferences called by the Contract Administrator or Contracting Officer, for the purpose of reviewing and expediting construction progress, coordination activities of mutual concern, and otherwise resolve problems. The Contractor may, of his own volition, request such a meeting to take place. Construction conferences shall deal only with procedural matters requiring coordination of all parties concerned and shall not relieve the Contractor's responsibility in full charge of prosecution of the work.

2.5.1.3 Meetings with Property Owners and Public Officials: The Contractor may be required to participate in meetings with property owners and public officials for the purpose of coordinating construction, business and municipal activities that will be carried out simultaneously at the job site.

2.5.2 Land and Right-Of-Way: Prior to the start of construction, unless otherwise expressly provided for in this Contract, VIA shall obtain all land and rights-of-way necessary for the carrying out and completion of work to be performed under this Contract.

2.5.3 Surveys, Permits and Regulations: Unless otherwise expressly provided for in this Contract, the Contractor will be responsible for all surveys necessary for the execution of the Work under the Contract. The City of San Antonio Right of Way permits will be provided by VIA. The Contractor will procure and pay for all permits, licenses and approvals necessary for the execution of the Work under the Contract. The Contractor shall comply with all laws, ordinances, rules, orders and regulations relating to the performance of the work, the protection of adjacent property, and the maintenance of passageways, guard fences or other protective facilities.

2.5.4 Sales Tax Exemption:

2.5.4.1 Sales to VIA Exempt: VIA is a political subdivision of Texas organized under 451, Texas Transportation Code. Sales to, rental to, or use by VIA of otherwise taxable items are exempt from sales tax under Section 151.309 of the Texas Tax Code. Purchases by the Contractor for resale to VIA may be exempt from sales tax as well, as described in the sections entitled "Certificate" and "Purchase of Materials Incorporated into Finished Work," below.

2.5.4.2 Certificate: After award and upon the request of the Contractor, VIA will issue Certificates of Exemption to the Contractor.

2.5.4.3 Purchase of Materials Incorporated into Finished Work: If the Contractor states an amount for "materials incorporated into finished work" in the Offer and Certifications Form, separate from the costs of labor and performance of service and if these materials are finally incorporated into VIA's realty, then the purchase of these materials may be exempt from taxation

under Section 151.056(b) of the Texas Tax Code, and the Contractor may choose to issue a resale certificate to his supplier under Section 151.151 of the Texas Tax Code.

2.5.4.4 Materials Used up During Construction: If the Contractor states an amount for "materials transferred to VIA and used up during construction" in the Offer and Certifications Form, and if the Contractor labels the materials "Public Property (VIA)" when feasible, then the Contractor's purchase of these materials may be exempt under Day & Zimmermann, Inc. v. Calvert 519 SW2d 106, Tex. 1975. The Contractor may choose to issue a resale certificate to his supplier under Section 151.151 of the Texas Tax Code. To facilitate this exemption and in consideration of VIA's separate specified payment, VIA will take title to the materials immediately after receipt by the Contractor and will furnish the materials to Contractor for use during construction. If the materials are to be used in repair or remodeling (rather than new construction), the Contractor must transfer the care, custody, and control of the materials to VIA to qualify for this exemption under Section 151.302(b) of the Texas Tax Code, and VIA will offer reasonable cooperation in this transfer. If for any reason the materials purchased by VIA under this section are in any way deficient or excessive for the completion of the work, then the Contractor is responsible for remedying the deficiency or disposing of the excess at his expense.

2.5.5 Asbestos Requirements:

2.5.5.1 Certification of No Asbestos: Contractor warrants that no material containing asbestos will be incorporated into the Work. References to "material containing asbestos" means any material containing any amount of asbestos (including less than 1%). Refer to the section entitled "General Definitions" for a definition of "asbestos." Contractor further warrants that no building materials containing asbestos will be brought on the Project Site, during the course of performance under this Contract. Any material containing asbestos found at any time, including after contract completion or other termination, to have been brought onto the Project Site or incorporated into the Work, in violation of this section, shall be removed and disposed of in accordance with the then current governmental regulatory standards, at Contractor's expense. Further, VIA shall be entitled to pursue other remedies and recover damages to which it may be entitled.

2.5.5.2 Quality Assurance: If VIA suspects the presence of any building materials containing asbestos, VIA shall have the right to require the Contractor to accomplish a materials test for asbestos following the standard testing procedures for asbestos. Testing will be accomplished in accordance with State and Federal laws and be accomplished at a Texas Department of Health licensed laboratory. Sampling will be accomplished by a State of Texas licensed inspector selected by VIA. The inspector will have the responsibility for the chain of custody for the materials and provide a written report to VIA with the testing results. The costs of this testing will be the responsibility of the Contractor, however, if materials are determined not to contain asbestos, VIA will pay all associated costs, unless Contractor has failed to provide building material documentation as required herein (see "Submittals of Mandatory Documentation," below).

2.5.5.3 Submittals of Mandatory Documentation:

2.5.5.3.1 Non-use of Asbestos Affidavit: At least 10 days prior to Final Acceptance, the Contractor will provide to VIA a fully executed Affidavit of Non-Use of Asbestos, in the form to be provided by VIA. This Affidavit certifies compliance with the section entitled "Certification of No Asbestos," above.

2.5.5.3.2 Material Safety Data Sheets (MSDS): At least 10 days prior to Final Acceptance, Contractor shall supply VIA or VIA's representative with Material Safety Data Sheets (MSDSs) for all building materials used under this Contract. These MSDSs shall be supplied in a bound document using the Library of Specification - Sections, latest addition, and separated into applicable divisions.

2.5.5.4 Failure to Provide Building Material Documentation: In the event the required Affidavit of Non-Use of Asbestos and/or MSDSs are not provided, all costs for an asbestos inspection,

testing and certification shall be borne by Contractor, regardless of test results. Final Acceptance, payment and/or retainage may be withheld until the above described Affidavit and/or information are received and approved.

2.5.6 Coordination:

2.5.6.1 Mutual Responsibility of Contractors: If, through acts of neglect on the part of the Contractor, any other contractors or any subcontractor shall suffer loss or damage to work, the Contractor agrees to settle with such other Contractor or subcontractor by agreement or arbitration if such other Contractor or subcontractor will so settle. If such other Contractor or subcontractor shall assert any claim against VIA due to any damage alleged to have been sustained, VIA shall notify the Contractor, who shall indemnify and save harmless VIA against any such claim.

2.5.6.2 Architect/Engineer Authority: The Architect/Engineer with approval of the Contract Administrator, or the Contracting Officer, shall give all orders and directions contemplated under this Contract and specifications relative to the execution of the work. The Architect/Engineer with approval of Contract Administrator, or the Contracting Officer, shall determine the amount, quality, acceptability, and fitness of the several kinds of work and materials which are to be paid for under this Contract and shall decide all questions which may arise in relation to said work and the construction thereof. The Architect/Engineer's estimates and decisions, or in the case of the Contract Administrator, shall be final and conclusive, except as herein otherwise expressly provided. In case any question shall arise between the parties hereto relative to said contract or specifications, the determination or decision of the Architect/Engineer, or in the case of the Contract Administrator, shall be a condition precedent to the right of the Contractor to receive any money or payment for work under this Contract affected in any manner or to any extent by such questions.

2.5.6.3 Superintendence by Contractor:

2.5.6.3.1 Representative on Site: The Contractor shall give his personal superintendence to the work or have a competent foreman or superintendent hereinafter designated his representative, satisfactory to the Contract Administrator, on the work site at all times during progress, with authority to act for the Contractor. Before starting work, the Contractor shall designate in writing the name, title, qualifications, and experience of this proposed representative and scope of his authority for approval by the Contract Administrator. A facsimile of the designated representative's signature shall be submitted to the Contract Administrator.

2.5.6.3.2 Change of Representative: The Contractor shall notify the Contract Administrator, in writing, when the Contractor desires to change his representative, and shall follow the procedures specified above (see, "Representative on Site") regarding the new proposed representative.

2.5.7 Contractor Participation: The Contractor shall perform on the Project Site, with his own employees, at least ten percent (10%) of the total amount of labor at the Project Site (in accordance with the work described in Technical Specifications at Attachment "A," and the Plans), measured by hours of labor. Work performed by supervisory personnel and subcontractors shall not be counted toward the 10%.

2.5.8 Damage or Defect: Any supplies, material or equipment damaged or defective at the time of delivery or installation or prior to Final Acceptance shall be repaired, replaced or corrected by the Contractor at the Contractor's cost without additional cost to VIA. If the Contractor shall fail to comply promptly with any order of the Contract Administrator to repair, replace or correct damaged or defective work, then the Contract Administrator shall, upon written notice to the Contractor, have the authority to deduct the cost thereof together with any costs reasonably related thereto, from any compensation due, or to become due to the Contractor (including, but not limited to retainage).

Nothing in this Section shall limit or restrict the provisions of the warranties as set forth herein, or any warranties that may arise by implication or by law.

2.5.9 Inspection and Testing of Materials:

2.5.9.1 Access to Facility and/or Work Site: VIA and its representatives shall have access to the manufacturing facility or Project Site and shall have the right to inspect all Work.

2.5.9.2 Conformance with Intended Purpose: Materials of construction, particularly those upon which the strength and durability of the structure may depend, shall be subject to inspection and testing established in conformance with specifications and suitability for VIA's intended purpose.

2.5.10 Additional Instructions and Detail Drawings:

2.5.10.1 Additional Instructions: The Contractor will be furnished additional instructions and detail drawings as necessary to carry out the work included in the Contract.

2.5.10.2 Coordination with Contract Documents: The additional drawings and instructions thus supplied to the Contractor shall be incorporated into the Contract as "Plans" in the order of priority under the section entitled "Contract," under "Scope of Work, Terms and Conditions." The Contractor shall carry out the work in accordance with the additional detail drawings and instructions. The Contractor and the Architect/Engineer will prepare jointly:

- (a) a schedule, fixing the dates at which special detail drawings will be required, such drawings, if any, to be furnished by the Architect/Engineer in accordance with said schedule, and
- (b) a schedule fixing the respective dates for the submission of shop drawings, the beginning of manufacture, testing and installation of materials, supplies, and equipment, and the completion of the various parts of the work; each such schedule to be subject to change from time to time in accordance with the progress of the Work.

2.5.11 Shop Drawings:

(a). The Contractor shall keep on the work site, specifications and drawings and shall at all times give the Engineer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of a difference between drawings and the specifications, the matter shall be promptly submitted to the Engineer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at his own risk and expense. The Engineer shall furnish from time to time such detail drawings and other information as considered necessary.

(b). The Contractor shall coordinate all shop drawings, and review them for accuracy, completeness, and compliance with Contract requirements and shall indicate his approval thereon as evidence of such coordination and review. Shop drawings submitted to the Engineer without evidence of the Contractor's approval may be returned for resubmission. The Engineer will indicate his approval or disapproval of the shop drawings and if not approved as submitted shall indicate VIA's reasons therefore. Any work done before such approval shall be at the Contractor's risk. Approval by the Engineer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this Contract, except with respect to variations described and approved in accordance with paragraph (c) below.

(c). If shop drawings show variations from the Contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves such any variation, the Contracting Officer shall issue an

appropriate contract modification, except that, if the variation is minor and does not involve a change in price or in time of performance, a modification need not be issued.

(d). The Contractor shall submit to the Engineer for approval one (2) set of sepias and four (4) sets of blue line prints (unless otherwise indicated herein) of all shop drawings as called for under the various headings of these specifications. One (1) blue line set will be returned to the Contractor.

(e). Omissions from the drawings or specifications or the mis-description of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted or mis-described details of the work but they shall be performed as if fully and correctly set forth and described in the drawings and specifications.

(f). The Contractor shall check all drawings furnished him immediately upon their receipt and shall promptly notify the Engineer of any discrepancies. Figures marked on drawings shall in general be followed in preference to scale measurements. Large scale drawings shall in general govern small scale drawings. The contractor shall compare all drawings and verify the figures before laying out the work and will be responsible for any errors which might have been avoided thereby.

2.5.12 Project Site:

2.5.12.1 Project Sign: VIA may require the Contractor to furnish, erect and maintain project signs at the Project Site. If so required, detailed drawings for such signs will be included as part of the Plans and Technical Specifications. Upon completion of the project, the Contractor will remove and deliver the signs to VIA.

2.5.12.2 Barricades, Traffic Detour and Street Usage: Contractor shall provide any and all barricades, traffic detouring and street signs, at Contractor's sole expense, which are required and/or necessary to safely carry out the construction activities. Contractor shall ensure that all barricades, traffic detouring and street signs have been properly placed and maintained, and that they will be removed upon completion and Final Acceptance by VIA. Bidders shall include all costs necessary for barricading, traffic detouring, street usage and maintenance of a clean and safe construction site.

2.5.12.3 Use of Premises and Removal of Debris: The Contractor expressly undertakes at his own expense:

- (a) To take every precaution against injuries to persons or damage to property;
- (b) To store his apparatus, materials, supplies and equipment in such orderly fashion at Project Site as will not unduly interfere with the progress of the work or the work of any other contractors;
- (c) To place upon the work or any part thereof only such loads as are consistent with the safety of that portion of the work;
- (d) To clean up frequently all refuse, rubbish, scrap materials, and debris caused by his operations, to the end that at all times the Project Site shall present a neat, orderly and workmanlike appearance;
- (e) Before Final Acceptance, to remove all surplus material, false work, temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from his operations, and to put the site in a neat, orderly condition;

- (f) To effect all cutting, fitting or patching of the work required to make the same conform to the Plans and Technical Specifications and, except with the consent of the Contract Administrator, not to cut or otherwise alter the work of any other contractor; and
- (g) To compensate VIA, either by a deduction from payments due Contractor or by direct payment to VIA, for any reasonable expense incurred by VIA in curing any failure by Contractor to diligently carry out items (a) through (f) above.

2.5.12.4 Protection of Work and Property - Emergency:

2.5.12.4.1 VIA Property: The Contractor shall at all times safely guard VIA's property and the Project Site, in general, from injury or loss in connection with this Contract. Contractor shall at all times safely guard and protect his/her/its own work, and that of adjacent property, from damage. The Contractor shall replace or make good any such damage.

2.5.12.4.2 Case of Emergency: In case of an emergency which threatens loss or injury of property and/or safety of life, the Contractor will be allowed to act, without previous instructions from the Contract Administrator, in a diligent manner. He shall notify the Contract Administrator immediately thereafter. Any claim for compensation by the Contractor due to such extra work shall be promptly submitted to the Contract Administrator for consideration.

2.5.12.4.3 Instruction by VIA: Where the Contractor has not taken action but has notified the Contract Administrator of an emergency threatening injury to persons or damage to the work or any adjoining property, he shall act as instructed or authorized by the Contract Administrator.

2.5.13. Differing Site Conditions:

2.5.13.1 Notice: The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contract Administrator of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this Contract, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this Contract.

2.5.13.2 Investigation: The Contract Administrator or his designee shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for performing any part of the work under this Contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Contract modified in writing accordingly.

2.5.13.3 No Adjustment Unless Timely Notice: No request by the Contractor for an equitable adjustment to the Contract under this clause shall be allowed, unless the Contractor has given the written notice required; *provided*, that the time prescribed above for giving written notice may be extended by the Contract Administrator in his/her sole discretion.

2.5.13.4 No Adjustment After Final Payment: No request by the Contractor for an equitable adjustment to the Contract for differing site conditions shall be allowed if made after final payment under this Contract.

2.6 RESERVED.

2.7 Custody of Bid Documentation: Once bids are opened, the apparent lowest responsive and responsible bidder will be required to submit legible copies of bid documentation used to prepare the bid for this project. This documentation will be placed in custody of VIA and preserved according to the terms in this section.

- 2.7.1 Submittal and Return of Bid Documentation:** Bid documentation must be submitted within 48 hours of VIA's request. The apparent lowest responsive and responsible bidder shall submit the bid documentation in a sealed package. The package shall be clearly marked "Bid Documentation" and shall state the bidder's name and address, the date of submittal and the project number. VIA will return sealed packages of unsuccessful bidders within seven (7) calendar days after contract award.
- 2.7.2 Affidavit:** In addition to the bid documentation, the bidder shall submit an affidavit, signed under oath by a representative of the bidder authorized to execute bidding proposals, listing each bid document by the author, date, nature, and subject matter. The affidavit shall attest (1) that the affiant has personally examined the bid documentation, (2) that the affidavit lists all the documents relied upon by the bidder in preparing its bid for the project, and (3) that all such bid documentation is included in the sealed package submitted to VIA.
- 2.7.3 Duration and Use:** After execution of the Contract, VIA will secure the sealed package in a locked cabinet or other secure device.
- 2.7.4 Refusal or Failure to Provide Bid Documentation:** Failure to provide bid documentation shall render the bid non-responsive.
- 2.7.5 Confidentiality of Bid Documentation:** The bid documentation and the affidavit in VIA custody are, and shall remain, the property of the Contractor. VIA has no interest, or right to ownership of the bid documentation. However, at VIA's option, VIA may open and review the documentation for the purpose of negotiating change orders or contract modifications, including Value Engineering Change Proposals (VECPs), with the Contractor. These materials and all copies made by VIA will be returned to the Contractor at contract completion. VIA will make every reasonable effort to protect the confidentiality of the documentation.
- 2.7.6 Preparation Costs:** All costs related to responding to this requirement shall be the sole responsibility of and shall be borne by the bidder.

2.8 Schedules:

- 2.8.1 Schedule Submittal:** The contractor shall prepare and submit to the Contracting Officer copies of the CPM schedule for the work of this contract in accordance with the specification requirements. If the Contractor fails to submit a schedule within the time prescribed or if the schedule fails to comply with the specified requirements, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.
- 2.8.2 Supplementary Schedule:** If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to VIA. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.
- 2.8.3 Sufficient Diligence:** Failure of the Contractor to comply with the requirements of the Contracting Officer under this Article shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the Work with sufficient diligence to ensure completion within the time specified in the Contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the Work, or any separable part of it, in accordance with the default terms of the Contract.

2.9 Contractor Representative:

2.9.1 Notification of Primary and Alternate Representatives: Prior to start of Contract performance, the Contractor shall advise VIA in writing of the primary and alternate representative *(including phone number) who will have management responsibility for the total Contract effort to receive and act on technical matters and resolve problems of a contractual nature.

**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, MATERIALMEN, 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 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 Mariana 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 Covenant Against Gratuities: 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.** 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 IDEMNIFY 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 Professional Liability: Claims-made coverage to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional service. Said errors and omissions insurance coverage shall be annually renewed for no less than three (3) years following completion of the contract and acceptance of the work by VIA. Coverage including renewals shall have the same retroactive date as the original policy applicable to this Contract.

\$ 1,000,000	per claim
\$ 2,000,000	aggregate

5.2.6 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 Receipt and Acceptance of Request for Payment:** Contractor shall submit a Request for Payment in acceptable form prior to each Progress Payment made by VIA to the Contractor. VIA will make payment only if the Request for Payment is mathematically correct and substantiated by actual work performed and material stored, and submitted to and approved by the Contract Administrator for the work performed during the period since the most recent Request for Payment. At least 30 days must pass between each submission of a Request for Payment.
- 6.2 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 the Contractor receives 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 submits all required closeout documentation. VIA must acknowledge acceptance of closeout documentation before the firm is in compliance with the requirements. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of VIA. This clause applies to both DBE and non-DBE subcontractors. Prime Contractors not in compliance may be subject to withholding of next payment.
- 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. The Contractor shall include as part of its invoice a list of all subcontractors and the amounts to be paid to each of the subcontractors from the invoice.
- 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 Late Payment:** In the event payment has not been made within thirty (30) calendar days after receipt of Request for Payment and approval by VIA, whichever date is later, the Contractor shall submit a reminder invoice marked "past due."
- 6.4 Inclusion of Subcontractors:** The Contractor shall include as part of its invoice a list of all Subcontractors and the amounts to be paid to each of the subcontractors from the invoice.
- 6.5 Payments By VIA:** If VIA so chooses, in its sole discretion, to pay any unpaid bills of the contractor, in so doing and only to that extent, VIA shall be deemed the agent of the Contractor. 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.
- 6.6 Acceptance of 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 and for every act and neglect of VIA and others relating to or arising out of this work. No payment, however, final or otherwise, shall operate to release the Contractor or the Contractor's Surety or Sureties from any obligation under this Contract or Performance and Payment Bond.
- 6.7 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.
- 6.8 E-Payables:** VIA can offer payment to Contractors through e-payables. The e-payable payment method provides the following advantages to the Contractor:

- Card acceptance offers business development opportunities for suppliers because buyers assign “preferred supplier” status to suppliers that accept cards
- Card acceptance can provide the opportunity to expand into online sales.
- Expedited receipt of cash, improving Days Sales Outstanding
- Reduced check processing costs
- Reduced collection costs associated with lost or misplaced checks
- More efficient handling of exception items
- Remittance data transmitted with payment for more efficient back-end reconciliation
- Paperless

Payments are processed as credit card transactions and standard bank fees will apply. There are no additional fees imposed by users or the issuing bank. Bidders interested in this alternative payment method should contact VIA’s Procurement department at (210) 362-2400.

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 bids 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 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: The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this Contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

- 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) RESERVED.**
- 7.9 Pre-Award and Post Delivery Audits Requirements: (Applies to contracts for acquisition of rolling stock/turnkey) RESERVED.**
- 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: (Applies to construction contracts over \$2,000).

7.16.1 Minimum wages:

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) (A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(ii)(B) If the contractor and the laborers and mechanics to be employed in the classification (if

known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(ii)(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(ii)(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(v)(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(v)(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(v)(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

7.16.2 Withholding: 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 the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, VIA may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

7.16.3 Payrolls and Basic Records: (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to VIA for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(ii)(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the

persons employed under the contract and shall certify the following:

- (1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
- (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

7.16.4 Apprentices and Trainees: (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 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 Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid

the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

- 7.16.5 Compliance with Copeland Act requirements:** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
- 7.16.6 Subcontracts:** The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
- 7.16.7 Contract Termination: Debarment:** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- 7.16.8 Compliance with Davis-Bacon and Related Act requirements:** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- 7.16.9 Disputes Concerning Labor Standards:** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the

contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

7.16.10 Certification of Eligibility: (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

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 et0u 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: (Applies to contracts involving experimental, developmental, or research work). RESERVED.**
- 7.27 Transit Employee Protective Agreements (Applies to contracts where transit operations are performed by employees of a contractor recognized by FTA to be a transit operator): 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:** The Contractor shall conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by TEA-21 Section 5206(e), 23 U.S.C. Section 502 note, and Federal Transit Administration Notice "FTA National ITS Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and other Federal requirements that may be issued.
- 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 (Applies to operational service contracts involving safety-sensitive functions - 49 CFR 655 and 49 CFR part 40):** The Contractor shall establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 655 and 49 CFR part 40, produce any documentation necessary to establish its compliance with Parts 655 and 49 CFR part 40, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the state oversight agency of Texas, or VIA, to inspect the facilities and records associated

with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 655 and 49 CFR part 40 and review the testing process.

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 SBE Element 49 CFR 26.39 Provisions)

8.1 Definitions:

- a) Disadvantaged Business Enterprise or DBE means a for-profit small business enterprise:
 - 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 enterprise means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business enterprise 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, SBE Target and SBE Participation goals will be allowed unless VIA's certifying agency partner and VIA Supplier Diversity staff have determined that the DBE or SBE is eligible. Offeror are strongly encouraged to contact VIA's Supplier Diversity 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 or SBEs that perform a commercially useful function may be counted towards goals. A DBE or SBE can 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 or SBE 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 or SBE 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 or SBE participation. If a DBE or SBE 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 or SBE 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 or SBE toward DBE, SBE Targets or SBE Participation goals. 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 or non Dot-assisted contract, toward DBE, SBE Targets or SBE Participation goals, 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, SBE Targets or SBE Participation goals only if the DBE's or SBE's

Subcontractor is itself a DBE. Work that a DBE or SBE subcontracts to a non-certified firm does not count towards any race conscious goals.

- 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 any race conscious goals.
- e) The Contractor may credit towards the race conscious goal 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 race conscious goal only 60% of the total dollar cost for material and supplies purchased from DBEs or SBE's 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 race conscious goal 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 race conscious goal, 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 race conscious goal. 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 Supplier Diversity 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 race conscious goal, VIA shall consider among other things it deems relevant, the criteria set forth below. Additionally, in determining whether a Bidder has made a good faith efforts, VIA will take into account the performance of other Bidders 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-Bid 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 Bidder must solicit this interest within sufficient time to allow the DBEs or SBEs to respond to the solicitation. The Bidder 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 SBE Target will be achieved. This includes, where appropriate, splitting 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 Bidder’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 Bidder 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 SBE 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 Bidder’s failure to meet the contract DBE goal or SBE 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 Bidder 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 Bids 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 SBE 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.**

Additionally, a unified certification program is a federal DOT memorandum of agreement for certification services that are performed by all 50 U.S. states DOTs.

- 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 Supplier Diversity 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 or SBE Modification or Substitution (dictated by assigned race conscious goal DBE, SBE Target or SBE Participation):

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 Supplier Diversity 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 SBE 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 Non-Compliance 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 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 Buy America Certificate: (Strike through the provision that does NOT apply) If neither provision is stricken, Bidder/offeror will be presumed to have chosen "Certificate of Compliance."

Certificate of Compliance: The Bidder/offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) (for steel, iron, or manufactured products) or 49 U.S.C. 5323(j)(2)(C) (for buses, other rolling stock and associated equipment) and the applicable regulations in 49 CFR 661.

OR

Certificate of Non-compliance: The Bidder/offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) (for steel, iron, or manufactured products) or 49 U.S.C. 5323(j)(2)(C) (for buses, other rolling stock and associated equipment) but may qualify for an exception to the requirement pursuant to 49 U.S.C. 5232(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

9.1.1.5 Bid/offer:

By execution below, the Bidder/offeror agrees to faithfully and diligently complete the work as bid 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:

- Acknowledgment of Addenda**
- List of Similar Contracts/References**
- Certification of Restrictions on Lobbying**
- Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion**
- Business Questionnaire**
- Schedule of Participation**
- Conflict of Interest Questionnaire**
- DBE Participation Certification**
- DBE Unavailability Certification**

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 Bidding 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 to be considered nonresponsive to the solicitation. Acknowledged receipt of each addendum must be clearly established and included with the bid.

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 (All Solicitations Valued at \$100,000 and above)

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) (All Solicitations Valued at \$25,000 and above)

1. By signing and submitting this bid or proposal, the Bidder 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 _____

BUSINESS QUESTIONNAIRE
(For Solicitations Valued at \$5,000 and above)

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

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

9.1.7 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 7th 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 7th 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

9.1.8 DBE 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 %
SUB-CONTRACTORS	(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

9.1.9 DBE PARTICIPATION CERTIFICATION



CONFIDENTIAL INFORMATION
REQUIRED SUBMITTAL

Intent to Perform as a DBE or SBE Contractor
IFB/RFP # _____

Note: In accordance with 49 CFR (Code of Federal Regulations) Part 26, VIA and ATD Board policy, DBE/SBE firms participating in VIA's DBE Program must have "current" certification status with a TUCP Certifying Agency by the due date established for this IFB/RFP In addition, VIA's SBE Participation Policy requires SBE certification for SBE Participation on locally funded contracts.

1. TO: (Name of Offeror/First Tier Subcontractor) _____

2. The undersigned is either currently certified under the Texas Unified Certification Program (TUCP) as a DBE or SBE or will be at the time this solicitation is due.

3. DBE Goal or SBE Target: The undersigned is prepared to perform the following described work and/or supply the material listed in connection with the above project (where applicable specify "supply" or "install" or both

and the following price \$ _____. With respect to the proposed subcontract described above, _____% of the dollar value of the first tier DBE's subcontract will be sublet and/or awarded to other DBE subcontractors.

4. SBE Participation: The undersigned is prepared to perform _____% on this contract.

(Name of DBE/SBE Firm)

(Signature of Authorized Representative)

(Phone Number)

(Date Signed)

(Name of Offeror/
Prime Contractor)

(Signature of Authorized Representative)

(Phone Number)

(Date Signed)

9.1.10 DBE UNAVAILABILITY CERTIFICATION

I, _____, _____
 (Name) (Title)

of _____ certify that on _____
 (Firm) (Date)

I contacted the following disadvantaged contractor to obtain a bid for work items to be performed on
 VIA's Contract No. _____

Disadvantaged Contractor	Work Items Sought	Form of Bid Sought (i.e. Unit Price, Materials and Labor, Labor only, etc.)

To the best of my knowledge and belief, said disadvantaged contractor was unavailable (exclusive of unavailability due to lack of agreement on price) for work on this project, or unable to prepare a bid, for the following reasons(s):

 Signature

 Date

9.1.11 DBE 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

**PART 10
PRICE PROPOSAL**

10.1 Price Proposal

10.1.1 Responsiveness: To be responsive, proposals must include this form completed in ink or by machine, as indicated, and specified in 1.3.5, Receipt of Proposal, and 1.8, Price Proposal Submission. Any modifications to this form or to any of the terms of the Request for Proposal will render this proposal non-responsive.

10.1.2 Completion: The Proposer shall respond to each item on the Price Proposal.

10.1.3 Offer: offers to supply goods or services to VIA Metropolitan Transit without exception according to all terms of the Request for Proposal issued by VIA November 24, 2015 for VIA Contract #16-054 in consideration of payment of the following price:

ITEM DESCRIPTION	SERVICES	MATERIALS	RENTAL	TOTAL
1. Design/Engineering	\$ _____			\$ _____
2. Site Work	\$ _____	\$ _____	\$ _____	\$ _____
3. Utilities	\$ _____	\$ _____	\$ _____	\$ _____
4. Installation	\$ _____	\$ _____	\$ _____	\$ _____
5. Start Up	\$ _____	\$ _____	\$ _____	\$ _____
Total				\$ _____

OPTION

5. Maintenance Contract \$ _____
(See Part 8.0 of the Scope of Work)

VIA may choose, at the time of award or later, to award option 5 for maintenance. However, if VIA is to consider awarding the option, VIA will include the price of the option in the adjudication of price. Prices/offers will be adjudicated on an "all or none" basis.

_____ d/b/a
Business Name (Bidder/Offeror)

Name of Person Authorized to Sign
(Print Name)

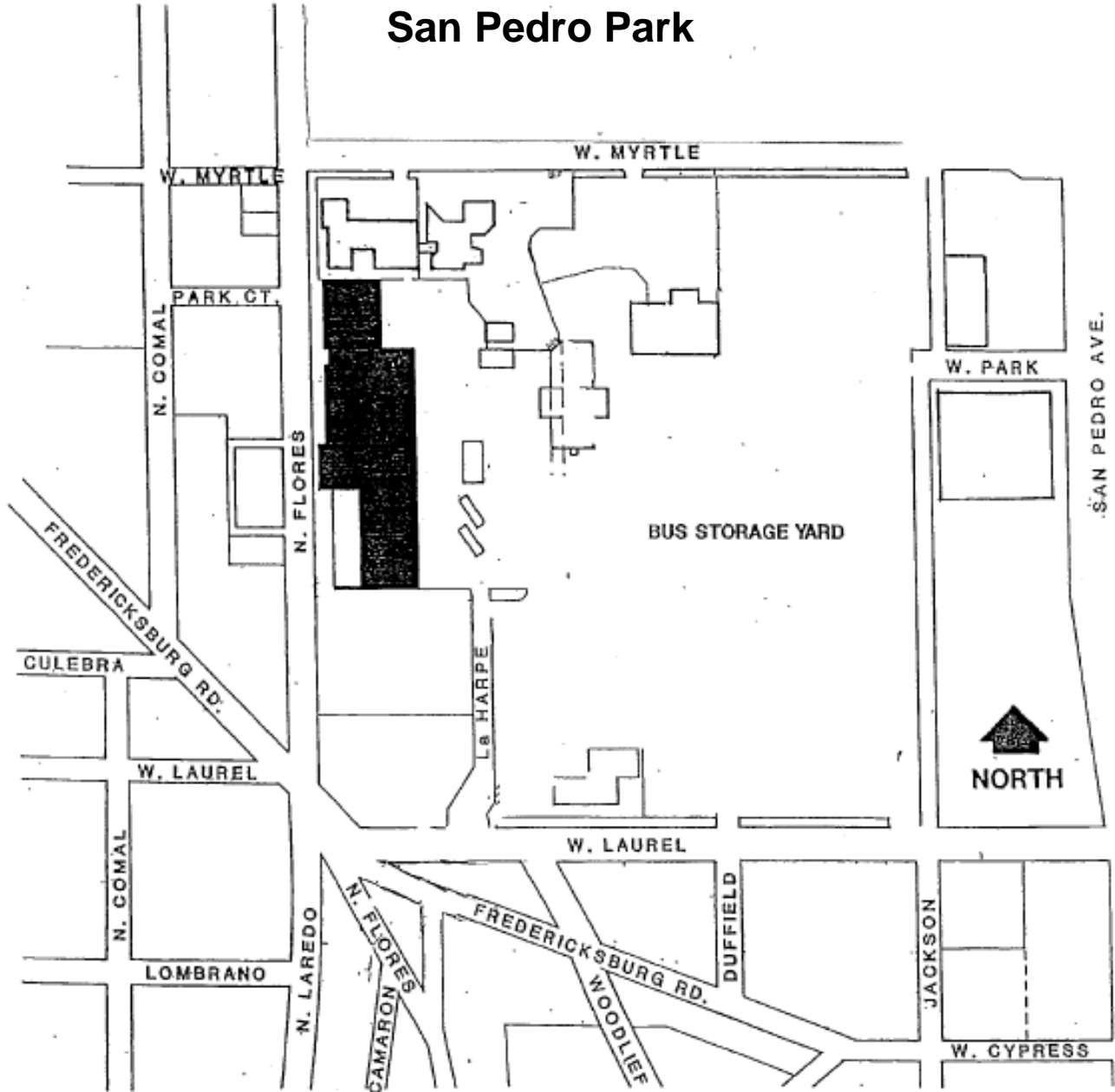
Signature

PROMPT PAYMENT DISCOUNT. The following prompt payment discount is hereby offered for payments made within the period specified after receipt of invoice.

_____ % _____ days



San Pedro Park



VIA Metropolitan Transit Site Map

Prior to the time and date indicated in the bid document, Bids/Proposals are to be delivered to the Contracting Officer at VIA's Procurement Department, VIA Metropolitan Transit, 800 W. Myrtle, Suite 203, San Antonio, TX 78212. The blackened box on the top denotes the location for bid/proposal drop off.



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, consisting of several fluid, overlapping strokes.

Jeffrey C. Arndt
President, CEO
VIA Metropolitan Transit

Signed on July 9, 2013

A black ink signature of Henry R. Munoz, III, written in a cursive style.

Henry R. Munoz, III
Chairman
VIA Board of Trustees