

Issue Date: January 12, 2011

VIA Contract # 11-058



REQUEST FOR PROPOSAL
FOR
FINANCIAL AUDITING SERVICES –
SUPPLEMENT A

Revised December 2010

1. REQUEST FOR PROPOSAL

- 1.1 Invitation**
- 1.2 Introduction**
- 1.3 Procurement Schedule**
 - 1.3.1 Summary of Salient Dates**
 - 1.3.2 Inquiry and Questions**
 - 1.3.3 Pre-proposal Conference**
 - 1.3.4 Request for Clarification and/or Modifications**
 - 1.3.5 Receipt of Proposal**
 - 1.3.6 Amendment and/or Postponement**
- 1.4 Acceptance Period**
- 1.5 Evaluation and Selection of Proposals**
 - 1.5.1 General**
 - 1.5.1.1 Separate Packages**
 - 1.5.1.2 Responsiveness**
 - 1.5.1.3 Organization of Technical Proposal Materials**
 - 1.5.2 Evaluation of Technical Proposal**
 - 1.5.2.1 Initial Evaluation**
 - 1.5.2.2 Review**
 - 1.5.2.3 Evaluation Form**
 - 1.5.2.4 Technical Evaluation**
 - 1.5.2.5 Further Discussions/clarification**
 - 1.5.2.6 Reevaluation**
 - 1.5.3 Evaluation of Price Proposal**
 - 1.5.3.1 Opening of Price Proposal**
 - 1.5.3.2 Scoring**
 - 1.5.4 Combined Proposal Scoring**
 - 1.5.5 Interviews, Discussions and Negotiations**
 - 1.5.5.1 Interviews**
 - 1.5.5.2 Negotiations**
 - 1.5.6 Best and Final Offer**
 - 1.5.7 Contract Award**
- 1.6 Late Submissions**
 - 1.6.1 Receipt Prior to Award**
 - 1.6.2 Postmark**
 - 1.6.3 Courier Delivery Date**
 - 1.6.4 Time/Date Stamp**
- 1.7 Documents to be Submitted with Technical Proposal**
 - 1.7.1 Forms**
- 1.8 Price Proposal Submission**
- 1.9 Disadvantaged Business Enterprise Goal/Target**

2. SCOPE OF WORK, TERMS AND CONDITIONS.

- 2.1 Contract**
- 2.2 Scope of Services**
 - 2.2.1 Term of Contract**
 - 2.2.2 Commencement**
 - 2.2.3 General Project Description**
 - 2.2.4 Financial Audit**
 - 2.2.5 Retirement Plan Audit**
 - 2.2.6 Proposal Requirements**
 - 2.2.7 Buy America Pre-Award and Post Award Audits**
 - 2.2.8 Schedule of Estimated Hours**

3. GENERAL TERMS.

- 3.1 Relationship and Work in General**
 - 3.1.1 Assignment of Personnel**

- 3.1.2 Employment of Personnel
- 3.1.3 Subcontracts
 - 3.1.3.1 Use of Subcontractors
 - 3.1.3.2 Written Approval of VIA
 - 3.1.3.3 Responsibility for Subcontractor(s) Acts
 - 3.1.3.4 Binding of Subcontractors
 - 3.1.3.5 Lack of Privity
 - 3.1.3.6 Consent Not Acceptance of Price or Waiver
 - 3.1.3.7 Cost-Plus Subcontract
 - 3.1.3.8 Substitution of Subcontractors
 - 3.1.3.9 Indemnity
- 3.2 Termination of Contract
 - 3.2.1 Termination Without Cause
 - 3.2.2 Termination for Cause
 - 3.2.2.1 Default
 - 3.2.2.2 Notice
 - 3.2.2.3 Termination of Subcontracts
 - 3.2.2.4 Compensation & Liability
- 3.3 Breaches and Dispute Resolution
 - 3.3.1 Disputes
 - 3.3.2 Performance During Dispute
 - 3.3.3 Remedies
 - 3.3.4 Rights and Remedies
- 3.4 Inspection of Work
- 3.5 Copyright
- 3.6 Proprietary Rights
- 3.7 Indemnification
- 3.8 Ownership of Documents
- 3.9 Contracting Authority Protection
- 3.10 Maintenance of Records
- 3.11 Progress Reports
- 3.12 Effect of Extensions of Time
- 3.13 Changes and Modifications
 - 3.13.1 Changes by Contractor
 - 3.13.2 Written Acceptance by VIA
 - 3.13.3 Change Orders/Modifications
 - 3.13.4 Price Requests
- 3.14 Assignment
- 3.15 Whole Agreements
- 3.16 Partial Invalidity
- 3.17 Titles and Headings for Convenience Only
- 3.18 Notice, Waiver and Applicable Law
 - 3.18.1 Notices
 - 3.18.2 Waiver
 - 3.18.3 Applicable Law and Venue
- 3.19 Access to Records and Reports
 - 3.19.1 Audits
 - 3.19.2 Maintenance of Records
- 3.20 General Definitions

4. GENERAL SOLICITATION POLICY PROVISIONS.

- 4.1 Covenant Against Contingent Fees
- 4.2 Proposers' Requests and Appeals
 - 4.2.1 Appointments
 - 4.2.2 Pre-proposal Approvals
 - 4.2.3 Submission
 - 4.2.4 Appeal

- 4.2.5 Final Ruling
- 4.2.6 Withdrawal
- 4.2.7 Denial
- 4.3 Non-collusive Affidavit
- 4.4 Penalty for Collusion
- 4.5 Covenant Against Gratuities
 - 4.5.1 Local Government Code 176.006
- 4.6 Code of Ethics
- 4.7 Procurement Protest Procedure
 - 4.7.1 Protest
 - 4.7.2 Timeliness
 - 4.7.3 Final Determination
 - 4.7.4 Withdrawal
 - 4.7.5 FTA Review
- 4.8 Release of Information
- 4.9 Rejection of Proposals
- 4.10 Preparation Costs

5. INSURANCE.

- 5.1 General Insurance Requirements
 - 5.1.1 Additional Insured
 - 5.1.2 Waiver of Subrogation
 - 5.1.3 Coverage Primary
 - 5.1.4 No Commencement Without Coverage
 - 5.1.5 Certificates
 - 5.1.6 No Lapse or Cancellation
 - 5.1.7 Breach
 - 5.1.8 Self Insurance
 - 5.1.9 Responsibility of Payments
 - 5.1.10 Own Equipment and/or Property
 - 5.1.11 Other Obligations
- 5.2 Specific Insurance Requirements
 - 5.2.1 Workers' Compensation Insurance
 - 5.2.2 Employer's Liability Insurance
 - 5.2.3 Broad Form Commercial General Liability Insurance
 - 5.2.4 Commercial Automobile Liability Insurance
 - 5.2.5 Professional Liability
 - 5.2.6 Subcontracts

6. BILLING AND PAYMENT.

- 6.1 Compensation
- 6.2 Payments By Contractor
- 6.3 Discounts
 - 6.3.1 Evaluation of Offers
 - 6.3.2 Binding
 - 6.3.3 Time Computation
 - 6.3.4 Payment Date
- 6.4 Acceptance of Final Payment

7. FEDERAL PROVISIONS.

- 7.1 Fly America Requirements
- 7.2 RESERVED
- 7.3 RESERVED
- 7.4 RESERVED
- 7.5 RESERVED
- 7.6 Energy Conservation Requirements
- 7.7 Clean Water Requirements

- 7.8 RESERVED
- 7.9 RESERVED
- 7.10 Lobbying
- 7.11 Access to Records and Reports
- 7.12 Federal Changes
- 7.13 RESERVED
- 7.14 Clean Air
- 7.15 RESERVED
- 7.16 RESERVED
- 7.17 RESERVED
- 7.18 RESERVED
- 7.19 No Government Obligation to Third Parties
- 7.20 Program Fraud and False or Fraudulent Statements and Related Acts
- 7.21 Termination
- 7.22 Government-Wide Debarment and Suspension
- 7.23 Privacy Act
 - 7.23.1 General
 - 7.23.2 Subcontracts
- 7.24 Civil Rights Requirements
 - 7.24.1 Nondiscrimination
 - 7.24.2 Equal Employment Opportunity
 - 7.24.2.1 Race, Color, Creed, National Origin, Sex
 - 7.24.2.2 Age
 - 7.24.2.3 Disabilities
 - 7.24.3 Inclusion of Subcontracts
- 7.25 Breaches and Dispute Resolution
- 7.26 RESERVED
- 7.27 RESERVED
- 7.28 General Disadvantaged Business Enterprise (DBE) Provisions
 - 7.28.1 DBE Program
 - 7.28.2 General Policy
 - 7.28.2.1 DBE Obligation
 - 7.28.2.2 Contractor/Subcontractor Obligation
- 7.29 RESERVED
- 7.30 Incorporation of Federal Transit Administration (FTA) Terms
- 7.31 RESERVED
- 7.32-7.39 [Reserved for future expansion]
- 7.40 Additional Environmental and Resource Conservation Requirements RESERVED
- 7.41 Access Requirements for Individuals with Disabilities

8. DISADVANTAGED BUSINESS ENTERPRISE.

- 8.1 Disadvantaged Business Enterprise (DBE) Contract Goal/Target
- 8.2 VIA's Disadvantaged Business Enterprise (DBE) Program dated July 2002
- 8.3 Good Faith Efforts
 - 8.3.1 Administrative Appeal
- 8.4 Required DBE Information
- 8.5 Termination of DBE Subcontractor
- 8.6 Validity of DBE Participant

9. FORMS.

- 9.1 Forms to be Submitted with Proposal
 - 9.1.1 Offer and Certifications Form
 - 9.1.1.1 Good Faith Offer
 - 9.1.1.2 Contractor Compliance with VIA's Drug/Alcohol-Free Workplace Policy
 - 9.1.1.3 Affidavit of Non-Collusion
 - 9.1.1.4 Certification of Restrictions on Lobbying
 - 9.1.1.5 Bid/Offer

- 9.1.2 Acknowledgment of Addenda
- 9.1.3 List of Similar Contracts/References
- 9.1.4 Certifications of Restrictions on Lobbying
- 9.1.5 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- 9.1.6 Business Questionnaire
- 9.1.7 Schedule of Participation
- 9.1.8 Conflict of Interest Questionnaire
- 9.1.9 DBE Participation Certification
- 9.1.10 DBE Unavailability Certification

10. PRICE PROPOSAL

- 10.1 Price Proposal
 - 10.1.1 Responsiveness
 - 10.1.2 Completion
 - 10.1.3 Offer

ATTACHMENTS:

VIA Headquarters Site Map

1. REQUEST FOR PROPOSAL

1.1 Invitation. VIA Metropolitan Transit (hereinafter "VIA") is seeking proposals from qualified firms for Financial Auditing Services – Supplement A.

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."

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>January 12, 2011</u>		Request for Proposal Issued.
<u>January 19, 2011</u>	<u>10:00 a.m.</u>	Pre-proposal Conference in the Procurement Bid Room, at the address shown under "Inquiry and Questions" below.
<u>March 11, 2011</u>		Last Day to Submit Request for Clarifications and/or Modifications to the Procurement/Contract Documents.
<u>March 25, 2011</u>		VIA's Response to Requests for Clarifications and/or Modifications.
<u>April 8, 2011</u>	<u>4:45 p.m.</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
Attn: Laura Garza
1720 N. Flores Street
P.O. Box 12489
San Antonio, Texas 78212
Phone: (210) 362-2415
Fax: (210) 362-2588
Email: laura.garza@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 5 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 - Financial Auditing Services – Supplement A"** and the price proposal envelope shall be labeled **"Price Proposal – Financial Auditing Services – Supplement A"** 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) meet 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.

1.5.2 Evaluation of Technical Proposal:

1.5.2.1 Initial Evaluation. In addition to the detailed technical information submitted by the firm to be evaluated pursuant to Section 1.5.2. Evaluation of Technical Proposal, each firm shall submit an executive summary that highlights the firm's strengths and capabilities in the categories outlined under CRITERIA (subcategories A-E). The executive summary shall not exceed four pages in length. All proposals will be initially evaluated and scored 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
A. Experience and Qualifications of the Proposing Firm:	20
• Auditing experience in public transportation authorities • Auditing experience in government entities • Experience of the firm in preparation of governmental reports related to financial statements • Size and structure of the firm, including audit staff positions	
B. Qualifications of the Staff to be Assigned:	35
• Educational backgrounds of (including types of and relevant continuing education received by) staff members • Percentage of staff members assigned to this contract who have a CPA designation • Experience in transit authorities by staff members to be assigned to this audit, including capacity served on previous transit audits • Experience in governmental entities by staff members to be assigned to this audit, including capacity served on previous governmental audits • General direction and supervision to be exercised over the audit team by the firm's management personnel • Staff rotation plans and their impact during the course of the contract	
C. Clear Understanding of Scope:	20
• Demonstrates clear understanding of external auditing • Demonstrates clear understanding of objectivity and independence • Demonstrates adequate planning; implementation approach realistic	

D. Assistance Required from VIA's staff: **15**

- Assistance requested for Financial and Pension Audits is reasonable and kept to a minimum

E. DBE: **10**

- Detailed plan for utilization of Disadvantaged Business Enterprises in an effort to meet the established goal, including but not limited to proposed firms, proposed work to be performed, any activities related to good faith efforts and any additional information that demonstrates the firm's knowledge and commitment to the program.

TOTAL **100**

1.5.2.4 Technical Evaluation. Following an initial evaluation and scoring 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 (100-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	89 points	20.00 points	109.00 points
B	86 points	16.00 points	102.00 points
C	93 points	17.39 points	110.39 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. Interviews may also be conducted by a committee of the VIA Board of Trustees of all firms technically acceptable and within the technically competitive range prior to a recommendation of a contract award. 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.** Firms determined to be within the competitive range will be forwarded to a committee of the VIA Board of Trustees for review, possible interviews, and recommendation for contract award by the Board committee based upon the technical and price criteria outlined in the Request for Proposal. Award will be made by the VIA Metropolitan Transit Board of Trustees 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
- 9.1.4 Certifications of Restrictions on Lobbying
- 9.1.5 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- 9.1.6 Business Questionnaire
- 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 Participation Certification
- 9.1.10 DBE Unavailability Certification

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 20%. Please see the section entitled "Disadvantaged Business Enterprise" for more information regarding VIA's DBE program.

VIA encourages 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 deadline to submit proposals. Please contact VIA's DBE office at 210-362-2077 for information regarding VIA's DBE program.

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) Scope of Services
- 6) Contractor's original proposal
- 7) Engagement Letters

2.2 Scope of Services

2.2.1 Term of Contract: The term of the contract is three (3) years. Following the initial 3-year term, VIA may, at its option, extend the contract for two additional 1-year terms.

2.2.2 Commencement: The Contractor agrees to begin serving as VIA's External Auditors upon a receipt of a letter to proceed from VIA.

2.2.3 General Project Description:

2.2.3.1 VIA Metropolitan Transit (VIA) of San Antonio, Bexar County, Texas is a political subdivision of the State of Texas established to develop, maintain, and operate a public mass transportation system, principally within Bexar County, Texas. The current revenue fleet consists of 464 fully sized buses and 105 paratransit vans. VIA's approved budgeted employee level for fiscal period 2011 was 1,710 full time employees and 324 full-time equivalent part-time employees. In addition to the ½ cent approved sales tax, on November 2, 2004, the City of San Antonio voted for the creation of the Advanced Transportation District (ATD), which provided for a 1/4th cent sales tax increase. VIA serves as agent for receiving the additional ATD sales tax money, and ½ of the 1/4th cent will flow to VIA, 1/4th of the 1/4th cent will flow to the City of San Antonio, and 1/4th of the 1/4th cent will flow to the Texas Department of Transportation (TXDOT). The VIA ATD sales tax money will flow to VIA on a "push" basis. The TXDOT ATD sales tax money will flow to an invested holding fund in the ATD account and later will flow to TXDOT on a "pull" basis. The Board of Directors for the ATD is the Board of Directors for VIA.

2.2.3.2 As stated in Part 1.1, VIA is soliciting proposals from independent, certified public accounting firms interested in performing:

- Financial audit services for the fiscal period ending September 30, 2011 and the subsequent fiscal years ending 2012, and 2013, with VIA options to continue for fiscal years ending 2014 and 2015.
- Retirement plan audit services for the plan years ending September 30, 2011, and the subsequent fiscal years ending 2012 and 2013, with a VIA option to continue for plan years ending 2014 and 2015.

2.2.3.3 Regulations: The examination of VIA's financial statements shall be made in compliance with:

- Generally Accepted Auditing Standards (GAAS), and
- The United States GAO Government Auditing Standards (Yellow Book), and

- The Office of Management and Budget (O.M.B.) Circular A-133, Audits of State and Local Governments, and
- The Federal Transit Act, as amended, and
- Chapter 451 of the Texas Transportation Code.

2.2.3.4 Financial Statements: The organization-wide audit will encompass the general purpose financial statements, combining statements and other schedules for VIA for the fiscal period and fiscal years previously stated. The financial statement audit is to determine whether (1) the financial statements present fairly the financial position, results of operations, and cash flows or changes in financial position in accordance with generally accepted accounting principles, and (2) whether VIA has complied with laws and regulations for those transactions and events that may have a material effect on the financial statements. The financial-related audit will also include determining whether (a) financial reports and related items are fairly presented, (b) financial information is presented in accordance with established or stated criteria, and (c) VIA has adhered to specific financial compliance requirements.

2.2.3.5 Internal Control: As a part of the audit of the general purpose financial statements, the annual audit will also include obtaining an understanding of VIA's internal control structure and reporting any reportable conditions relating to the internal control systems coming to the attention of the auditors. Any material weaknesses noted during the study and evaluation of internal accounting and administrative controls will be reported.

2.2.3.6 Compliance: As part of the audit of the general purpose financial statements, transactions and records pertaining to federal programs will be tested for material compliance with federal laws, rules, and regulations, and all instances of non-compliance will be reported to VIA.

2.2.3.7 External Auditor: The Contractor will be serving as the External Audit firm of record for VIA Metropolitan Transit. As such, the Contractor will be required to attend VIA Board of Trustee Audit Committee meetings, at least on a quarterly basis. Some of these meetings may be related to the Annual Financial Audits, but some may be to serve in a technical advisory capacity for the Audit Committee.

2.2.4 Financial Audit:

2.2.4.1 Revenues, Expenses and Expenditures

a. Revenues: Annual revenues for the fiscal year ending 09/30/09 were as follows:

- Total Revenue of \$156,273,921 including the following major categories
- Sales Tax Revenue (net) \$113,532,679
- Operating Revenue \$ 24,587,472
- Grant Ops Reimbursement \$ 19,237,153

Sales tax revenue shown above resulted from collections at the rate of ½% of taxable sales in the VIA service area. As noted in paragraph 2.2.3.1, commencing in the fiscal year ending 09/30/05, there is also an ATD sales tax collections of 1/4th cent remitted to VIA with 1/8th cent flowing to VIA, 1/16th cent to the City of San Antonio, and 1/16th cent to TXDOT.

b. Expenses and Expenditures: VIA currently receives grant funds from the Federal Transit Administration (FTA) and other Federal Agencies. There are approximately 11 open grants, including operating subsidies. Annual expenses and expenditures for fiscal year ending 09/30/09 included:

- Operating expenses of \$145,374,251, excluding depreciation expenses
- Capital contributions of \$ 11,719,076

2.2.4.2 Accounting System: Accounting records are primarily located in the Finance Department at VIA's Administrative headquarters (800 W. Myrtle St.) and are maintained on the accrual basis using the enterprise method. The general ledger system is supported and maintained on a Dell server running Windows 2000.

The payroll system is maintained on an in-house Dell server running Windows 2000. Personnel are paid on a bi-weekly basis. The accounts payable system is maintained on an automated basis. Approximately 1,200 vendor checks are prepared each month. The fixed asset system is also maintained on the in-house computer.

There are currently twelve (12) bank accounts which include:

- 7 Zero-Balance Accounts
 - 1 Operations
 - 1 Claims
 - 1 VIAflex
 - 3 Payroll
 - 1 Pension
- 5 Interest-Bearing Accounts
 - 3 Retainage
 - 1 Depository Master Account
 - 1 ATD-VIA Account

2.2.4.3 Investments: Investments are handled through approximately nine (9) banks/brokers and include:

- General Obligations of the United States
- Treasury Bills
- Treasury Notes
- TexPool Investments

Value of Investments at year end 2009 was \$79,992,730.

2.2.4.4 Inventory System: The inventory system is maintained on a perpetual basis through a computer system located in-house.

2.2.4.5 Assistance Available to Contractor: VIA's Finance Department staff will be available to prepare schedules, reproduce copies of documents, pull documents, and type client representation letters and confirmation requests. VIA will provide all necessary client representation letters. Office space and workstations will be provided at VIA's Administrative headquarters.

VIA's Internal Audit staff conducts internal audits of functions, activities and organizations in VIA. However, support from the internal audit staff will be limited to a coordinating role.

VIA staff will prepare drafts of the financial statements and supplemental schedules. The reports will include:

- Budget to Actual Statements
- Schedule of Operating Expenses by Expense Category and Cost Center
- Combining Statement of Revenues, Expenses and Changes in Retained Earnings
- Combining Statement of Cash Flows
- Combining Balance Sheet
- Statement of Grants and Disbursements
- Fully Funded Grants
- Schedule of Grants Expenditures
- Schedule of Grant Resources

VIA staff will prepare the National Transit Database report in accordance with the requirements of FTA.

2.2.4.6 Assistance Available From Contractor: If requested, the Contractor will provide additional audit services. However, prior to the commencement of work on the additional audit services, a written change order must be signed by both the Contractor and VIA, evidencing agreement as to the terms.

The Contractor shall provide to VIA at no extra cost access to all working papers and other related documents produced during the financial audits rendered under the Contract to VIA and its representative enumerated in Part 7, Federal Provisions, 7.11 "Access to Records and Reports".

2.2.4.7 Report Requirements: The Contractor shall prepare and render an opinion addressed to VIA's Board of Trustees, on the financial statements and supplemental schedules prepared by VIA. Prior to final submission of the Contractor's opinion, a Management Letter will be issued and a draft of the proposed reports will be reviewed by the Audit Committee of the Board of Trustees, the President/CEO, the Chief Financial Officer, and the Director of Internal Audit.

The Contractor shall issue reports addressed to VIA's Board of Trustees on the Internal control environment and compliance with grant agreements, in accordance with the requirements of Generally Accepted Auditing Standards (GAAS), United States GAO Government Auditing Standards (Yellow Book), and **OMB Circular No. A-133**.

The Contractor shall prepare and issue an agreed upon procedures letter in accordance with the audit requirements for FTA National Transit Database reporting.

The Contractor shall complete its review well in advance of the issuance of VIA's Comprehensive Annual Financial Report.

FTA National Transit Database reporting may require a separate review and audit statement, depending on existing Governmental guidelines as of the audit date.

The required Single Audit Reports and the Schedule of Expenditures of Federal Awards will be in conformity to **O.M.B. Circular A-133**.

The Contractor shall print and bind all reports to facilitate distribution as follows:

- Twenty-five (25) copies of the financial statements and supplemental schedules
- Five (5) copies of the FTA National Transit Database report

In addition, the Contractor shall furnish the reports on magnetic media (ASCII files on CD) suitable for importing into a word processing program to eliminate data re-entry. Microsoft Word files are preferred.

2.2.4.8 Deliverables and Due Dates: The Contractor shall prepare and deliver the deliverables and have completed the reviews listed below by the dates specified:

	1 st Year	2 nd Year	3 rd Year	4 th Year (Optional)	5 th Year (Optional)
Financial Statements and Supplemental Schedules	12/29/11	12/28/12	12/27/13	12/26/14	12/30/15
Reports Required under the Single Audit Act	12/29/11	12/28/12	12/27/13	12/26/14	12/30/15
Report on the Conduct of the Audit	12/15/11	12/14/12	12/13/13	12/12/14	12/16/15

FTA NTD Report	12/29/11	12/28/12	12/27/13	12/26/14	12/30/15
Review of Comprehensive Annual Financial Report	03/02/12	03/04/13	03/03/14	03/02/15	03/01/16

2.2.5 Retirement Plan Audit:

2.2.5.1 Receipts, Disbursements and Assets: Receipts, disbursements and assets of the VIA Metropolitan Retirement Fund for the plan year ending 09/30/04 were as follows:

- Pension Trust Revenues (net) \$ (5,999,060)
- Pension Trust Expenses \$ 11,245,680
- Pension Trust Assets \$149,125,465

2.2.5.2 Accounting System: Accounting records are primarily located in the Human Capital and Development Division at the VIA Metro Center and are maintained on the accrual basis. The general ledger is maintained on a spreadsheet on an in-house computer.

The pension payroll system is maintained on an in-house Dell server running Windows 2000. Retired personnel are paid on a monthly basis.

There are currently two (2) checking accounts used for VIA Pension Payroll.

- Pension supplemental payroll account
- Pension payroll account

2.2.5.3 Investments: Investments are handled through one Trustee, which has accounts with approximately nine (9) account managers and include:

- Common and Preferred Stock
- Market and Mutual Funds
- Institutional Bond Funds
- U.S. Government & Agency Issues
- International Equities
- Foreign Government Bonds

2.2.5.4 Assistance Available to Contractor: VIA's Retirement Plan Administrator will be available to prepare schedules, reproduce copies of documents, pull documents and type client representation letters and confirmation requests. VIA will provide all necessary client representation letters. Office space and workstations will be provided at VIA's administrative headquarters.

VIA staff will prepare drafts of the financial statements and supplemental schedules. The reports will include:

- VIA Pension Trust Working Trial Balance
- VIA Pension Trust Statement of Receipts and Disbursements

2.2.5.5 Assistance Available From Contractor: If requested, the Contractor will provide additional audit services. However, prior to the commencement of work on the additional audit services, a written change order must be signed by both the Contractor and VIA, evidencing agreement as to the terms.

The Contractor shall provide to VIA, at no extra cost, access to all working papers and other related documents produced during the retirement plan audits rendered under contract to VIA and its representative enumerated in Part 7, Federal Provisions, 7.11 "Access to Records and Reports".

2.2.5.6 Report Requirements: The Contractor shall prepare and render an opinion, addressed to VIA's Board of Trustees, on the financial statements and supplemental schedules prepared by VIA. Prior to final submission of the Contractor's opinion, a draft of the proposed reports will be reviewed by the Pension Committee of the Board of Trustees, the Pension Administrator, the Chief Financial Officer and the Director of Audit.

The Contractor shall issue reports addressed to VIA's Board of Trustees on the internal control environment, in accordance with the requirements of Generally Accepted Government Auditing Standards (GAGAS), United States GAO Government Auditing Standards, and **OMB Circular No. A-133**.

The Contractor shall print and bind all reports to facilitate the distribution of twenty-five (25) copies of the financial statements and supplemental schedules.

2.2.5.7 Deliverables and Due Dates: The Contractor shall prepare and provide the deliverables listed below by the dates specified:

	1 st Year	2 nd Year	3 rd year	4 th Year (Optional)	5 th Year (Optional)
Pension Assets	12/16/11	12/14/12	12/20/13	12/19/14	12/18/15
Final report issued	01/13/12	01/15/13	01/17/14	01/16/15	01/15/16
Review of Retirement/Pension Fund CAFR	03/02/12	03/04/13	03/03/14	03/02/15	03/01/16

2.2.6 Proposal Requirements:

2.2.6.1 General Requirements of the Proposal

2.2.6.1.1 Each Proposal shall clearly answer every item and portion of each item listed in Part 1 and shall be submitted in the format prescribed.

2.2.6.1.2 In order for a Proposer to be eligible to be awarded the Contract, the Proposer must be responsive to the Request for Proposals, and VIA Metropolitan Transit must be able to determine that the Proposer is responsible to perform the Contract satisfactorily.

2.2.6.1.3 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.

2.2.6.1.4 A Proposer may, at any time after the submission of the Proposal be requested to submit further written evidence verifying that the firm(s) meet 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.

2.2.6.2 Requirements of the Proposal to be Submitted

2.2.6.2.1 Cover Letter – a cover letter, not exceeding two (2) pages in length, shall clearly state:

- the name of the Proposing firm,
- the firm's location from which most work will be performed for this engagement, including address, telephone number and fax,
- the name of VIA's principal contact, should the Contract be awarded to this firm (including address, telephone number and fax, if different from previous listing), and
- a summarization of the key points of the Proposal.

2.2.6.2.2 Required Information – Each Proposer shall complete, and submit with his Proposal the information requested below:

2.2.6.2.2.1 Technical Component: To describe clearly the public accounting firm's understanding of the work to be done, the Proposer will:

- a. Explain the Proposer's approaches to performing an annual audit, including the methodology, nature, and extent of audit procedures to be performed in providing required attestations affecting financial reports, internal controls, and compliance; (complete Schedule of Estimated Hours, Part 2.2.7)
- b. Describe how the approach to performing the audit would be affected if this were a multi-year Contract; and
- c. Make a statement concerning the independence of the Proposer, including direct and indirect financial interest, and the relationship of the proposed audit team to employees of VIA and any of the Board members.
- d. Identify employment of any former VIA employees, associates, and representatives.

2.2.6.2.2.2 Management Component: The Proposer will furnish satisfactory evidence of capability to provide in a professional and timely manner the services stated in the Request for Proposals. To meet this requirement, the Proposer must:

- a. Be an independent auditor properly licensed in the State of Texas for public practice.
- b. Meet the qualifications and independence standards of Government Auditing Standards, United States General Accounting Office (GAO).
- c. State whether the Proposer is currently under the terms of a public or private reprimand by the Texas State Board of Public Accountancy and/or licensing board(s) or other state(s).
- d. Provide the name of the external quality control review organization of which the Proposer is a member and the Proposer's length of membership. Also, state the review organization's planned frequency of peer/quality reviews.
- e. State whether the firm has received a peer/quality review, the date of the most recent review, and whether in the most recent review an unqualified report was issued. (Be prepared to provide a copy of the report, if requested).
- f. Certify that they are not on the U.S. Controller General's List of Ineligible Contractors.
- g. Be otherwise qualified and eligible to receive an award under applicable Federal, State, County and Municipal laws and regulations.
- h. List any audits or reviews in the past three years by cognizant Federal Government Audit Agencies, the period covered, and identify the agency. Provide a copy of the audit or review reports by said agencies.
- i. State whether the Proposer is a national, regional or local public accounting firm, and the size of the professional staff at each level.
- j. List current and past transit property and governmental audit clients, along with the names and telephone numbers of contacts, and with the (clients') fiscal years in which services were rendered. For transit properties, state the average fleet size

(for the time period under audit) of transit properties on the list, and for other governmental entities, state each one's average annual budget.

- k. List an experience of the firm in the preparation of financial statements and related governmental reports, i.e. Federal Transit Administration, Section 15 reports, **O.M.B. Circular A-133** requirements, etc.
- l. Have adequate financial resources, or ability to obtain such resources as required during the performance of the Contract.
- m. Certify that the firm will be able to comply with the required performance schedule, taking into consideration all existing business commitments.
- n. Identify the firm's insurance carrier and its rating under the latest Best's Key Guide Rating.
- o. List names of staff member(s) who will direct the overall audit throughout the duration of the engagement, as well as those staff members who will be responsible for planning, directing, and conducting substantial portions of the fieldwork or reporting on this audit engagement.
- p. Include an organizational chart which shows where each person (in the previous Part 2.2.6.2.2.2 o.) falls in the organizational structure.
- q. List the total number of staff members to be assigned to this audit, broken out by position to be held for this audit, and how many in each category are currently licensed as CPA's. Unlike Parts 2.2.6.2.2.2 o and 2.2.6.2.2.2 p, everyone assigned to this audit should be included here.
- r. Confirm that staff members indicated in the organization chart will be assigned to the project. If personnel substitutions are planned on a contingency basis, they should also be indicated on the organization chart.
- s. Describe staff rotation plans for audit team members during the course of this multi-year Contract.
- t. Provide the names and qualifications of any outside specialists and consultants who will assist the Proposer's staff members.
- u. If other accounting firm(s) will be used as Subcontractor(s) on this Contract, list the name of each firm, the percentages of work to be done by the Proposing firm and each of the Subcontractors. Also, submit information for Parts 2.2.6.2.2.1 and 2.1.6.2.2.2, (a) through (t), for each of the Subcontractor(s) proposed.
- v. Describe in as much detail as possible, the type and amount of work (such as "schedules prepared by client") expected from VIA staff. Break out the expectations based on the type of audit procedures and names of staff to be assigned.

2.2.7 Buy America Pre-Award and Post Award Audits:

In addition to the above mentioned tasks, the Contractor will be asked to perform "Buy America Act" compliance pre-award and post delivery audits for upcoming transit vehicle purchases.

2.2.8. Schedule of Estimated Hours:

Please provide a detailed breakout of hourly estimates for the Annual Financial Audit as follows:

	<u>Estimated Hours</u>
I. Planning	_____
II. General	
A. Familiarization with procedures/operation personnel	_____
B. Minutes, contracts, ordinances and laws	_____
III. Balance Sheet/Income Statement Items	
A. Cash	_____
B. Investments	_____
C. Revenues, receivables and receipts	_____
D. Expenditures for goods and services and accounts payable	_____
E. Payroll and related liabilities	_____
F. Inventories	_____
G. Property, equipment and capital expenditures	_____
H. Debt and debt service	_____
I. Fund equities	_____
J. Grant programs	_____
K. Insurance/Self-insurance	_____
IV. Compliance	
A. Federal Financial Assistance – Specific	_____
B. Federal Financial Assistance – General	_____
V. Internal Control Structure	
A. Generally Accepted Auditing Standards	_____
B. General Government Auditing Standards	_____
C. Federal Financial Assistance	_____
VI. Report preparation, publication, and presentation	_____
VI. Other (Please detail if significant)	_____
Total	=====

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

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

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

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

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

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

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

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

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

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

"Protest" means a formal request contesting:

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

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

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

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

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

"Request for Qualifications" or "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.

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 4.6, 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.

5. INSURANCE

- 5.1 General Insurance Requirements:** The Contractor and any subcontractors shall purchase and maintain in effect during the entire period of this Contract, including any maintenance period thereof, insurance of the types and with minimum limits of liability as stated below. Such insurance shall protect Contractor from any and all claims and damages, which may arise out of or result from Contractors operations whether such operations are performed by Contractor or by a subcontractor or by anyone for whose acts any of them 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 (Broad Form) and Commercial Automobile Liability policies shall be endorsed to name VIA and its employees as additional insured regarding Contractor's operations in performance of this Contract.
- 5.1.2 Waiver of Subrogation:** The Commercial General Liability, Commercial Automobile Liability and Workers' Compensation and Employer's Liability, shall be endorsed to provide a waiver of subrogation in favor of VIA, its officers, trustees, and employees.
- 5.1.3 Coverage Primary:** Such insurance as is provided therein shall be primary and non-contributing with any other valid and collectible insurance available to VIA. The limits of liability required above 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 below.
- 5.1.4 No Commencement Without Coverage:** The Contractor shall not commence work at the site under this Contract until he/she has obtained all required insurance and until such insurance has been approved by VIA. Contractor shall not allow any subcontractor to commence work until all similar required insurance has been obtained and approved. 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 the certificate of insurance and applicable endorsements evidencing insurance coverage as required, shall be furnished to the 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 (not otherwise included under Contractor's coverage), INCLUDING ALL SUBCONTRACTORS. All certificates from Contractor and any subcontractors must be issued reflecting VIA Metropolitan Transit as the certificate holder. All Certificates of Insurance shall reflect the VIA project number and the name of the Contracting Officer. 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 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 policies shall be provided by insurance companies having a Best's rating of A- rating or greater, VI or greater (A-:VI) 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-:VI will not be accepted as complying with the insurance requirements of the Contract unless such insurance companies are approved in writing prior to the award of the Contract. Certificate of Insurance shall contain transcripts from the proper office of the insurer, evidencing in particular those insured, the extent of the insurance, the location and the cancellation clause as required below.
- 5.1.6 No Lapse or Cancellation:** The Contractor and any subcontractor shall not cause any insurance to be canceled nor permit any insurance to lapse. All insurance policies shall include a clause to the effect that the policy shall not be canceled, reduced, restricted, or limited until thirty (30) days after VIA has received written notice as evidenced by return receipt of registered or certified letter. In the event of cancellation or lapse of insurance, the Contractor shall notify VIA immediately. In addition to any other remedies VIA may have upon Contractors 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 any payment(s) which become due, to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof. For contracts which require owners and contractors protective liability coverage, there are additional non-cancellation requirements. Refer to the section entitled "Owners and Contractors Protective Liability" for applicability and details.

- 5.1.7 Breach:** Failure to maintain insurance coverage as required herein, shall constitute a material breach and default.
- 5.1.8 Self Insurance:** The Contractor's insurance requirements as outlined herein, may be self-insured as long as the Contractor is in compliance with the State of Texas requirements for self- insurance and subject to approval and review or audit by VIA to verify the Contractor's financial stability. Audited Financial Statements as well as self-insured certificates must be approved by VIA prior to acceptance of self-insurance and prior to commencement of work. The Contractor's liability is not limited by the amount of insurance carried nor by its self-insurance.
- 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 any 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.

5.2 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 Broad Form Commercial General Liability Insurance:** Coverage is required for general liability, including coverage for the following where exposure exists:
- 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

5.2.5 Professional Liability: Coverage is required for professional liability, 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, with limits not less than:

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

5.2.6 Subcontracts: The Contractor shall require subcontractors to provide:

- 1) Insurance with the statutory benefits as specified in the section entitled "Workers' Compensation and Employer's Liability insurance;" and
- 2) Insurance with the same minimum limits as specified in the section entitled "Commercial General Liability;" and
- 3) Commercial automobile insurance with the same minimum limits as specified in the section entitled "Commercial Automobile Insurance."
- 4) Professional liability insurance with the same minimum limits as specified in the section entitled "Professional Liability."

6. BILLING AND PAYMENT

- 6.1 Compensation:** The Contractor shall be reimbursed by VIA for authorized costs incurred in performance of the work under this Contract. Authorized costs shall include Contractor's direct labor, payroll burden, general and administrative, reimbursable expenses and fixed fee based on the prices specifically described in the Best and Final Offer. Detailed records must be maintained to show actual time devoted and costs incurred. The Contractor shall include as part of his invoice a list of all DBE subcontractors and the amounts to be paid to each of the subcontractors from this invoice. This requirement is in accordance with FTA Circular 4716.1.

Errors on the invoice will cause the invoice to be sent to the Contractor to be corrected. The invoice will be checked entirely for accuracy before submittal to the Contract Administrator. The rate of payments will be according to the schedules included (whether expressly or by reference) in this document. The invoice will be on the Contractor's letterhead and signed by the Chief Financial Officer or designated representative of the company.

After verification, VIA will submit payment to the Contractor within thirty (30) days after receipt of a properly submitted invoice. In the event payment is not made within (30) days, the Contractor shall submit a reminder invoice marked overdue. If the invoice contains an error, the invoice will not be classified as a properly submitted invoice.

- 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 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.

6.3 Discounts

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

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

6.3.3 Time Computation. Time will be computed, for discount computation purposes, from:

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

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

6.4 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.

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). RESERVED.**
- 7.3 School and Charter Bus Requirements: (Applies to operational service contracts). 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). RESERVED.**
- 7.5 Seismic Safety Requirements: RESERVED.**
- 7.6 Energy Conservation Requirements:** The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321).
- 7.7 Clean Water Requirements:** (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* The Contractor agrees to report each violation to the Purchaser (VIA) and understands and agrees that VIA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.
- 7.8 Bus Testing: (Applies to contracts for acquisition of rolling stock/turnkey). 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, 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"). RESERVED.**
- 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). RESERVED.**
- 7.16 Davis-Bacon and Copeland Anti-Kickback Acts: (Applies to construction contracts over \$2,000). RESERVED.**
- 7.17 Contract Work Hours and Safety Standards Act: (Applies to construction contracts over \$2,000 and turnkey, rolling stock and operational contracts - excluding contracts for transportation services - over \$2,500). RESERVED.**
- 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 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 agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

7.24.2 Equal Employment Opportunity: During the performance of this Contract, the Contractor 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 agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et 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. 200e 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 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, sex, or age. 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 agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor 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 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 agrees to comply with any implementing requirements FTA may issue.

7.24.3 Inclusion of Subcontracts: The Contractor 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.

7.25 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: RESERVED.

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

7.31 Drug and Alcohol Testing: (Applies to operational service contracts involving safety-sensitive functions - 49 CFR 655 and 49 CFR part 40). RESERVED.

7.32 - 7.39 Reserved for future expansion.

7.40 Additional Environmental and Resource Conservation Requirements: RESERVED.

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.

8. DISADVANTAGED BUSINESS ENTERPRISE

- 8.1 Disadvantaged Business Enterprise (DBE) Contract Goal/Target:** The DBE contract goal or target (as the case may be) is indicated under the section entitled "Disadvantaged Business Enterprise Goal/Target" (as applicable) under Part 1 of this Contract. All bidders/offers must submit with their bid/offer the DBE documentation contained in or otherwise referenced in this Part 8 "Disadvantaged Business Enterprise." If this is an Indefinite Quantities Contract, VIA will set contract goals for each Task Order as deemed necessary and Contractor must exert good faith efforts to meet the DBE contract goal set for each Task Order, due to the nature of the Indefinite Quantities Contract.
- 8.2 VIA's Disadvantaged Business Enterprise (DBE) Program dated July 2002:** The Program concerning the utilization of DBEs in VIA contracts is contained in the VIA Disadvantaged Business Enterprise (DBE) Program dated July, 2002.
- 8.3 Good Faith Efforts:** Award of this Contract will be conditioned on meeting the requirements of 49 CFR Part 26, Section 26.53, which provides that a contract for which a DBE contract goal has been established shall be awarded only to a bidder/offeror who makes good faith efforts to meet the contract goal. Good faith efforts are established by the bidder/offeror's doing the following:
- (i) Documents that it has obtained enough DBE participation to meet the goal; or
 - (ii) Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. See VIA's DBE Program and Appendix A of 49 CFR Part 26 for guidance regarding good faith efforts.
- 8.3.1 Administrative Appeal:** In the event that VIA determines that the bidder/offeror has failed to make good faith efforts to meet the contract goal, bidder/offeror shall have the opportunity for administrative reconsideration by VIA, as described in VIA's Disadvantaged Business Enterprise Program dated July 2002 ("VIA's DBE Program").
- 8.4 Required DBE Information:** Bidders/Offerors shall submit DBE participation information with their bids/proposals. All bidders/offers will be required to submit the following information to VIA:
- (i) The names and addresses of DBE firms that will participate in the Contract ("Schedule of Participation" form);
 - (ii) A description of the work that each DBE will perform ("Schedule of Participation" form);
 - (iii) The dollar and percentage amount of the participation of each DBE firm participating ("Schedule of Participation" form);
 - (iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal ("Schedule of Participation" form);
 - (v) Written confirmation from the DBE that it is participating in the Contract as provided in the Contractor's commitment ("DBE Participation Certification" form); and
 - (vi) If the contract goal is not met, evidence of good faith efforts (See VIA's DBE Program and Appendix A of 49 CFR Part 26 for guidance regarding good faith efforts).
- 8.5 Termination of DBE Subcontractor:** The Contractor agrees to comply with 49 CFR Part 26 (Sections 26.53(f)(1) and (2)), which provide: (1) that a Contractor shall not terminate for convenience a DBE subcontractor listed in the Contractor's bid/offer (or an approved substitute DBE firm) and then perform the work of the terminated subcontract with Contractor's own forces or those of an affiliate, without VIA's prior written consent; and (2) when a DBE subcontractor is terminated, or fails to complete its work on the Contract for any reason, the Contractor must make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established by VIA for the Project. Failure by 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. In complying with VIA's DBE Program, Contractor shall only utilize DBE subcontractors possessing the requisite knowledge, qualifications and experience for the scope of work to be performed pursuant to that particular subcontract.

8.6 Validity of DBE Participant: The legitimacy of each DBE or DBE-majority joint venture shall be determined by VIA, based on the information submitted by said participant as required by VIA and/or the South Central Texas Regional Certification Agency.

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 Certification of Restrictions on Lobbying:

The Bidder/offeror certifies that:

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

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

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

9.1.1.5 Bid/offer:

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

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

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

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

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

Name of Firm

Signature of Authorized Person

Address

Print Name

City State Zip Code

Position and/or Title

Type of Entity

Date

9.1.4 CERTIFICATION OF RESTRICTIONS ON LOBBYING

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

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

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

Executed this _____ day of _____ 20_____

Company Name: _____

By: _____
(signature of company official)

(title of company official)

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

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

CERTIFICATION

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

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

Signature _____
Typed or Printed Name _____
Title _____
Company _____
Date _____

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

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

Doing Business As: _____
(other business name, if applicable)

2. Business Mailing Address: _____

City: _____ State: _____ Zip Code: _____ / _____

3. Business Telephone Number: () _____ - _____ Fax Number: () _____ - _____

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:
☐ 100 or fewer ☐ 101-500 ☐ 501-750 ☐ 751-1,000 ☐ 1,001 or over

8. Is Business Owned by Minority Ethnicity? ☐ Yes ☐ No

9. Ethnic Group: ☐ Black American ☐ Hispanic American ☐ Native American
☐ Asian Pacific American ☐ Subcontinent Asian American ☐ Other

10. Woman Owned? ☐ Yes ☐ No

11. Physically Challenged? ☐ Yes ☐ No

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

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

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

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

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

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

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

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

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 which 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 bidder's account: _____

Federal Taxpayer I.D. number: _____

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

- | | | |
|--------------------------------------|---|--|
| ☐ Newspaper | ☐ VIA Website | ☐ Other (Identify)_____ |
| ☐ Direct Mail | ☐ E-mail | ☐ VIA Outreach |
| ☐ Telephone | ☐ TX Marketplace | ☐ Networking Event |

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 who offer the commodities and services used by VIA.**

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

9.1.7 SCHEDULE OF PARTICIPATION

By the date of the bid opening, DBE firms listed on this Schedule must be certified with VIA in accordance with provisions of Part 8 of this document.

Name of Contractor and subcontractors	Address	Type of Work To Be Performed	Percentage and Dollar Amount of Compensation	DBE Goal Attainment Yes or No

The undersigned may enter into a formal agreement with subcontractors for work listed in this schedule. This Schedule of Participation may be modified at any time prior to the expiration of five working days after bid opening. After that time, the undersigned will enter into a formal agreement with subcontractors for work listed in this schedule conditioned upon execution of a contract with VIA Metropolitan Transit.

(Signature of Bidder/Offeror)

9.1.8 CONFLICT OF INTEREST QUESTIONNAIRE**FORM CIQ****For vendor or other person doing business with local government entity**

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

9.1.9 DBE PARTICIPATION CERTIFICATION

I, _____, _____
(NAME) (TITLE)

of _____, certify that we will enter into a formal
(FIRM)

agreement with prime contractor for work listed in the schedule of participation conditioned upon execution of a contract with VIA Metropolitan Transit.

(Signature)

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

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 services to VIA Metropolitan Transit without exception according to all terms of the Request for Proposal issued by VIA January 12, 2011 for **VIA Contract #11-058** in consideration of payment of the following price:

ANNUAL FINANCIAL AUDIT-BASIC CONTRACT SERVICES

FIRM FIXED PRICE

Fiscal Year Ending 09/30/11 \$ _____

Fiscal Year Ending 09/30/12 \$ _____

Fiscal Year Ending 09/30/13 \$ _____

****RENEWAL PERIOD (OPTIONAL) ****

Fiscal Year Ending 09/30/14 \$ _____

Fiscal Year Ending 09/30/15 \$ _____

ANNUAL RETIREMENT PLAN AUDIT – BASIC CONTRACT SERVICES

FIRM FIXED PRICE

Plan Year Ending 09/30/11 \$ _____

Plan Year Ending 09/30/12 \$ _____

Plan Year Ending 09/30/13 \$ _____

****RENEWAL PERIOD (OPTIONAL)****

Plan Year Ending 09/30/14 \$ _____

Plan Year Ending 09/30/15 \$ _____

ADDITIONAL SERVICES

Fiscal & Plan Year Ending 09/30/11:

<u>Job Title</u>	<u>Rate Per Hour</u>
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

Fiscal & Plan Year Ending 09/30/12:

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

Fiscal & Plan Year Ending 09/30/13:

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

****RENEWAL PERIOD (OPTIONAL)****

Fiscal & Plan Year Ending 09/30/14:

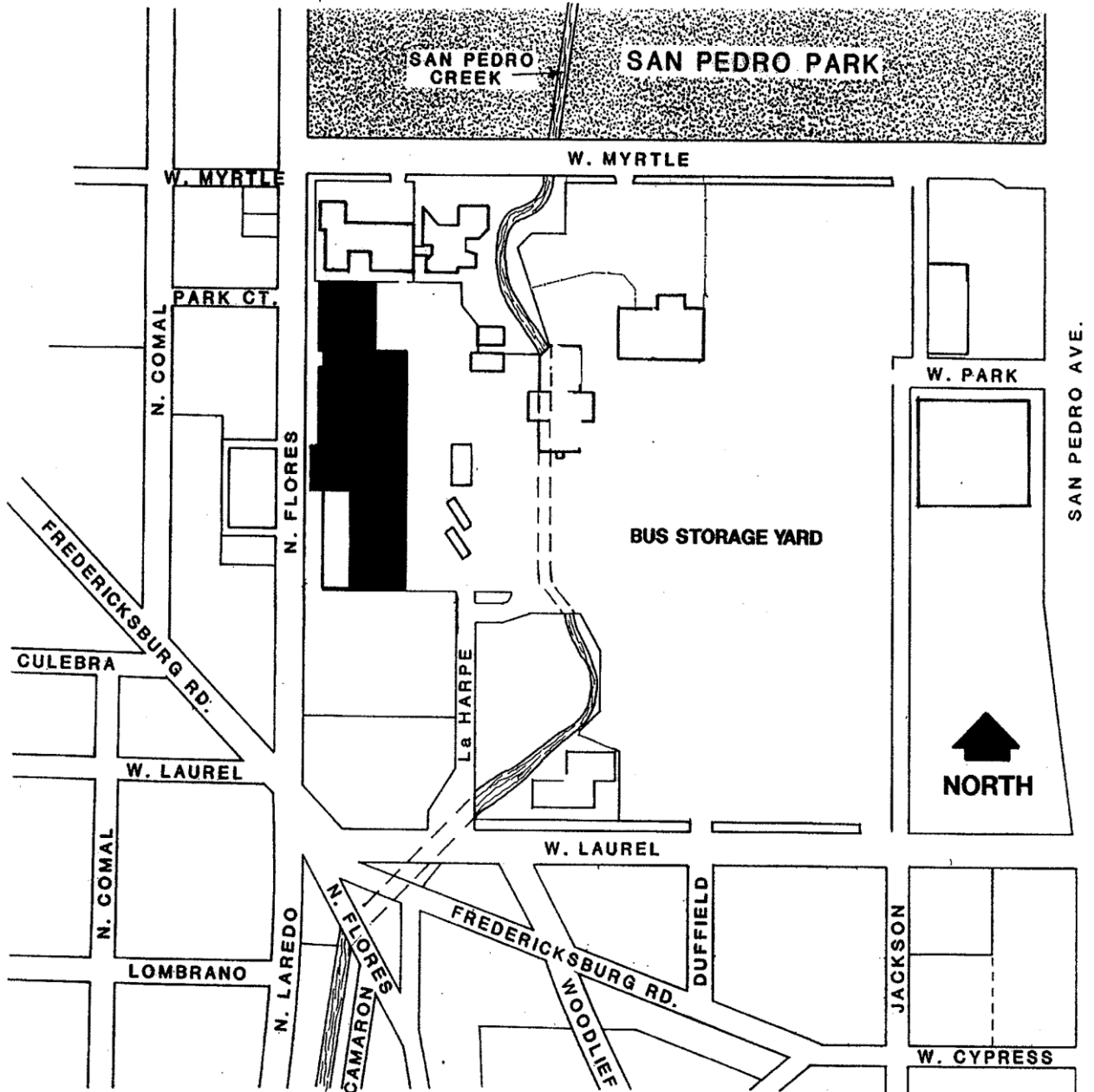
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

Fiscal & Plan Year Ending 09/30/15:

<u>Job Title</u>	<u>Rate Per Hour</u>
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

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

_____ % _____ days



VIA Headquarters Site

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, 1720 N. Flores Street, San Antonio, TX 78212. The blackened box on the top denotes the location for bid/proposal drop off.