

REQUIREMENTS



INVITATION FOR BID FOR MICROFILMING & MICROFICHE SERVICES

INVITATION FOR BID

Sealed bids will be received by the Contract Administrator, VIA Metropolitan Transit until 2:00 p.m., July 17, 2009 to supply VIA with **Microfilming & Microfiche Services** for the period August 1, 2009 through July 31, 2011.

Bids received after the time and date specified in the bidding documents will not be considered.


Contract Administrator



INVITATION, BID, AND AWARD

DATE ISSUED:

June 15, 2009

CONTRACT NO. 09-215 PURCHASE ORDER NO. _____

BID FOR: Microfilming and Microfiche Services

BID OPENING DATE AND TIME: 2:00 p.m., July 17, 2009

INVITATION FOR BID

Sealed bids, subject to the Terms and Conditions of the Invitation for Bids and the accompanying Schedule, such other contract provisions, specification, drawings or other data as are attached or incorporated by reference in the schedule, will be received at the office of the Manager, Procurement Department, VIA Metropolitan Transit, 1720 N. Flores Street, San Antonio, Texas 78212, until the date and time indicated above, and at that time publicly opened to furnish the supplies or services described in the accompanying Schedule, for delivery F.O.B. VIA Metropolitan Transit. General information and instructions to bidders are contained in the Terms and Conditions attached hereto.

BID

ITEM NO	QUANTITY	UNIT	SCHEDULE OF SUPPLIES AND SERVICES	UNIT PRICE	TOTAL AMOUNT
A	22,500	Page	Microfilming per image (See Scope of Work)	\$ _____	\$ _____
B	40,000	Page	Microfiche conversion (48x) (See Scope of Work)	\$ _____	\$ _____
C	225	Ea.	Silver Duplicate rolls (100ft. roll) (See Scope of Work)	\$ _____	\$ _____
D	5,500	Ea.	Jackets, Loaded w/ film and typed (See Scope of Work)	\$ _____	\$ _____
E	1,000		Shredding (See Scope of Work)	\$ _____	\$ _____
Contract Term: <u>August 1, 2009 through July 31, 2011</u>					
NOTES TO BIDDERS - All supplies must be properly packaged. - The quantities shown are approximate quantities only. Actual usage may be more or less than the quantities shown. - Bids are to be submitted on a firm fixed price basis. No escalation of price will be permitted during the term of this contract. See Section 3.42 of the General Terms and Conditions for Equipment, Material and Supplies. - If the Contractor cannot deliver items released under this contract within thirty (30) calendar days after receipt of order, VIA is free to purchase said items elsewhere. - DBE Utilization Goal. For the purpose of this contract, the goal for utilization of Disadvantaged Business Enterprises shall be as follows: <u>0%</u> Percent of the Contract Dollar Amount.					

NAME OF BIDDER OR CONTRACTOR

SIGNATURE OF PERSON AUTHORIZED TO SIGN BID

DATE OF BID

SIGNED

ITEM NO	QUANTITY	UNIT	SCHEDULE OF SUPPLIES AND SERVICES	UNIT PRICE	TOTAL AMOUNT
			Information regarding VIA's DBE program is available from the DBE office by calling 210-362-2077. 6. Bidder must submit the following forms with their bid. Failure to do so may deem the bid non-responsive: a. Schedule of Supplies and Services b. Statement of Eligibility c. Acknowledgment of Addenda (if applicable) d. Affidavit of Non-Collusion e. List of Similar Contracts f. Schedule of Participation g. Business Questionnaire 7. INSURANCE REQUIREMENTS: The Contractor shall furnish the following types of insurance for the duration of the contract. Two (2) copies of certificates of insurance evidencing insurance coverage as required shall be furnished to the Contracting Officer within ten (10) calendar days after receipt of notice of award (See Part 2, Insurance Requirements). a) Worker's Compensation Insurance b) Employer's Liability Insurance c) Commercial General Liability Insurance d) Commercial Automobile Liability Insurance		

Discount Terms _____ % _____ days Net 30 (see Article 3.35 Payment and Article 3.42 Discounts)

Delivery _____ calendar days after receipt of order.

ALL BIDS WILL BE ACCEPTED ON A LOW ITEM BASIS UNLESS BIDDER OTHERWISE INDICATES BY CHECKING THE FOLLOWING:

☒ BIDDING ON AN "ALL OR NONE" BASIS.

NAME AND ADDRESS OF BIDDER	SIGNATURE OF PERSON AUTHORIZED TO SIGN BID	DATE OF BID
E-MAIL ADDRESS	TYPE OR PRINT SIGNER'S NAME AND PHONE NUMBER	

AWARD

ACCEPTED AS TO ITEMS NUMBERED:	DATE OF AWARD	AMOUNT
		\$
SUBMIT INVOICES IN DUPLICATE TO:	VIA METROPOLITAN TRANSIT	
VIA METROPOLITAN TRANSIT 1720 N. Flores St. San Antonio, TX 78212	BY _____ CONTRACTING OFFICER	

**PART 1
SCOPE OF SERVICE
FOR
MICROFILMING SERVICES**

Minimum specifications:

1. Reproductions must comply with minimum standards approved by the American National Standards Institute for permanent photographic reproduction.
2. Contractor must meet all state regulations pertaining to microfilming including "Rules Establishing Standards and Procedures for Microfilming Local Government Records" Texas State Archives Policies dated October 12, 1990.
3. The Contractor understands the confidential nature of the information contained within these records, is aware of their protection under State Statute, and agrees to safeguard the confidentiality and to secure the records while in its possession.
4. Some of the documents will need to be shredded. The Contractor will be notified in advance when documents are to be shredded. In such cases, VIA will verify receipt of microfilm/microfiche for all records sent to Contractor before any record is shredded. Contractor will destroy records only upon receipt of written destruction orders from VIA. Upon completion of shredding, Contractor must forward a statement to VIA certifying that the documents have been destroyed.
5. All microfilming work must be of good quality done at 29X or 32X with a Planetary Camera on 16MM x 100 ft. rolls. Each roll film is to be inserted into a black plastic storage box with type label on front and top of box. (See attached sample of label)
6. Master microfilm must be silver-gelatin type. Filming must meet the specifications in American National Standard for Imaging media (Film) – Silver – Gelatin Type – Specifications for Stability (ANSIIT9.11989 or latest revision), except where these standards specifically state otherwise. Refer to Texas State Library and Archives Commission "Rules Establishing Standards and Procedures for Microfilming Local Government Records" (Effective October 12, 1990).
7. Silverbase Roll Duplicates are to be inserted into jackets.
8. Contractor must furnish certification that a methylene blue test has been performed according to Texas Local Government Code, Chapter 204, and the rules adopted under it.
9. Contractor may be required to film front of sheet only or front and back side of each sheet only.
10. Fill cartridge completely, more than 1 cu. Box per cartridge is allowed.
11. Type labels for each cartridge.
12. Contractor will be responsible for pick up and delivery. All boxes and empty folders must be returned to VIA.
13. Document preparation – Contractor will prepare documents for processing by unpacking, unfolding, removing staples and paperclips, etc.
14. The unit prices bid will include all services listed above.

STATEMENT OF ELIGIBILITY

I hereby certify that _____
(Name of Bidder)

is/is not (underscore one) included on the U.S. Comptroller General's Consolidated List of Persons or Firms
Currently Debarred for Violations of Various Public Contracts Incorporating Labor Standards Provisions.

Name of Firm

Address

City State Zip

Signature of Authorized Person

Name

Type of Entity

Position and/or Title

Date

ACKNOWLEDGMENT OF ADDENDA

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

ADDENDUM NO. _____, DATED _____

ADDENDUM NO. _____, DATED _____

ADDENDUM NO. _____, DATED _____

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

Name of Bidder

Street Address

City State Zip

Signature of Authorized Official

Name

Type of Entity

Position and/or Title

Date

AFFIDAVIT OF NON-COLLUSION

I hereby swear (or affirm) under the penalty for perjury:

1. That I am the bidder (if the bidder is an individual), a member of the bidding partnership (if the bidder is a partnership), or an officer or employee of the bidding corporation having authority to sign on its behalf (if bidder is a corporation);
2. That the attached bid 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 Invitation for Bids, designed to limit independent bidding or competition.
3. That the contents of the bid have not been communicated by the bidder or its employees or agents, to any person not an employee or agent of the bidder or its surety on any bond furnished with the bid, and will not be communicated to any such person prior to the official opening of the bid; and
4. That I have fully informed myself regarding the accuracy of the statements made on this affidavit.

Company Name

Signature of Authorized Official

Street Address

Printed Name of Authorized Official

City State Zip

Position and/or Title

Type of Entity

Date

Subscribed and sworn before me this _____ day of _____, 20____.

NOTARY PUBLIC _____

My Commission Expires _____

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:

Signature of Authorized Person

Name

Type of Entity

Title and/or Position

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 4 of this document.

Name of Contractor and subcontractors	Address	Type of Work To Be Performed	Percentage of Compensation (do not show \$ amount)	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)

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: _____
Street Address
City _____ State _____ Zip _____

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 that has a 10% or more ownership or control interest in the Business (attach additional pages as necessary).

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

Name of Bank: _____

Address: _____

City and State: _____

Officer familiar with bidders account: _____

Federal Taxpayer I.D. number: _____

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

☐ Newspaper	☐ VIA Website	☐ TX Marketplace	☐ Other (Identify)_____
☐ Direct Mail	☐ E-mail	☐ VIA Outreach	
☐ Telephone	☐ VIA Bidline	☐ 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 that 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.

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

PART 2 INSURANCE REQUIREMENTS

- 2.1 The following types of insurance shall be furnished for the duration of the project and two (2) copies of certificates of insurance evidencing insurance coverage as required by the following provisions shall be furnished to the Contracting officer within ten (10) calendar days after the date of Notice of Award:
- 2.2. **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 claims that may arise out of or result from Contractor's 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:
- 2.2.1. All insurance policies, except Workers' Compensation and Employer's Insurance, shall be endorsed to name VIA and its Employees as **additional insured** regarding Contractor's operations in performance of this contract.
- 2.2.2. All insurance policies shall be endorsed to provide a **waiver of subrogation** in favor of VIA and its employees.
- 2.2.3. 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.
- 2.2.4. Certificate of Insurance shall be filed with VIA within ten (10) calendar days after the date of Notice of Award. All certificates from Contractor and any subcontractors must be issued reflecting VIA Metropolitan Transit as the certificate holder. Failure to furnish evidence of satisfactory insurance coverage or the required certificates of insurance within ten (10) calendar days after the date of Notice to Award 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 having 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.
- 2.2.5. The required insurance must be written by a Company licensed, at the time the policy is issued, to do business in Texas. In addition, the company must be acceptable to VIA.
- 2.2.6. The Contractor 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.
- 2.2.7. 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 by subparagraph above. **All Certificates of Insurance shall reflect the VIA job number and the name of the contract administrator.**

2.3. SPECIFIC INSURANCE REQUIREMENTS:

CONTRACTOR'S INSURANCE: The Contractor shall purchase and maintain in effect during the entire periods 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 claims that may arise out of or result from Contractor's operations whether such operations are performed by Contractor or by any subcontractor or by anyone for whose acts any of them may be liability. All costs associated with these insurance coverage are the sole responsibility of the Contractor.

2.3.1 Workers' Compensation Insurance 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.

2.3.2 Employer's Liability Insurance with limits of liability not less than:

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

2.3.3 Commercial General Liability Insurance, including coverage for the following where exposure exists:

- A) Premises/Operations
- B) Independent Contractors
- C) Products/Completed Operations
- D) Personal Injury
- E) Contractual Liability
- F) 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

2.3.4 Commercial Automobile Liability Insurance covering all owned/leased, hired and non-owned motor vehicles including fuel transports used in connection with the work being performed under the contract with limits of liability not less than:

\$500,000	Combined Single Limit
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2.3.5 SUBCONTRACTOR'S INSURANCE: The Contractor shall require Subcontractors to provide:

- a. Insurance with the statutory benefits as specified in Section 2.3.1 Worker's Compensation and 2.3.2 Employer's Liability insurance; and
- b. Insurance with the same minimum limits as specified in Section 2.3.3 Commercial General Liability; and
- c. Commercial Automobile Insurance with the same minimum limits as specified in Section 2.3.4 Commercial Automobile Insurance.

2.3.5.1. Certificates provided by subcontractors must include **additional insured** in favor of VIA and its employees for commercial automobile liability and general liability. All policies must include a **waiver of subrogation** in favor of VIA and its employees.

2.3.5.2. Such insurance as is provided therein shall be primary and non-contributing with any other valid and collectible insurance available to VIA.

2.3.5.3. 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 amount required above.

2.4. SELF INSURANCE: The Contractor's insurance requirements as outlined in Section 2.3.2. through 2.3.4., may be self-insured as long as the Contractor is in compliance with the State of Texas self-insurance and subject to a 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 service start date. The Contractor's liability is not limited by the amount of insurance carried or by its self-insurance.

**PART 3
GENERAL TERMS AND CONDITIONS
FOR
EQUIPMENT MATERIAL AND SUPPLY CONTRACTS**

General Information

3.1. DEFINITION OF TERMS. Whenever herein or in the bid or contract documents the following terms or pronouns in place of them, or abbreviations, are used, the intent and meaning shall be interpreted as follows:

- A. **"Schedule of Supplies and Services"** is the form provided by VIA attached hereto for submission of the bid and, if such bid is accepted, for the Award of Contract by VIA.
- B. **"Contracting Officer"** is that person designated by VIA to enter into and administer this contract and make determinations and findings in regard to the contract on behalf of VIA. For the purpose of the procurement herein proposed, the Contracting Officer is:

<u>Vanecia Noland</u>	<u>Contract Administrator</u>
(Name)	(Title)

- C. **"Contractor"** means the successful bidder to whom a contract is awarded.
- D. **"Invitation For Bid"** (IFB) is the complete assembly of related documents, whether attached or incorporated by reference, furnished by VIA for the purpose of bidding, including the Invitation, Bid, and Award, the Instructions for Bidders, General Terms and Conditions for Equipment, Material and Supply Contracts, Supplemental Conditions, Specifications, Bid Form, Bid Attachments, and Addenda, if any, Notice of Award, if any, and Purchase Order.
- E. **"Authorized Signature"** The person who is executing this contract on behalf of the Bidder/Contractor and who is authorized to bind the Bidder/Contractor.
- F. **"Invitation For Bid"** is the advertisement that is published, posted and sent to prospective bidders informing interested persons of the proposed procurement.
- G. **"Notice of Award"** The written notice sent by VIA notifying the selected Bidder of the award of contract. Such Notice of Award shall be sent only in equipment/construction contracts over \$25,000.00 for which Performance Bonds are required by VIA. For Contracts not requiring Performance Bonds, the receipt of a Purchase Order issued by VIA shall serve as notice of the award of contract, and no Notice of Award shall be sent.
- H. **"Specifications"** is the written description and statement of necessary requirements of the equipment and/or supplies to be provided.
- I. **"Procuring Agency"** - VIA Metropolitan Transit.
- J. **"VIA"** means VIA Metropolitan Transit, San Antonio, Texas.
- K. **"Written Order"** means a written order signed by the VIA General Manager or the Contracting Officer mailed to the Contractor at the address designated in his bid or to such other address as he may designate in writing as his official place of business.
- L. **"Purchase Order"** The written order sent by VIA on its form ordering the equipment or supplies in accordance with the terms and conditions of the Invitation for Bid. For contracts not requiring Performance of Bid Bonds, the receipt of a Purchase Order issued by VIA shall constitute Notice of Award of Contract.
- M. **"Release Order"** Written notice authorizing shipment, delivery and installation of, and payment for, a specific number of items bid.

- N. **"Subcontractor"** A person, firm or corporation supplying labor and materials or only labor for work at the site of the project for, and under separate contract or agreement with, the Contractor.
- 3.2. **SALES TAX EXEMPTION.** The materials provided for this project pursuant to this contract will be exempt from the Limited Sales, Excise and Use Tax imposed by Chapter 20, Title 122A, Taxation-General, Revised Civil Statutes of Texas. When award is made, the Contractor shall obtain instructions for the issuance of an exemption certificate from the local office of the State Comptroller of Public Accounts.
- 3.3. **DELIVERY CHARGES.** Unless otherwise stated in the IFB, Bidders shall include freight and/or delivery charges in the total price of their bids.
- 3.4. **SAMPLES.** Samples, when required, must be submitted within the time specified, at no expense to VIA. If not destroyed or used up during testing, samples will be returned upon request at the Bidder's expense.
- 3.5. **QUALIFICATIONS FOR AWARD.** The bidder must be a person, firm or corporation that:
- A. Can assure delivery of all equipment within the time specified under this contract by either being a manufacturer who has plant facilities of adequate size and properly equipped or a distributor who has a contractual arrangement with a manufacturer who has in operation or has the capability to have in operation on a manufacturing plant adequate to assure delivery of all equipment within the time specified under this contract.
 - B. Has adequate engineering and service personnel, or has the capability to have such personnel, to satisfy any engineering or service problems that may arise during the warranty period.
 - C. Has the necessary facilities and financial resources, or has the capability to obtain such facilities and resources, to complete the contract in a satisfactory manner within the required time.
 - D. The Procuring Agency shall have the right to conduct a pre-award survey of each bidder.
- 3.6. **DETERMINATION OF RESPONSIBILITY.** The Bidder may be required upon request to present evidence to the satisfaction of the Contracting Officer of responsibility, including evidence of adequate financial resources, capability to execute the contract in accordance with the delivery schedule, satisfactory integrity and business ethics and qualifications under any applicable laws and regulations.
- 3.7. **WAIVER.** The Bidder represents and warrants that he has sufficiently informed himself in all matters effecting the specification; that he has checked his bid for errors and omissions; that the prices stated in his bid are correct and as intended by him and are a complete and correct statement of his bid price. The Bidder hereby waives any claim for the return of his bid guarantee, if, on account of errors or omissions claimed to have been made by him in his bid, or for any other reason, he should refuse or fail to execute the contract.
- 3.8. **BID ACCEPTANCE PERIOD.** All bids shall remain in effect ninety (90) calendar days from the date of bid opening. Bids offering less than ninety calendar days for acceptance by VIA from the date set for opening will be considered non-responsive and will be rejected.
- 3.9. **AMENDMENT AND/OR POSTPONEMENT.** VIA reserves the right to postpone for its own convenience the date of bid opening, but any bidder whose bid has already been submitted to VIA when the decision to postpone is made shall be afforded the opportunity to revise or withdraw its bid.

VIA reserves the right to revise or amend the specifications up to the time set for opening the bids. Such revisions and addenda, if any, shall be announced by addenda to this solicitation. Copies of such addenda shall be furnished to all prospective bidders. If the revisions and addenda require

changes in quantities or prices bid, or both, the date set for opening bids may be postponed by such number of days as in the opinion of the VIA shall enable bidders to revise their bids. In any case, bid opening shall be at least 5 working days after the last addendum, and the addenda shall include an announcement of the new date, if applicable, for opening bids.

3.10. CANVASS OF BID

3.10.1 PROCESS. At the hours specified in the Invitation for Bid, the Contracting Officer or his designee will publicly open, examine, declare and record all bids received. Bidders, their representatives, and others interested, are invited to be present at the opening of bids. An award will be made or bids rejected by VIA within the time specified in the specifications or Bid forms or, if not specified, within reasonable time after bids have been opened.

3.10.2 FEDERAL PARTICIPATION. To the extent any contract awarded under this Invitation for Bid involves Federal funding in an amount equal to or in excess of \$500,000, any announcement of a contract award will specify the amount of Federal funds that will be used to finance the project hereunder and will specify the said amount as a percentage of the total costs of the planned project.

3.11. REJECTION OF BIDS. VIA reserves the right to reject any and all bids that are not responsive or unreasonably priced, or impose modifying conditions. VIA may reject the bid 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 bids, and to waive technical defects as the interest of VIA may require. Each Bidder shall be notified if all bids are rejected.

3.12. SINGLE BID. In the event a single bid is received, VIA will, at its option, either conduct a price and/or cost analysis of the bid and make the award by negotiation or reject the bid and re-advertise. A price analysis is the process of examining the bid and evaluating a prospective price without evaluating the separate cost elements. Price analysis shall be performed by comparison of the price quotations submitted on other current quotations, with published price lists, or other established or competitive prices. The comparison shall be made to a purchase of similar quantity and involving similar specifications. Where a difference exists, a detailed analysis must be made of this difference and costs attached thereto.

Where it is impossible to obtain a valid price analysis, it may be necessary for VIA to conduct a cost analysis of the bid price. Cost analysis is the review and evaluation of a Contractor's cost or pricing data and of the factors applied in projecting from such data the estimated costs of performing the contract, assuming reasonable economy and efficiency.

The price and/or cost analysis shall be made by competent and experienced auditors or price analysts. An engineer's estimate or comparison of the prices involved is insufficient.

If the price or cost analysis is unsuccessful in determining whether the bid price is fair and reasonable, VIA may, at its option, attempt to establish with the offeror a different price that may be determined to be fair and reasonable.

3.13. BIDDER'S PROTEST PROCEDURE.

3.13.1 PROTEST. In the event VIA receives a protest according to the terms referenced herein, specifically 3.13.2 TIMELINESS, VIA will suspend the procurement process until the protest is resolved. A protest, if any, shall be submitted to VIA's Contracting Officer for transmittal to and consideration by VIA's Protest Committee. A protest must be in writing and must be supported by sufficient information to enable the protest to be considered. A protest will not be considered if it is insufficiently supported or it is not received within the time limits set forth in Section 3.13.2 TIMELINESS below. A protest, if any, may be submitted upon the following reasons:

- A. a protest relating to restrictive procedures, alleged improprieties or other similar situations arising prior to bid opening;

- B. a protest of a final ruling relating to requests for changes to or approval of equals, clarifications and modifications of the specifications as set forth in Section 3.19, Bidders' Requests, or
- C. a protest of the award of contract or alleged impropriety arising after bid opening as set forth in Section 3.13.2.(c), Timeliness, below.
- D. A protest committee will be formed to address the protest and will respond in detail to each substantive issue raised in the protest and shall have the authorization to make a final determination.
- E. FTA Circular 4220.1.F, Chapter VII, addresses Bid Protests. A copy of the Circular will be provided upon written request to VIA. FTA will only review protests regarding the alleged failure of the grantee to have or follow a written protest procedure or alleged failure to review a complaint or protest, and only when submitted by an actual or prospective offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract. Alleged violations on other grounds are under the jurisdiction of the appropriate state or local administrative or judicial authorities. Alleged violations of a specific Federal requirement that provides an applicable complaint procedure shall be submitted and processed in accordance with that Federal regulation. Protest to FTA shall be filed no later than five (5) calendar days after VIA's final determination is rendered.
- F. A request for reconsideration of final determination shall be considered if data becomes available that was not previously known or there has been an error of law or regulation.

3.13.2 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 restrictive procedures, alleged improprieties or other similar situations arising prior to bid opening must be submitted so that it is received by VIA's Contracting Officer for transmittal to VIA's protest committee no later than seven (7) working days prior to the specified bid opening date and may only be protested once;
- B. a protest based upon a 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 for transmittal to VIA's protest committee within seven (7) working days following the issuance of the Contracting Officer's final ruling; and
- C. a protest of the award of contract or alleged impropriety arising after bid opening must be submitted so that it is received by VIA's Contracting Officer for transmittal to VIA's Protest Committee within seven (7) working days following the earlier of the date on which the Bidder knew, or the date on which a diligent Bidder would have known, of the award or alleged impropriety.

The FTA's role in the protest procedure shall be limited to accepting protests alleging that VIA does not have a written protest procedure, is alleged to have violated such procedures, or is alleged to have failed to review a complaint or protest.

3.14. PREPARATION OF BID. A bid shall be submitted on the forms furnished, or copies thereof, shall be completed in ink or by typewriter and shall be manually signed. If erasures or other changes appear on the forms, each erasure or change shall be initialed by the person signing the bid. Unless specifically authorized in the Invitation for Bids, no telegraphic or telefaxed bids will be considered.

The Schedule of Supplies and Services may provide for submittal of a price or prices for one or more items, which may be lump sum bids, alternative prices, scheduled items resulting in a bid on a unit of construction or a combination thereof. Where the Schedule of Supplies and Services explicitly

requires that the bidder bid on all items, failure to do so will disqualify the bid. When submittal of a price on all items is not required, a bidder shall insert the words "no bid" in the space provided for any item on which no price is submitted.

A bid by a partnership shall be executed in the partnership name and signed by a partner. The official address of the partnership shall be shown below the signature.

A bid submitted by a joint venture shall list the name of the joint venture and the mailing address, and shall be executed by all joint ventures in the same manner as if they were individually submitting bids. The signature portion of the Schedule of Supplies and Services shall be altered as appropriate for execution by the joint venture and all joint ventures.

All names shall be typed or printed below the signature. The address shall be shown to which communications regarding the bid are to be directed.

Alternative bids will not be considered unless explicitly requested on the Schedule of Supplies and Services.

Bidders shall enter prices and amounts for each line item as indicated on the schedule of supplies and services. In the event there is a difference between the unit price and the extended total amount, the unit price will be held to be the intended bid and the total of the line item shall be recomputed accordingly.

3.15. SUBMISSION OF BID. Prior to the hour specified in the Invitation to Bid inviting sealed bids, all bids shall be delivered to the Contracting Officer at the address shown in the Invitation to Bid. Each bid shall be in a sealed envelope properly labeled on the outside with the quotation number and the bid opening date. No telegraphic or telefaxed bids will be considered.

3.16. LATE SUBMISSIONS.

3.16.1 RECEIPT PRIOR TO AWARD. Any bid 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 offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers 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 time bid opening; or
- C. is the only bid received.

3.16.2 POSTMARK. The only acceptable evidence to establish the postmark date of a bid 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.

3.16.3 COURIER DELIVERY DATE. The only acceptable evidence to establish the courier service guaranteed delivery date is a receipt or other documentary evidence that will establish that the bid or modification was sent by a courier service for timely delivery.

3.16.4 TIME/DATE STAMP. The only acceptable evidence to establish the time and date of receipt at VIA is the time/date stamp on the bid wrapper or other documentary evidence of receipt maintained by VIA.

3.17. MODIFICATION OR WITHDRAWAL OF BID. A bid may be modified or withdrawn by written notice received in the office designated in the Invitation to Bid not later than the exact time set for opening of bids. A bid may be withdrawn in person by a Bidder or his authorized representative provided his

identity is made known and he signs a receipt for the bid if the withdrawal is prior to the exact time set for opening of bids.

3.18 RESPONSIVENESS: In order for a Bidder to be eligible to be awarded the Contract, the Offer must be responsive to the Invitation for Bid, and VIA Metropolitan Transit must be able to determine that the bidder is responsible to perform the Contract satisfactorily. Responsive Offers are those complying in all material aspects of the solicitation. Offers which do not comply with all the terms and conditions of this solicitation may be rejected as non-responsive. A Bidder may, at any time after the submission of the Offer, be requested to submit further written evidence verifying that the firm(s) meet the criteria necessary to be determined a responsible Bidder. Refusal to provide requested information may result in the Bidder being declared non-responsive, and the Offer may be rejected.

3.19. BIDDER'S REQUESTS AND APPEALS.

3.19.1 APPOINTMENTS. Bidders and suppliers may make appointments with the Contracting Officer to discuss the specifications. This privilege, however, does not relieve them from the requirements of Section 3.19.2 and Section 3.19.3 below.

3.19.2 EQUALS AND CLARIFICATIONS. Bidders and suppliers may submit to VIA requests for approved equals and clarifications of specifications provided that such requests for approved equals and clarifications of specifications are:

- A. Submitted in writing and received by VIA no later than 15 calendar days before the date of bid opening, and
- B. Supported by evidence such as technical data, test results, or other pertinent information that demonstrates that the substitute offered is equal to or better than the specification requirement.

3.19.3 SUBMISSION DEADLINES. The Contracting Officer's decisions on submissions under Section 3.19.2 above shall be postmarked at least 7 calendar days prior to the date of bid opening. VIA assumes no responsibility for delayed or lost responses. Bidders should contact the Contracting Officer if they believe a response is missing or lost.

3.19.4 AMENDING MATERIALS. Any amending material issued by VIA pertaining to the bid solicitation documents (including, without limitation, clarifications, approved equals, and corrections) shall be set forth in an addendum and sent to all parties who are on record as having obtained a copy of the bid solicitation documents.

3.19.5 APPEAL. Should any bidder or supplier choose to appeal VIA's decision, such appeal must be in writing and received by VIA not less than 7 calendar days before the date of bid opening. VIA has no obligation to consider appeals received less than 7 calendar days before the date of bid opening.

3.19.6 WITHDRAWAL. The bidder or supplier may withdraw its appeal at any time before VIA issues a final decision. There shall be no further review of the appeal after the final decision is issued.

3.19.7 NOTIFICATION. Should VIA postpone the date of bid opening owing to an appeal, VIA shall notify all parties who are on record as having obtained a copy of the bid solicitation documents that an appeal has been filed and that the date of bid opening shall be postponed until VIA has issued its final decision. VIA shall issue appropriate amendments postponing and rescheduling the date of bid opening.

3.19.8 INQUIRIES. Inquiries should be directed to the Contracting Officer at VIA Metropolitan Transit, 1720 North Flores, San Antonio, Texas 78212, telephone number (210) 362-2400.

3.20. WARRANTY OF TITLE. Contractor shall warrant to VIA, its successors and assigns, that the title to the material, supplies or equipment covered by the contract, when delivered to VIA or to its successors or assigns, shall be free from all liens and encumbrances.

3.21. PRODUCT/SERVICES WARRANTY. Contractor warrants that the goods furnished under the contract will conform to the contract description, be free of defects in materials and working conditions, be fit for the ordinary purposes for which such goods are used, run of even kind, quality and quantity within each unit and among all units involved, be adequately contained, packaged and labeled as the agreement may require and conform to the promises or affirmation of fact made on the container or label, if any. If the contract is for services, Contractor warrants that the services furnished hereunder will conform to the contract description.

If VIA informed Contractor of the intended use of the goods supplied under this contract, Contractor acknowledges that VIA is relying on Contractor's skill and judgment to furnish suitable goods and warrants that the goods supplied hereunder will be fit for the stated particular purpose of VIA.

All necessary repairs, renewals, changes or modifications in the equipment due to defective materials and workmanship, occurring within twelve (12) months after final acceptance of the equipment, shall be promptly corrected by the Contractor at his expense, including labor and materials, with minimum inconvenience to VIA.

Where specific equipment items are guaranteed by the manufacturer for periods exceeding those shown above, such guarantees are not voided by provisions of this paragraph.

This warranty is construed to mean that all equipment furnished by the Contractor that malfunctions shall be repaired by the Contractor at no cost or expense to VIA for a minimum period of twelve (12) months, after final acceptance.

Any equipment or part thereof that has been replaced under the provisions of this warranty shall become property of the Contractor.

Should the Contractor wish to have the defective equipment or part thereof returned to him, it shall be returned at his expense.

In the event the Contractor does not request the return of such replaced parts within (6) months from the date of replacement, they shall, at the option of VIA, become the property of VIA.

3.22. DELIVERY. Complete Delivery must be made within 30 calendar days after the date of the Purchase Order. Delivery will be F.O.B. VIA Metropolitan Transit, 1720 N. Flores St., San Antonio, Texas, unless otherwise specified in the IFB.

The Contractor shall perform all packing, shipping, and freight of supplies procured by this contract.

Contractor shall assume all responsibility and risk of loss incident to said deliveries.

The Contractor shall clearly mark all crates delivered to the site with the Contractor's name and identification of the contents by number of pieces and item number for each piece.

In the event the delivery of the equipment and supplies under the contract shall be necessarily delayed because of strike, injunctions, government controls, or act of God having a direct effect on the manufacture and delivery of the equipment and supplies that could not have reasonably been anticipated by the Contractor, the Contracting Officer may extend the time of completion of the contract.

The Contractor will notify the Contracting Officer in writing, within fifteen (15) days from the beginning of any such delay. The Contracting Officer will investigate the facts and ascertain the extent of the delay and his findings thereon shall be final and conclusive.

Hours of delivery shall be 7:30 a.m. through 3:00 p.m., Monday through Friday, San Antonio time.

3.23. TERMINATION OF CONTRACT

3.23.1 Termination For Convenience. VIA may terminate this contract, in whole or in part, at any time without cause and solely for the convenience of VIA by giving 30 days written notice to the Contractor. The Contractor shall be paid fees and expenses for work performed up to the time of termination provided the Contractor submits an itemized claim within thirty (30) calendar days of the termination. If the Contractor has any property in its possession belonging to VIA, the Contractor will account for the same and dispose of it in the manner VIA directs.

3.23.2 Termination For Default.

3.23.2.1 DEFAULT. In the event that the Contractor breaches the terms or violates the conditions of the Contract to be awarded, and does not within ten (10) days of written notice from VIA cure such breach or violation, VIA may immediately terminate the Contract, and pursue any and all legal and equitable remedies available to it against the Contractor.

3.23.2.2 NOTICE. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default.

3.23.2.3 VIA OPTIONS. In addition to any other remedy available, VIA may:

- (a) complete such contract without further liability to the Contractor for compensation for any labor, supplies or materials furnished by the Contractor under the contract, or
- (b) direct the Contractor to remove any equipment delivered and/or installed by the Contractor and to refund to VIA any amounts paid by VIA to the Contractor, and VIA shall have no further liability to the Contractor.
- (c) contract to acquire supplies or services similar to those terminated.

3.23.2.4 COMPENSATION & LIABILITY. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. The Contractor and the Contractor's surety or sureties shall be liable to VIA for all excess costs, loss or damage incurred for supplies or services to complete the contract, in the event Contractor fails to complete the contract.

3.23.2.5 EXCUSE. If it is later determined by VIA that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, or events which are not the fault of or are beyond the control of the Contractor, VIA, after setting up a new delivery or performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

3.24. CHANGES. Any proposal by Contractor that varies or adds to this contract shall be construed as additional terms or modifications and shall not become part of the contract unless accepted in writing. Notice is hereby given of VIA's objection to such additional terms or modifications unless they are specifically accepted in writing by VIA.

The Contracting Officer may at any time, by a written order, and without notice to the sureties, make changes, within the general scope of this contract, in any one or more of the following: (i) drawings, designs or specifications; (ii) method of shipment or packing; and (iii) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change; provided, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract.

- 3.25. EFFECT OF EXTENSIONS OF TIME.** Granting of or acceptance of extensions of time to complete the work or furnish the labor, supplies, materials, or equipment, or any one of the aforementioned, will not operate as a release to the Contractor or the Surety on Contractor's faithful performance bond from said guarantee.
- 3.26. INDEMNIFICATION: THE CONTRACTOR SHALL INDEMNIFY, KEEP AND SAVE HARMLESS VIA, ITS AGENTS, OFFICIALS, AND EMPLOYEES, AGAINST ALL SUITS OR CLAIMS THAT MAY BE BASED ON ANY INJURY TO PERSONS OR PROPERTY THAT MAY OCCUR, OR THAT MAY BE ALLEGED TO HAVE OCCURRED, IN THE COURSE OF THE PERFORMANCE OF THIS CONTRACT BY THE CONTRACTOR, WHETHER OR NOT IT SHALL BE CLAIMED THAT THE INJURY WAS CAUSED BY THE NEGLIGENCE OF VIA, ITS OFFICERS, EMPLOYEES OR AGENTS. CONTRACTOR SHALL, AT HIS OWN EXPENSE DEFEND ANY AND ALL ACTIONS, AND SHALL AT HIS OWN EXPENSE PAY ALL CHARGES OF ATTORNEY FEES AND ALL COSTS AND OTHER EXPENSES ARISING THERE FROM OR INCURRED IN CONNECTION THEREWITH; AND IF ANY JUDGMENT SHALL BE RENDERED AGAINST VIA IN ANY SUCH ACTION, THE CONTRACTOR SHALL AT HIS OWN EXPENSE SATISFY AND DISCHARGE THE SAME.**
- 3.27. DEFECTIVE OR DAMAGED WORK.** Any material or equipment damaged or defective at the time of delivery or installation shall be repaired, replaced or corrected by the Contractor hereunder without additional cost to VIA. If the Contractor shall fail to comply promptly with any order of the Contracting Officer to repair, replace or correct damaged or defective work, then the Contracting Officer shall, upon written notice to the Contractor, have the authority to deduct the cost thereof from any compensation due or to become due to the Contractor. Nothing in this section shall limit or restrict the provisions of the warranties as set forth in these contract conditions or any warranties that may arise by implication or by law.
- 3.28. DAMAGES.** All loss or damage arising from any unforeseen obstructions or difficulties, either natural or artificial, which may be encountered in the prosecution of the work, or the furnishing of the supplies, materials or equipment, or from any action of the elements prior to the final acceptance of the work, or of the supplies, materials or equipment or from any act or omission not authorized by the contract or by the Contracting Officer on the part of the Contractor or any agent or person employed by him, shall be sustained by the Contractor.
- 3.29. NONWAIVER OF WARRANTIES.** It is understood that acceptance of the equipment and materials to be manufactured and assembled pursuant to this contract shall not waive any warranty, either expressed or implied, or any liability of the manufacturer as determined by any court decision by a court of competent jurisdiction. Contractor shall not exclude or modify any applicable warranty.
- 3.30. WAGE-PRICE REGULATIONS.** Should the Federal Government reinstitute wage-price regulations that are applicable to the sale of this equipment pursuant to this bid, Contractor shall comply with the provisions of such laws and regulations that may be adopted.
- 3.31. BRAND NAMES OR EQUAL.** It should be understood that specifying brand names, components, and/or equipment in this document shall not relieve the supplier from their responsibility to produce the product in accordance with the performance warranty and contractual requirements. The supplier is responsible for notifying VIA of any inappropriate brand names, components and/or equipment that may be called for in the Schedule of Supplies and Services, Plans, or in the Specifications, and to propose a suitable substitute for consideration.

Whenever a material, article or piece of equipment is identified on the Schedule of Supplies and Services, Plans or in the Specifications by reference number, by manufacturers' name, or by brand name, it is intended merely to establish a standard. Any material, article, or equipment of other manufacturers and vendors which will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, article, or equipment so proposed is, in the opinion of Contracting Officer, of equal substance and function. It shall not be purchased or installed by the Contractor without the Contracting Officer's written approval.

3.32. 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.

3.33. 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.

3.33.1. 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 Enclosed Form CIQ).

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

3.35. PAYMENT TO CONTRACTOR. Terms shall be net thirty (30) calendar days after receipt of an invoice and after acceptance of the equipment by VIA, whichever is later. 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.

The prime Contractor shall include as part of his Request for Payment a list of all DBE/WBE subcontractors who will be paid from this Request for Payment. This requirement is in accordance with FTA Circular 4716.1.

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

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

3.37. ASSIGNMENTS. 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 permission. If such permission 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.

3.38. MUTUAL RESPONSIBILITY OF CONTRACTORS. IF THROUGH ACTS OF NEGLIGENCE ON THE PART OF THE CONTRACTOR, ANY OTHER CONTRACTORS OR ANY SUBCONTRACTOR SHALL SUFFER LOSS OF DAMAGE ON WORK, THE CONTRACTOR AGREES TO SETTLE WITH SUCH OTHER CONTRACTOR OR SUBCONTRACTOR BY AGREEMENT OR ARBITRATION IF SUCH OTHER CONTRACTOR OR SUBCONTRACTOR WILL SO SETTLE. IF SUCH OTHER CONTRACTOR OR SUBCONTRACTOR SHALL ASSERT ANY CLAIM AGAINST

VIA DUE TO ANY DAMAGE ALLEGED TO HAVE BEEN SUSTAINED, VIA SHALL NOTIFY THE CONTRACTOR, WHO SHALL INDEMNIFY AND HOLD HARMLESS VIA AGAINST ANY SUCH CLAIM, AS PROVIDED IN PART 3.26 OF THIS CONTRACT.

- 3.39. SPECIFIED PARTS.** All parts shall be new and under no circumstances will used, reconditioned, or obsolete parts be accepted.

Materials must be furnished as specified in all cases. Where brand names or specific items or processes are used in the Schedule of Supplies and Services, Plans or in the Specifications, and the term "approved equal" follows, a request for approval or any substitution or "approved equal" must be submitted in writing to VIA prior to submission of a bid and acceptance of the substitute will be at VIA's discretion. It shall be the responsibility of the bidder to obtain such approval from VIA. The bidder will be required to supply VIA with performance data, samples, and special guarantees as a condition of acceptance of any proposed alternates.

Bidder shall be responsible for providing VIA with information on the latest applicable revision to any part or process specifically called for in the specifications for consideration in the specifications.

All engineering details must be settled before the bid opening date. VIA shall have the power to reject or condemn any material furnished or work performed under the contract that does not conform to the terms and conditions as set forth in the contract documents.

- 3.40. BREACHES AND DISPUTE RESOLUTION RESERVED.**

- 3.41. CIVIL RIGHTS REQUIREMENTS:** The following requirements apply to the underlying contract:

A. *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.

B. *Equal Employment Opportunity:* During the performance of this Contract, the Contractor agrees as follows:

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 49 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. 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor 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.
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.

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.
4. **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.

3.42 DISCOUNTS. 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.

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.

Time will be computed, for discount computation purposes, from the:

- A. Date of delivery to, and acceptance by, VIA.
- B. Date a proper invoice is received in the office specified by VIA, if the latter date is later than the date of delivery.

Payment will be deemed to have been made on the date that appears on payment checks.

3.43. ESCALATION. There shall be no escalation of price over the term of the contract.

3.44. NATIONAL ITS ARCHITECTURE COMPLIANCE: The Contractor shall conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by TEA-21 Section 5206(e), 23 U.S.C. Section 502 note, and Federal Transit Administration Notice "FTA National ITS Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and other Federal requirements that may be issued.

3.45. CARGO PREFERENCE - Use of United States-Flag Vessels: (Applies to contracts involving equipment, materials, or commodities which may be transported by ocean vessels). The Contractor agrees: (a) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; (b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the Contractor in the case of a subcontractor's bill-of-lading.) (c) to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

3.46. ENERGY CONSERVATION: The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321).

3.47. CLEAN WATER: (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 and understands and agrees

that the Purchaser 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.

- 3.48. 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 the Purchaser and understands and agrees that the Purchaser 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.

- 3.49. INFRINGEMENT OF PATENTS.** The Contractor agrees that he will, at his own 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 the materials or equipment, or any part thereof, or any tool, article or process used in the manufacture, operation or use thereof, constitutes an infringement of any patent, trade secret, copyright or any other proprietary right.

- 3.50. INTEREST OF MEMBERS OF, OR DELEGATES TO, CONGRESS.** In accordance with 18 U.S.C. 431, no member of, or delegates to, the Congress of the United States shall be admitted to a share or part of this contract or to any benefit arising therefrom.

- 3.51. CONFLICTING INTERESTS.** If any member of the VIA Board, any employee of VIA, or any person related within the third degree of consanguinity or second degree of affinity to a VIA Board member or employee has directly or indirectly any financial interest in or has sought any financial gain from this bid or contract, bidder shall disclose to the Contracting Officer the interest or potential gain and the relationship before contract award or as soon as the bidder could with diligence have learned of the interest or seeking of gain. Failure to comply with this disclosure requirement will constitute a default and major breach of contract by the bidder if awarded the contract.

No member of the Board, General Manager, or department head of VIA shall, directly or indirectly, have any financial interest in, or seek any financial gain from, any contract to which VIA is a party.

No VIA employee nor any person related within the third degree of consanguinity or second degree of affinity to a member of the VIA Board or to a VIA employee shall have any financial interest in or seek any financial gain from, any contract to which VIA is a party and in which the related Board member or employee plays a role in selection, award, or administration.

VIA's Board members, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from Contractors, potential Contractors, or parties of subagreements.

- 3.52. CODE OF ETHICS:** On July 11, 1995, the VIA Metropolitan Transit 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.

- A. 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.

3.53. 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:

- A. **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.
- B. **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.

3.54. 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.

3.55. ACCESS TO RECORDS: The following access to records requirements apply to this Contract:

- A. In accordance with 49 C. F. R. 18.36(i), the 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 C. F. R. 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.
- B. 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.
- C. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than four (4) 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).

- D. Contractor agrees and understands that in addition to federal law, access to government records is further governed by the Texas Public Information Act more commonly referred to as the Texas Open Records Act ("TORA). Any proprietary information, trade secrets or confidential commercial and financial information that a Contractor believes should be exempted from disclosure **shall be specifically identified and marked as such by Contractor**. Blanket-type identification by designating whole pages or sections as containing proprietary information, trade secrets or confidential commercial and financial information may not be 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, the Contractor(s) involved if and only if the information requested was previously 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. **THE CONTRACTOR(S) INVOLVED AGREE TO AND HEREBY DO INDEMNIFY VIA FOR ITS COSTS ASSOCIATED WITH CONTRACTOR'S REFUSAL TO PRODUCE SUCH IDENTIFIED INFORMATION. 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.**

3.56. BUY AMERICA: RESERVED.

- 3.57. **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 502(b) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 792(b),(7); 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 Benefiting 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.

- 3.58. 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.
- 3.59. NO OBLIGATION BY THE FEDERAL GOVERNMENT:** (1) VIA and the 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, 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.
- 3.60. 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 that would cause VIA to be in violation of the FTA terms and conditions.
- 3.61. GENERAL DISADVANTAGED BUSINESS (DBE) PROVISIONS: (Refer to Section 4 for provisions specific to this Contract).**
- 3.61.1 DBE Program:** As a condition to financial assistance, VIA has submitted and the DOT has approved, a Disadvantaged Business Enterprises 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.
- 3.61.2 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 a 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.
- 3.61.2.1 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.
- 3.61.2.2 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.
- 3.62. 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.

3.63. SUBCONTRACTS:

3.63.1 Use of Subcontractors: The Contractor may utilize the services of specialty subcontractors on those parts of the work that under normal contracting practices, are performed by specialty subcontractors.

3.63.2 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 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.

3.63.3 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 the Contractor, for payment of any work or services performed under this Contract. The Contractor is and shall be fully responsible to VIA for the acts and omissions of Contractor's subcontractors and any person directly or indirectly employed by the subcontractor.

3.63.4 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 the sole responsibility of the Contractor.

3.63.5 Lack of Privity: Nothing contained in this contract shall create any contractual relation between VIA and a subcontractor.

3.63.6 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 or any responsibility for performing this contract, unless such approval or consent specifically provides otherwise.

3.63.7 Cost-Plus Subcontract: The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-a-cost-basis.

3.63.8 Substitution of Contractors: Any subcontractor receiving approval in accordance with the terms of this section (3.63) must be utilized by the Contractor for the portion of the Work for which the subcontractor was approved. VIA will generally not entertain substitutes of any such subcontractor in the absence of compelling circumstances to do so.

3.63.9 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 SUFFICIENT 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.

- 3.64. **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.
- 3.65. **RECYCLED PRODUCTS:** (Applies to all contracts for items designated by the EPA, when procurement is made of \$10,000 or more of one of these items during a fiscal year, using Federal funds). The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.
- 3.66. **LOBBYING: RESERVED.**

PART 4
DISADVANTAGED BUSINESS ENTERPRISES SPECIAL PROVISIONS

4.1. Disadvantaged Business Enterprise (DBE) Contract Goal. The DBE Contract Goal for this contract is specified in the Schedule of Supplies and Services under Notes to Bidders. All bidders/offers must submit with their bid/offer the DBE documentation contained in or otherwise referenced in the "Disadvantaged Business Enterprise Special Provisions."

4.1.1 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.

4.1.2 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 doing the following:

- (1) Documents that it has obtained enough DBE participation to meet the goal; or
- (2) 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.

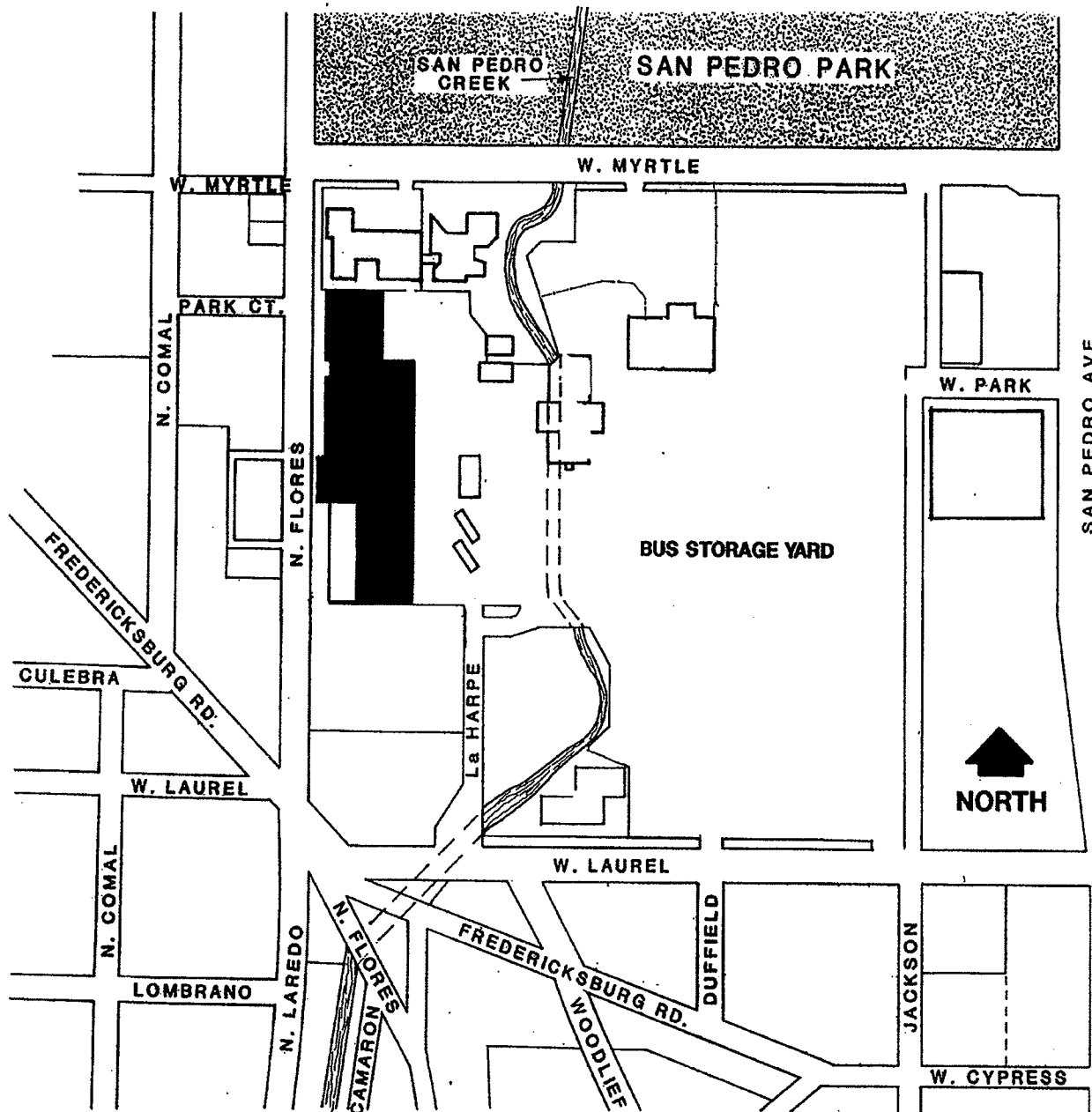
4.1.2.1 Administrative Appeal. In the event that VIA determines that the bidder/offeror has failed to make good faith efforts to meet the contract goal, bidder/offeror shall have the opportunity for administrative reconsideration by VIA, as described in VIA's Disadvantaged Business Enterprise Program dated August 1999 ("VIA's DBE Program").

4.1.3 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;
- (ii) A description of the work that each DBE will perform
- (iii) The dollar and percentage amount of the participation of each DBE firm;
- (iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
- (v) Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; 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).

4.1.4 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 prime 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.

4.1.5 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.



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 map denotes the location for bid/proposal drop-off.