

Issue Date: February 1, 2011

VIA Contract #11-069



REQUEST FOR PROPOSAL
FOR
ARCHITECTURAL DESIGN AND
DEVELOPMENT SERVICES

REVISED: JANUARY 2011

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1. REQUEST FOR PROPOSAL

1.1 Invitation. VIA Metropolitan Transit is seeking statements of qualifications and proposals from qualified firms that can provide a full range of Architectural Design and Development Services.

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

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

1.3 Procurement Schedule:

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

<u>Date</u>	<u>Time*</u>	<u>Event</u>
<u>February 1, 2011</u>		Request for Proposal Issued.
<u>February 16, 2011</u>	10:00 a.m.	Pre-proposal Conference in the Procurement Conference Room, at the address shown under "Inquiry and Questions" below.
<u>February 28, 2011</u>		Last Day to Submit Request for Clarifications and/or Modifications to the Procurement/Contract Documents.
<u>March 8, 2011</u>		VIA's Response to Requests for Clarifications and/or Modifications.
<u>March 18, 2011</u>	4:45 p.m.	Deadline for submitting Statement of Qualifications and proposals package.

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

1.3.2 Inquiry and Questions: Proposals should be submitted to, and any requests and all questions should be directed to:

Procurement Department
VIA Metropolitan Transit
Attn: Laura Garza
1720 N. Flores Street
P.O. Box 12489
San Antonio, Texas 78212
Phone: 210-362-2415
Fax: 210-362-2588
Email: laura.garza@viainfo.net

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

1.3.4 Request for Clarification and/or Modifications: Proposers must submit requests for changes to or approval of equals, clarifications and modifications of the specifications in writing as provided in Section 4.2. Proposers Requests and Appeals, of the contract documents.

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

1.3.5 Receipt of Proposal: Prior to the time and date indicated above, (in the section entitled, "Summary of Salient Dates") all Statements of Qualifications and Proposals shall be delivered to the Contract Administrator at the address indicated above, (in the section entitled "Inquiry and Questions"). Statements of Qualifications and Proposals received after the above time and date shall not be considered, except as provided in the section entitled "Late Submissions." An original and **6** copies shall be submitted in a sealed package. The package shall be labeled "**Architectural Design and Development Services - VIA #11-069**" and addressed as indicated above, (in the section entitled "Inquiry and Questions").

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

1.4 Acceptance Period: Proposals shall remain valid for a period of ninety (90) calendar days from the date of submission. If a Best and Final Offer has been requested of the Offeror/Proposer, the Proposal shall remain valid for a period of up to sixty (60) additional days from the date of submission of the Best and Final Offer.

1.5 Evaluation and Selection of Statement of Qualifications and Proposals:

1.5.1 Firm's Basic Experience and Personnel Resources. In order to be considered, interested Firm's must submit a qualifications statement that provides the following information:

- A. The location of the firm's offices and a point of contact within each office.
- B. The number of personnel by discipline (e.g., principal architects, architect interns, CAD technicians, etc.).
- C. Summary of professional service fees received for each of the last five years.
- D. Profile of firm's project experience for last five years.
- E. Summary of annual average professional services revenues for last three years showing totals for Federal and Non-Federal work.

*VIA will accept Standard Form (SF) 330 Part II as a supplemental response to this requirement.

1.5.2 Project Specific Qualification Statements and Proposals:

- A. To be acceptable, proposals shall be of no more than 40 pages (single-sided using 12 point or greater font size) not including resumes. Each resume shall be 2-page maximum, single-sided using 12 point or greater font size. The Proposal pages shall be numbered and bound, or in a 3-ring binder with the proposing firm's name clearly indicated on the cover.
- B. The Proposer is expected to agree with the terms contained or referenced herein. The Proposer should therefore not make any changes to these terms, nor restate any provisions in their Proposal or supporting material. However, if the Proposer has any specific exceptions, such exceptions should be set forth in a separate letter included with its response to the RFP. VIA is under no obligation to entertain or accept any such specific exceptions. Exceptions raised at a time subsequent to proposal submission will not be accepted. The scope of the tasks to be performed by the Proposer are set forth in this document.
- C. Each section of the proposal shall be separated with a tab divider that is labeled in accordance with the requirements specified below:
 - 1. Executive Summary
 - 2. Firm's Experience
 - 3. Project Team – List the proposed project team, showing all firms and their roles in the contract. Include an organizational chart of the proposed team, showing the names and roles of all key personnel and the firm they are associated with.
 - 4. Relevant Project Experience – Relevant experience of each of the proposed team's firms. For all projects referenced, include the name of the company, a contact person and current telephone number for verification purposes.
 - 5. Project Approach and Written Presentation – Proposed management approach for performing the required services, being responsive to VIA's needs, keeping VIA apprised of the project status and ensuring the quality of the work product.
 - 6. Forms from Section 9
 - 7. Appendix – include resumes and the following;
 - a. A complete list of firm's affiliates.
 - b. If the proposing firm or any employee, agent or subcontractor of the proposing firm has any conflict of interest, or may give the appearance of a possible conflict of interest, the proposing firm shall include in its proposal a statement indicating the nature of the conflict. VIA reserves the right to disqualify the proposing firm if, in its sole discretion, any interest disclosed from any source could create, or give the appearance of, a conflict of interest. VIA's determination regarding any question(s) of conflict of interest shall be final. See Attachment "A" for more information regarding this disclosure.

*VIA will accept Standard Form (SF) 330 Part I as a supplemental response to this requirement.

1.5.3 Evaluation Criteria. VIA will employ those evaluation criteria set forth in this paragraph or in addenda that may be issued. An evaluation criterion is deemed to include any unstated sub-criterion that logically might be included within the scope of the stated criterion.

1.5.4 Initial Evaluation. All statements shall be initially evaluated and ranked on the basis of the following weighted factors:

CRITERIA	WEIGHT
A. Firm's Experience, Staff and Staffing Level:	45
<ul style="list-style-type: none"> a. Firm's past and present experience in performing similar assignments for other owners and the overall reputation of the firm. b. Depth of experience of the consulting firm's staff as defined in Section 2.4. c. Ability to assign qualified architectural design staff that will be responsible for the project and will be able to complete the work within the time schedule required by VIA. 	
B. Project Approach and Written Presentation:	40
<ul style="list-style-type: none"> a. Demonstrated understanding of the requirements of this contract as identified in Section 2.3 Scope of Services. b. Demonstrated ability to solve problems. What lessons has the firm learned in previous projects and how have they reacted under adverse conditions? c. How will the firm accomplish this project? Describe the firm's project plan and approach required to accomplish the objective listed in Section 2.4 Proposed Work Under This Contract. 	
C. Forms and Resumes:	15
<ul style="list-style-type: none"> a. Did firm provide all required forms listed under Section 9 of RFP? b. Are resumes provided in proposal's appendix section? Did firm include list of affiliates? c. Are there any conflicts of interest and is there an explanation for any conflicts? 	
TOTAL	100

1.5.5 Short-list. The committee will short-list those firms that are deemed within the range of consideration. Firms not short-listed will be notified in writing as soon as practical.

1.5.6 Interviews. Following evaluation of qualifications and proposals and development of the short-list of qualified firms, VIA will establish a schedule for each qualified firm to make oral presentations. VIA will advise qualified firms in advance of any questions VIA may have regarding the firm and its capabilities.

1.5.7 Final Ranking. At the conclusion of the oral presentations, VIA will perform final scoring and ranking of the short-listed firms. Once an agreement is reached on the highest qualified firm, that firm will then be requested to submit a cost proposal for negotiation of a contract.

1.5.8 Negotiations. VIA will negotiate compensation, which it determines to be both fair and reasonable for the services that are to be provided. In making such a determination, VIA shall take into account the estimated value of the services to be rendered, the scope of work, complexity, and professional nature thereof.

1.5.9 Rejection of Price Proposal. In the event that compensation can not be agreed upon, VIA may terminate negotiations and reject the price proposal. VIA will then request a price proposal and will begin negotiations with the second highest qualified firm. This process may continue, as necessary, until successful negotiations are concluded, unless VIA determines that a satisfactory contract may not be awarded.

1.5.10 Best and Final Offer. The firm which presents a fair and reasonable price may be required to

submit a Best and Final Offer. This offer must remain valid for a sixty (60) day period after submission of the Best and Final Offer to VIA.

1.5.11 Multiple Contract Awards. It is VIA's desire to contract with one or more firms that can provide the expertise, quality, experience and resources to effectively provide architectural design and development services. VIA reserves the right to contract with multiple firms. If multiple awards are made, the criteria listed above, in addition to the evaluation process detailed in this section will be used to determine contract award. Award will be made to the responsible firms whose proposals are most advantageous to VIA. Accordingly, VIA may not necessarily make an award to the Proposer with the highest technical ranking nor award to the Proposer with the best price if doing so would not be in the overall best interest of VIA.

1.6 Investigation Rights. VIA reserves the right to investigate the qualifications of all firms under consideration and to confirm any part of the information furnished by a firm, or to require other evidence of managerial, financial or technical capabilities that are considered necessary for the successful performance of the work. VIA reserves the right to visit sites where work of a similar nature has been performed by the firm.

1.7 Late Submissions.

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

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

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

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

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

1.8 Documents to be Submitted with Proposal: The following documents/forms (attached hereto in the sections indicated) are to be completed by the Offeror and must be submitted with the Statement of Qualifications:

- 9.1.1 Offer and Certifications Form
- 9.1.2 Acknowledgment of Addenda
- 9.1.3 List of Similar Contracts/References **(This form must be submitted for all Subcontractors as well)**
- 9.1.4 Certifications of Restrictions on Lobbying
- 9.1.5 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- 9.1.6 Business Questionnaire
- 9.1.7 Schedule of Participation
- 9.1.8 Conflict of Interest Questionnaire

1.9 Disadvantaged Business Enterprise Goal/Target:

A DBE goal will be established for each task order on an individual basis based on the task order's definite scope of work. VIA will set contract goals as deemed necessary and Contractor must exert good faith efforts to meet the DBE contract goal set for each task order. The DBE firms utilized must be certified with VIA in accordance with provisions of Part 8 of this document. Please see section entitled "Disadvantaged Business Enterprise" or contact VIA's DBE office at 210-362-2077 for information regarding VIA's DBE program.

2. SCOPE OF WORK, TERMS AND CONDITIONS

2.1 Indefinite Quantities Contract. It is specifically understood that this is an “indefinite quantities” contract and that work to be performed hereunder may be assigned by VIA, in its sole discretion, by documents referred to herein as “Task Orders.” It is further understood that this is a non-exclusive contract, and that VIA is under no obligation to assign tasks or work to the Contractor, even if the work falls under the scope of this contract (except to the extent of the minimum compensation specified herein). VIA reserves the right to assign similar work to any other Contractor at VIA’s sole discretion.

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

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

2.2 Contract Period.

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

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

2.2.3 Term. The term of the contract is three (3) years. Following the three (3) year term, VIA may extend the contract for two (2) additional one (1) year terms.

2.3 Scope of Services.

2.3.1 General Information. The Contractor, in accordance and compliance with the terms, provisions and requirements of this Contract shall manage, perform and provide all activities and services and produce all reports set out in the scope of services. Modifications or alterations to the scope of work may be made only pursuant to prior notification and written approval of VIA.

2.3.2 Multiple Contract Awards. It is VIA’s intent to contract with one or more firms that can provide the expertise, quality, experience and resources to effectively provide architectural design and development services for future undefined development projects. To accomplish the work, VIA desires to establish contracts with qualified and experienced architectural firms. For each assigned task the selected firm(s) will be required to provide the appropriate level of service necessary to achieve completion.

2.3.3 Assignment of Task Orders. VIA will employ specific criteria to each task to determine the assignment of task orders. Assignment of task orders will be based on the following criteria:

- Past Performance on earlier tasks or orders issued under the contract
- Quality of deliverables
- Timeliness of deliveries
- Experience or expertise in a specific field
- Price

- Other factors considered relevant by VIA

2.3.4 Price Requests/Task Orders. Following contract award, VIA will issue price requests for architectural services. The price request will include a scope of services. The architectural firm(s) will submit a price proposal based on the appropriate level of service required to complete the specific project and the negotiated rates established for the contract. After a mutually agreed amount is determined, VIA will issue a Task Order authorizing the architectural firm(s) to begin the work described in the scope of services. VIA reserves the right to negotiate hours, staffing, and other service requirements before issuance of each Task Order.

2.3.5 Escalation. Hourly rates shall remain firm during the entire first 24 months of the Contract term. For the subsequent years of the Contract term, the Contractor will be allowed, upon written request and approval by VIA, to adjust prospectively the hourly rates that will apply during that year based on the Consumer Price Index (CPI). The hourly rates will be adjusted by the percentage change of the CPI for the San Antonio area as evidenced by the most recent CPI figures available to VIA at that time. The effective date of the CPI adjustment, if any, will commence on either; 1) the first day of the third and/or subsequent year(s) of the Contract term, or any extension thereof, or 2) the date of the Contractor's request, whichever event is later. The CPI adjustment, if any, is subject to a maximum increase of 3.5% in any one year, unless otherwise mutually agreed.

Rate increases will only apply to task orders issued after the increase effective date. Therefore, rate increases will not be applied retroactively. The percentage change will be the CPI for the current period less the CPI for the previous period divided by the previous period CPI multiplied by 100. Hourly rates may only be adjusted once a year.

2.3.6 Design Errors or Deficiencies. If the Contractor's designs, drawings or specifications contain errors or deficiencies, the Contractor agrees to and shall correct said designs, drawings or specifications at no increase in price to VIA.

2.3.7 Possible Projects:

- Renovation & remodel of existing facilities
- Design of transit patron facilities
- Design of maintenance facilities
- Site Feasibility Analysis

2.4 Proposed Services Required Under the Contract.

All work performed under this contract shall be performed by or under the direct supervision of a State of Texas Registered Architect. The consultant may be required to make presentations to VIA Management, VIA Board of Trustees, and various groups and committees. The proposed services required under the contract will include but is not limited to the following:

2.4.1 Project Administration and Management.

- Discipline coordination/document checking
- Agency consulting/review/approval
- Owner supplied data coordination
- Preliminary estimate of the cost of the work

2.4.2 Pre-Design/Planning Services.

- Space schematics/flow diagrams
- Programming
- Existing facilities surveys
- Economic feasibility studies

2.4.3 Site Development Services.

- Site development planning
- Detailed site utilization studies
- Site feasibility analysis
- Off-site utility studies
- Environmental studies and reports
- Zoning and platting processing assistance
- Geotechnical engineering
- Site surveying
- Tree survey

2.4.4 Design Services.

- Schematic Design
- Design Development
- Coordination of construction documents
- Building permit issues/traffic analysis
- Construction documents (Final Design)
 - Architectural design/ documentation
 - Structural design/ documentation
 - Mechanical design/ documentation
 - Electrical design/ documentation
 - Civil design/ documentation
 - Landscape design/ documentation
 - Interior design/ documentation
 - Materials research/ specifications

2.4.5 Bidding and Negotiation Services.

- Bidding materials
- Addenda
- Analysis of alternates/substitutions
- Bid evaluation

2.4.6 Construction Phase Services.

- Submittal services
- Observation services
- Supplemental documentation
- Quotation requests/change orders
- Interpretations and decisions
- Project closeout

2.4.7 Supplemental Services.

- Fine arts and crafts
- Graphic design
- Renderings
- Model construction
- Still photography
- Life cycle cost analysis
- Detailed cost estimating
- Value Engineering

2.5 Additional Requirements.

- The successful Architectural firm(s) will be responsible, at no additional cost to VIA, to address and resolve any design issues that may arise during the construction phase.
- Minimum insurance limits have been set in Section 5.2, Specific Insurance Requirements. VIA reserves the right to change the minimum depending upon the complexity of each project assigned under this solicitation. Insurance limits required over the minimum will be negotiated for each project.

3. GENERAL TERMS

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

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

3.1.3.8 Substitution of Subcontractors: Any Subcontractor receiving approval in accordance with this paragraph 3.1 must be utilized by the Contractor for the portion of the Work for which they were approved. VIA will generally not entertain substitutes for any such Subcontractor in the absence of compelling circumstances to do so.

3.1.3.9 INDEMNITY: BY SUBMISSION OF A BID/PROPOSAL/STATEMENT OF QUALIFICATIONS (AS THE CASE MAY BE) THE CONTRACTOR AGREES TO THE FULLEST EXTENT ALLOWED UNDER LAW, INCLUDING BUT NOT LIMITED TO SECTION 271.904 OF THE TEXAS LOCAL GOVERNMENT CODE, THAT HE/SHE/IT WILL INDEMNIFY AND SAVE VIA HARMLESS FROM ALL CLAIMS GROWING OUT OF THE LAWFUL DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, AND ALL SUPPLIES, INCLUDING COMMISSARY, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. THE CONTRACTOR SHALL, AT VIA'S REQUEST, FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED BE PAID, DISCHARGED, OR WAIVED. IF THE CONTRACTOR FAILS TO DO SO, THEN VIA MAY, AFTER HAVING SERVED WRITTEN NOTICE, DIRECT, OR WITHHOLD FROM THE CONTRACTOR'S UNPAID COMPENSATION A SUM OF MONEY DEEMED REASONABLY EFFICIENT TO PAY ANY AND ALL SUCH CLAIMS UNTIL SATISFACTORY EVIDENCE IS FURNISHED THAT ALL LIABILITIES HAVE BEEN FULLY DISCHARGED WHEREUPON PAYMENT TO THE CONTRACTOR SHALL BE RESUMED, IN ACCORDANCE WITH THE TERMS OF THIS CONTRACT, BUT IN NO EVENT SHALL THE PROVISIONS OF THIS SENTENCE BE CONSTRUED TO IMPOSE ANY OBLIGATIONS UPON VIA TO EITHER THE CONTRACTOR OR HIS SURETY.

3.2 Termination of Contract:

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

3.2.2 Termination For Cause

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

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

- regulations and laws; and
- d. Violation by Contractor of any rule, regulation or law to which Contractor is bound or shall be bound under the terms of this Contract.

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

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

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

3.3 Breaches and Dispute Resolution:

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

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

3.3.3 Remedies: Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between VIA and the Contractor arising out of or relating to this agreement or its breach may be decided by binding arbitration provided the parties mutually agree to the arbitration, the rules by which it shall be governed and the arbitrator or arbitrators. In the event arbitration is not agreed to, then either party may pursue its court action in a court of competent jurisdiction within Bexar County, Texas.

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

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

3.5 Copyright: No reports, maps, or other documents produced in whole or in part under this contract shall be the subject of an application for copyright by or on behalf of the Contractor. All reports, maps, and

other documents produced under this contract shall become the property of VIA. THE CONTRACTOR SHALL, AT ITS EXPENSE, DEFEND ALL SUITS OR PROCEEDINGS INSTITUTED AGAINST VIA AND PAY ANY AWARD OF DAMAGES ASSESSED AGAINST VIA IN SUCH SUITS OR PROCEEDINGS, INSOFAR AS THE SAME ARE BASED ON ANY CLAIM THAT MATERIALS FURNISHED OR WORK PERFORMED UNDER THE CONTRACT CONSTITUTES AN INFRINGEMENT OF ANY PATENT, TRADE SECRET, COPYRIGHT, OR ANY OTHER PROPRIETARY RIGHT.

- 3.6 Proprietary Rights:** Contractor agrees not to release data or information about the results of the project to any third party without first obtaining written authorization to release such information from VIA.
- 3.7 INDEMNIFICATION: BY SUBMISSION OF A PROPOSAL OF QUALIFICATIONS THE CONTRACTOR AGREES TO THE FULLEST EXTENT ALLOWED UNDER LAW, INCLUDING BUT NOT LIMITED TO SECTION 271.904 OF THE TEXAS LOCAL GOVERNMENT CODE, TO INDEMNIFY AND HOLD VIA, ITS OFFICERS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS, LIENS, LOSSES, EXPENSES, FEES (INCLUDING REASONABLE ATTORNEY'S FEES AND COSTS OF DEFENSE), PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY OR DEATH FOR WHICH RECOVERY OF DAMAGES IS SOUGHT THAT MAY ARISE OUT OF OR BE OCCASIONED OR CAUSED BY CONTRACTOR'S ACT, ERROR, OR OMISSION OR ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANT OF CONTRACTOR AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OF PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT. IN THE EVENT CONTRACTOR AND VIA ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO VIA AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES. FURTHER, CONTRACTOR SHALL PROMPTLY ADVISE VIA, IN WRITING, OF ANY CLAIM OR DEMAND AGAINST VIA OR CONTRACTOR KNOWN TO THE CONTRACTOR RELATED TO OR ARISING OUT OF CONTRACTOR'S ACTIVITIES UNDER THIS CONTRACT. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO NOR DO THEY CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHER WISE, TO ANY OTHER PERSON OR ENTITY.**
- 3.8 Ownership of Documents:** The Parties agree and understand that any and all documents produced under this Contract are the sole and exclusive property of VIA and VIA retains ownership of all such documentation including, but not limited to, studies, plans, specifications, and all related documents. To the extent necessary, CONTRACTOR HEREBY ASSIGNS AND TRANSFERS ANY AND ALL COPYRIGHTS TO VIA.
- 3.9 CONTRACTING AUTHORITY PROTECTION. ANY AND ALL OF CONTRACTOR'S EMPLOYEES WHILE ENGAGED IN THE PERFORMANCE OF ANY WORK REQUIRED BY VIA UNDER THIS AGREEMENT SHALL BE CONSIDERED EMPLOYEES OF CONTRACTOR ONLY AND NOT OF VIA, AND ANY AND ALL CLAIMS THAT MAY ARISE FROM THE WORKERS COMPENSATION ACT ON BEHALF OF SAID EMPLOYEES WHILE SO ENGAGED, AND ANY AND ALL CLAIMS MADE BY ANY THIRD PARTY AS A CONSEQUENCE OF ANY ACT OR OMISSION ON THE PART OF CONTRACTOR'S EMPLOYEES WHILE SO ENGAGED IN ANY OF THE WORK OR SERVICES PROVIDED TO BE RENDERED HEREIN, SHALL BE THE SOLE OBLIGATION AND RESPONSIBILITY OF CONTRACTOR. TO THE EXTENT ALLOWED BY LAW, CONTRACTOR INDEMNIFIES, SAVES, AND HOLDS HARMLESS VIA AGAINST ALL CLAIMS, DEMANDS, ACTIONS, OR CAUSES OF ACTION OF WHATSOEVER NATURE OR CHARACTER, AS PERMITTED BY LAW, ARISING OUT OF ANY REASON OF THE EXECUTION OR PERFORMANCE OF THE WORK PROVIDED FOR HEREIN AND FURTHER AGREES TO DEFEND, AT ITS SOLE COST AND EXPENSE, ANY ACTION OR PROCEEDING COMMENCED FOR THE PURPOSE OF ASSERTING ANY CLAIM OF WHATSOEVER CHARACTER ARISING HEREUNDER.**

- 3.10 Maintenance of Records:** Contractor shall maintain records to show actual time involved in performance of the Work and costs incurred.
- 3.11 RESERVED:**
- 3.12 Effect of Extensions of Time:** Granting of or acceptance of extensions of time to complete the work or furnish the labor or materials will not operate as a release to the Contractor from the covenants and conditions of the Contract.
- 3.13 Changes and Modifications:**
- 3.13.1 Changes By Contractor.** If, during the performance of Work under the Contract, the Contractor finds it impracticable to comply strictly with any portion of the work assigned Contractor, the Contractor shall notify the Contract Administrator immediately in writing.
- 3.13.2 Written Acceptance By VIA.** Any proposals by Contractor that vary or add to this Contract shall be construed as additional terms or modifications and shall not become part of the Contract unless accepted in writing, by the Contract Administrator.
- 3.13.3 Change Orders/Contract Modifications:** All changes in the work contemplated herein, or the work otherwise specified in Task Orders issued hereunder (if this is an Indefinite Quantities Contract), shall be made only with the prior approval of the Contracting Officer and only by appropriate written Change Order or Contract Modification as appropriate. The Contracting Officer may, at any time, by a written Change Order or Contract Modification, and without notice to the Surety (if any), make changes within the general scope of this Contract. If the change affects the Contractor's costs, then the Contracting Officer shall also make an equitable adjustment in the Contractor's compensation, after compliance by the Contractor with the Price Request procedure provided below. Charges or credits for the work covered by such approved Change Orders or Contract Modifications shall be determined by one or more, or a combination, of the following methods:
- (a) Unit prices previously approved.
 - (b) An agreed lump sum.
 - (c) The actual cost of:
 - 1) Labor;
 - 2) Materials;
 - 3) Insurance;
 - 4) Social Security and old age and unemployment contributions;
 - 5) An equitable allowance for profit.
- 3.13.4 Price Requests:** Where the Contracting Officer foresees issuing a Change Order affecting Contractor's costs, a Price Request will be issued to the Contractor. Unless otherwise specified therein, the Contractor shall fully respond to the Price Request within 10 days of issuance.
- 3.14 Assignment:** This Contract is personal in nature and the Contractor shall not assign, transfer, convey or otherwise dispose of the whole or any part of this Contract or Contractor's right, title or interest in or to any monies due or to become due under this Contract without VIA's express prior written consent.
- 3.15 Whole Agreements:** The Contract constitutes the whole of the agreement between the parties hereto and neither party has been induced to make or enter into the Contract by reason of any promise, agreement, representation, statement, or warranty other than contained herein.
- 3.16 Partial Invalidity:** If any term, provision, covenant, or condition of this agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

3.17 Titles and Headings for Convenience Only: As used throughout this Contract, titles and headings of sections are for convenience only, and shall not be used to aid in interpretation of the provisions contained herein.

3.18 Notice, Waiver, Applicable Law and Venue:

3.18.1 Notice: Notice given under the Contract shall be given in writing by certified mail return receipt requested at the respective designated addresses.

3.18.2 Waiver: Waiver by VIA of a breach by Contractor of any provision of this Contract shall not be deemed a waiver of future compliance therewith, and such provision, as well as other provisions hereunder, shall remain in full force and effect.

3.18.3 Applicable Law and Venue: The rights and duties of the parties hereto shall be determined by the laws of the State of Texas, and to that end venue shall lie, and this agreement shall be considered and construed as a contract made and to be performed in San Antonio, Bexar County, Texas. All work performed, pursuant to this solicitation and Contract shall be in compliance with the laws and regulations of the State of Texas and the United States of America and local rules and ordinances as may be applicable. Contractor shall, if requested by VIA, supply certification and evidence of such compliance.

3.19 Access to Records and Reports:

3.19.1 Audits: Upon three (3) days written notice, Contractor agrees to and shall provide VIA or any VIA representative, access to any and all books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of conducting audits, examinations, excerpts and transcriptions. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as determined by VIA or its representative.

3.19.2 Maintenance of Records: The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period as required by the appropriate retention statutes but in no case less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until VIA has disposed of all such litigation, appeals, claims or exceptions related thereto.

3.20 General Definitions:

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

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

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

"Construction Coordinator" (used in the context of construction contracts) is the person or organization who is responsible for the management and coordination of a construction project for VIA.

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

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

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

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

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

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

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

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

"Notice of Award" is the written notice sent by VIA notifying the selected Contractor of the award of contract, and acceptance of Contractor's offer to perform under the terms contained herein.

"Procurement" means the formal solicitation issued by VIA, for services.

"Protest" means a formal request contesting:

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

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

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

"Request for Proposal" (RFP) means the formal procurement issued by VIA (see also, "Procurement").

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

"Small Business Concern" means a for profit small business as defined pursuant to Section 3 of the Small Business Act and Small Business Administration regulations implementing the Small Business Act, except that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of \$17,420,000 over the previous three fiscal years.

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

- (1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.

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

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

"Specifications" means the written description and statement of necessary requirements of the services to be provided.

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

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

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

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

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

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

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

4. GENERAL SOLICITATION POLICY PROVISIONS.

- 4.1 Covenant Against Contingent Fees:** The Contractor hereby **warrants and represents** that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, VIA shall have the right to annul this Contract without liability or at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
- 4.2 Proposers' Requests and Appeals:**
- 4.2.1 Appointments:** Proposers may make appointments with the Contracting Officer to discuss any question a Proposer may have concerning the specifications, which may impact upon proposal submission.
- 4.2.2 Pre-proposal Approvals:** The Contracting Officer's written approval must be obtained prior to proposal submission for:
- a. any clarification of the specifications; or
 - b. any brand name or product proposed as equal to the one specified, unless the technical specifications explicitly permit approval after award; or
 - c. any sample or engineering detail which the technical specifications required to be submitted before proposing, including substitution of any required proposal or contract form; or
 - d. any modification to the specifications which the Proposer maintains are restrictive and which the Proposer proposes be altered, amended or changed.
- 4.2.3 Submission:** Submissions under Section 4.2.2, Pre-proposal Approvals, must be in writing and received by the Contracting Officer no later than the date specified in Section 1.3.4, Requests for Clarification and/or Modifications, of the Request for Proposal; and
- a. supported by evidence such as technical data, test results, and/or other pertinent information that demonstrates that the substitute offered is equal to or better than the specification requirement; or
 - b. in the instance of submission of a request for modification of the specifications, must contain a draft of the recommended language relating to the specification(s) which is/are proposed to be altered, amended or changed.
- 4.2.4 Appeal:** Any appeal of the Contracting Officer's determination in response to a request for pre-proposal approval must be submitted in writing and received by the Contracting Officer within five (5) working days of the date issuance of the Contracting Officer's determination.
- 4.2.5 Final Ruling:** After receipt of an appeal, if any, a final ruling will be issued by the Contracting Officer and provided contemporaneously to all Proposers. Proposers may protest a final ruling under Section 4.2.2, Pre-proposal Approvals, as provided in Section 4.7, Protest Procedures.
- 4.2.6 Withdrawal:** Proposers may withdraw a request or an appeal at any time prior to the Contract Administrator's issuance of a final ruling. There will be no further review by the Contract Administrator of a request or an appeal after a final ruling is issued.
- 4.2.7 Denial:** Any pre-proposal request for approval is denied unless such request is approved by the Contracting Officer in writing prior to proposal submission.

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

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

4.5 Covenant Against Gratuities: The Contractor hereby **warrants and represents** that it has not offered or given gratuities (in the form of entertainment, gifts, or otherwise) to any official or employee of VIA with a view toward securing favorable treatment in the awarding, amending, or evaluating performance of this Contract. For breach of this warranty, VIA shall have the right to annul this Contract without liability and/or employ any other remedy it may have at law.

4.5.1. Local Government Code 176.006: Any person who seeks to contract for the sale or purchase of property, goods or services with VIA shall file a completed conflict of interest questionnaire promulgated by the Texas Ethics Commission as required by the law (See Part 9, Forms).

4.6 Code of Ethics: On July 11, 1995, the VIA Board of Trustees adopted a *Code of Ethics and Conduct Related to Business Transactions*, establishing general standards of ethical conduct for VIA employees, Board members, Contractors and vendors. Contractor agrees to and hereby **warrants and represents** 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 void this Contract without liability and/or employ any other remedy it may have at law or in equity. Upon request, a copy of the *Code of Ethics and Code of Conduct Related to Business Transactions* shall be made available to Contractor.

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

4.7 Procurement Protest Procedure:

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

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

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

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

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

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

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

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

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

- (i) violations of Federal law or regulations; and/or,

(ii) violations of VIA's protest procedures for failure to review a complaint or protest in accordance therewith.

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

- 4.8 Release of Information:** Access to government records is governed by the Texas Open Records Act ("TORA"). Except as otherwise required by TORA, VIA may exempt from disclosure proprietary information, trade secrets and confidential commercial and financial information submitted in the proposal, bid or statement of qualifications. Any such proprietary information, trade secrets or confidential commercial and financial information which 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 will not assure 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 shall INDEMNIFY VIA for its costs associated with its refusal to produce such identified information; otherwise, the requested information may be released.**
- 4.9 Rejection of Proposals:** VIA reserves the right to reject any and all proposals that are not responsive or unreasonably priced, or impose modifying conditions. VIA may reject the proposal of any party who has been determined to be non-responsible in any former contract with VIA. VIA reserves the right to reject any or all proposals, and to waive technical defects as the interest of VIA may require. Each Proposer shall be notified if all proposals are rejected.
- 4.10 Preparation Costs:** All costs related to responding to this procurement solicitation, including (if applicable) the cost of any oral presentations required, shall be the sole responsibility of and shall be borne by each Proposer.

5. INSURANCE

- 5.1 General Insurance Requirements:** The Contractor and any subcontractors shall purchase and maintain in effect during the entire period of this Contract, including any maintenance period thereof, insurance of the types and with minimum limits of liability as stated below. Such insurance shall protect Contractor from any and all claims and damages, which may arise out of or result from 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:
- 5.1.1 Additional Insured:** The Commercial General Liability (Broad Form) and Commercial Automobile Liability policies shall be endorsed to name VIA and its employees as additional insured regarding Contractor's operations in performance of this Contract.
- 5.1.2 Waiver of Subrogation:** The Commercial General Liability, Commercial Automobile Liability and Workers' Compensation and Employer's Liability, shall be endorsed to provide a waiver of subrogation in favor of VIA, its officers, trustees, and employees.
- 5.1.3 Coverage Primary:** Such insurance as is provided therein shall be primary and non-contributing with any other valid and collectible insurance available to VIA. The limits of liability required above may be provided by a single policy of insurance or by a combination of primary, excess or umbrella policies. But in no event shall the total limits of liability available for any one occurrence or accident be less than the amounts required below.
- 5.1.4 No Commencement Without Coverage:** The Contractor shall not commence work at the site under this Contract until he/she has obtained all required insurance and until such insurance has been approved by VIA. Contractor shall not allow any subcontractor to commence work until all similar required insurance has been obtained and approved. Approval of the insurance by VIA shall not relieve or decrease the liability of the Contractor hereunder.
- 5.1.5 Certificates:** Two (2) copies of the certificate of insurance and applicable endorsements evidencing insurance coverage as required, shall be furnished to the Contracting Officer prior to commencement of work and within ten (10) calendar days after the date of Notice of Award. CERTIFICATES and ENDORSEMENTS SHALL BE PROVIDED BY CONTRACTOR AND ANYONE INVOLVED IN THE PERFORMANCE OF WORK UNDER THIS CONTRACT (not otherwise included under Contractor's coverage), INCLUDING ALL SUBCONTRACTORS. All certificates from Contractor and any subcontractors must be issued reflecting VIA Metropolitan Transit as the certificate holder. All Certificates of Insurance shall reflect the VIA project number and the name of the Contracting Officer. Failure to furnish the required certificates of insurance and accompanying endorsements within the time allowed shall not be considered cause for modification of any contractual time limits. All policies of insurance presented as proof of compliance with the above requirements shall be on forms and with insurance companies approved by VIA. All such insurance policies shall be provided by insurance companies having a Best's rating of A- rating or greater, VI or greater (A-:VI) as shown in the most current issue of A.M. Best's Key Rating Guide. Policies of insurance issued by insurance companies not rated by Best's or have a Best's rating lower than A-:VI will not be accepted as complying with the insurance requirements of the Contract unless such insurance companies are approved in writing prior to the award of the Contract. Certificate of Insurance shall contain transcripts from the proper office of the insurer, evidencing in particular those insured, the extent of the insurance, the location and the cancellation clause as required below.
- 5.1.6 No Lapse or Cancellation:** The Contractor and any subcontractor shall not cause any insurance to be canceled nor permit any insurance to lapse. All insurance policies shall include a clause to the effect that the policy shall not be canceled, reduced, restricted, or limited until thirty (30) days after VIA has received written notice as evidenced by return receipt of registered or certified letter. In the event of cancellation or lapse of insurance, the Contractor shall notify VIA immediately. In addition to any other remedies VIA may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, VIA shall have the right to order Contractor to stop work hereunder, and/or withhold any

payment(s) which become due, to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof. For contracts which require owners and contractors protective liability coverage, there are additional non-cancellation requirements. Refer to the section entitled "Owners and Contractors Protective Liability" for applicability and details.

- 5.1.7 Breach:** Failure to maintain insurance coverage as required herein, shall constitute a material breach and default.
- 5.1.8 Self Insurance:** The Contractor's insurance requirements as outlined herein, may be self-insured as long as the Contractor is in compliance with the State of Texas requirements for self-insurance and subject to approval and review or audit by VIA to verify the Contractor's financial stability. Audited Financial Statements as well as self-insured certificates must be approved by VIA prior to acceptance of self-insurance and prior to commencement of work. The Contractor's liability is not limited by the amount of insurance carried nor by its self-insurance.
- 5.1.9 Responsibility of Payments:** Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this Agreement.
- 5.1.10 Own Equipment and/or Property:** Contractor and any Subcontractors are responsible for all damage to their own equipment and/or property.
- 5.1.11 Other Obligations:** It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

5.2 Specific Insurance Requirements:

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

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

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

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

- 1) Premises/Operations
- 2) Independent Contractors
- 3) Products/Completed Operations
- 4) Personal Injury
- 5) Contractual Liability
- 6) Explosion/Collapse/Underground Property Damage (where applicable)

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

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

\$500,000 Combined Single Limit

5.2.5 Professional Liability: Coverage is required for professional liability, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission, with limits not less than:

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

5.2.6 Subcontracts: The Contractor shall require subcontractors to provide:

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

6. COMPENSATION, BILLING AND PAYMENT

6.1 Compensation: The Contractor shall be reimbursed by VIA for authorized costs incurred in performance of the work pursuant to each Task Order issued under this Contract, based on the unit prices specifically described in the Best and Final offer and in amounts negotiated for each Task Order. The Contractor shall include as part of the Request for Payment a list of all DBE subcontractors and the amounts to be paid to each of the subcontractors from this Request for Payment. This requirement is in accordance with FTA Circular 4716.1. The Contractor will submit a final invoice within 30 days after the completion of work. Invoices submitted after this time will not be honored unless prior arrangements are made and approved in writing by VIA.

6.2 Ceiling Price: The estimated ceiling price established for this Contract is **\$500,000 per contract** over the term of the contract, inclusive of the cost of all task orders issued hereunder. In the event that the ceiling price is exceeded during the course of this Contract, VIA shall have no obligation to pay and Contractor shall only exceed the ceiling price at its own risk, unless the Contractor is notified in writing by the Contract Administrator that additional funds are allocated to the Contract, effectively raising the ceiling price, and that the Contractor is authorized to exceed the ceiling price. VIA may raise the ceiling price at any time in its sole discretion and in the event the ceiling price is raised, Contractor shall be obligated to perform within the terms of this Contract and the new ceiling price.

The right to refuse to allocate additional funds is reserved by VIA in its sole discretion. In the event additional funds are not allocated, VIA may either terminate the Contract or allow the Contract to remain in effect until expiration of the term (in contemplation of the possibility of additional funding allocations); however, VIA shall not be obligated under any circumstance to pay any amount in excess of the ceiling price unless the Contractor is authorized to exceed the ceiling price as provided herein. The Contractor shall not be required to perform further services in excess of the ceiling price unless and until authority is granted to exceed the ceiling price as provided herein. The ceiling price represents VIA's maximum total funds currently allotted to this Contract and shall not be construed as an obligation by VIA to pay any funds or to otherwise incur any costs without the issuance of a task order by VIA, which (the issuance or non issuance of which) shall be solely within the discretion of VIA.

6.3 Minimum Compensation: As consideration for this Contract, the sufficiency of which is acknowledged by Contractor, VIA shall issue (a) Task Order(s) for work which will allow the Contractor to be compensated in (at least) the amount of one thousand (\$1,000) dollars.

6.4 Method of Payment: Reimbursement shall be made monthly within thirty (30) days after the receipt of Contractor's invoice. Contractor shall submit, during the progress of the work, an invoice by the fifteenth (15th) day of each month for work done or expenses incurred during the previous month. VIA will withhold ten percent (10%) of each invoiced amount pending completion of the Contract (or each Task Order, if this is an Indefinite Quantities Contract). Prior to final payment, an audit of the records supporting the costs claimed by the Contractor shall be made promptly and without cost to the Contractor. If, after final audit, certain previous reimbursement costs are judged ineligible, the Contractor will be responsible to cover the costs and reimburse VIA, if necessary, in the amount of the ineligible reimbursements.

In the event payment is not made within thirty (30) days, the Contractor shall submit a reminder invoice marked "overdue".

6.5 Payments by Contractor: The Contractor agrees to pay each subcontractor under this Contract for satisfactory performance of its contract no later than ten (10) calendar days from the receipt of each payment from VIA. The Contractor agrees further to release retainage payments to each subcontractor within thirty (30) calendar days after the subcontractor's work is satisfactorily completed and submits all required closeout documentation. VIA must acknowledge acceptance of closeout documentation before the firm is in compliance with the requirements. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of VIA. This clause applies to both DBE and non-DBE subcontractors. Prime Contractors not in compliance may be subject to withholding of next payment.

- 6.6 Expenses.** Contractor understands and agrees that all costs and expenses incurred by Contractor under this Contract, including but not limited to labor, supervision of work, report reproduction, typing, insurance, communication, computer access, materials, supplies, subcontractor costs, telephone, stationary, rent and any and all other costs and expenses necessary to complete this Contract, shall be borne by Contractor.
- 6.7 Statutory Compliance.** Notwithstanding any other provision in this Contract, the Parties shall comply with all applicable requirements of V.T.C.A., Government Code, Chapter 2251, as amended.
- 6.8 Discounts**
- 6.8.1 Evaluation of Offers.** Discounts for early payment shall not be considered in the evaluation of offers, except in the case of a tie bid provided that a minimum of ten (10) days is offered in which to take the discount.
- 6.8.2 Binding.** Discounts that are included in offers become a part of the resulting contracts and are binding on the Contractor for all orders placed under the Contract. Discounts offered only on individual invoices will be binding on the Contractor only for the particular invoice on which the discount is offered.
- 6.8.3 Time Computation.** Time will be computed, for discount computation purposes, from:
- (a) the date of delivery to and acceptance by VIA; or
 - (b) the date a proper invoice is received in the office specified by VIA, if the latter date is later than the date of delivery.
- 6.8.4 Payment Date.** Payment will be deemed to have been made on the date which appears on payment checks.
- 6.9 Acceptance of Final Payment:** The acceptance by the Contractor of final payment shall be and shall operate as a release to VIA of all claims and all liability to the Contractor for all things done or furnished in connection with this work and for every act and neglect of VIA and others relating to or arising out of this work. No payment, however, final or otherwise, shall operate to release the Contractor or the Contractor's Surety or Sureties from any obligation under this Contract or Performance and Payment Bond.

7. FEDERAL PROVISIONS
[THESE PROVISIONS APPLY TO THE EXTENT APPLICABLE]

- 7.1 Fly America Requirements:** The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international transportation.
- 7.2 Buy America Requirements: RESERVED**
- 7.3 School and Charter Bus Requirements: RESERVED**
- 7.4 Cargo Preference – Use of United States-Flag Vessels: RESERVED**
- 7.5 Seismic Safety Requirements:** The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this Contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.
- 7.6 Energy Conservation Requirements:** The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321).
- 7.7 Clean Water Requirements:** (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* The Contractor agrees to report each violation to the Purchaser (VIA) and understands and agrees that VIA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.
- 7.8 Bus Testing: RESERVED**
- 7.9 Pre-Award and Post Delivery Audits Requirements: RESERVED**
- 7.10 Lobbying:** Contractor shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to VIA.
- 7.11 Access to Records and Reports:** Contractor agrees to provide VIA, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 CFR 633.17 to provide the FTA Administrator or his authorized representatives including any PMO contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs

described at 49 U.S.C. 5307, 5309 or 5311. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

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

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

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

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

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

7.15 Recycled Products: RESERVED

7.16 Davis-Bacon and Copeland Anti-kickback Acts: RESERVED

7.17 Contract Work Hours and Safety Standards Act: RESERVED

7.18 RESERVED

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

7.20 Program Fraud and False or Fraudulent Statements and Related Acts: (1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, (31 U.S.C. 3801 *et seq.*) and U.S. DOT regulations, "Program Fraud Civil Remedies," (49 CFR Part 31) apply to its actions pertaining to this Project. Upon execution of the underlying Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate. (2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. 5307, the Government reserves the right to impose the penalties of 18 U.S.C. 1001 and 49 U.S.C. 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate. (3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further

agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

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

7.22 Government-Wide Debarment and Suspension:

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

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

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

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

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

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

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

7.24 Civil Rights Requirements:

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

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

7.24.2.1 Race, Color, Creed, National Origin, Sex: In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. 2000e, and Federal transit laws at U.S.C. 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by

Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. 200e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

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

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

7.26 Patents and Rights in Data: RESERVED

7.27 Transit Employee Protective Agreements: RESERVED

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

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

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

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

7.28.2.2 Contractor/Subcontractor Obligation: The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and

administration of [this] Contract[s]. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as VIA deems appropriate.

7.29 National ITS Architecture Compliance: RESERVED

7.30 Incorporation of Federal Transit Administration (FTA) Terms: The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, dated June 19, 2003, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any VIA requests which would cause VIA to be in violation of the FTA terms and conditions.

7.31 Drug and Alcohol Testing: RESERVED

7.32 - 7.39 Reserved for future expansion.

7.40 Additional Environmental and Resource Conservation Requirements:

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

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

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

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

7.40.4 Mitigation of Adverse Environmental Effects: Should the performance under this Contract cause adverse environmental effects, the Contractor agrees to take all reasonable steps to minimize such effects pursuant to 49 U.S.C. app. 1610, all other applicable statutes, and the procedures set forth in 23 CFR Part 771 and 49 CFR Part 622. The Contractor agrees to undertake all environmental mitigation measures that may be identified as commitments in applicable environmental documents (such as environmental assessments, environmental impact statements, memoranda of agreements, and statements required by 49 U.S.C. 303) and with any

conditions imposed by the Government as part of a finding of no significant impact or a record of decision; all such mitigation measures are incorporated in and made part of this Contract by reference.

7.41 Access Requirements for Individuals with Disabilities: The Contractor agrees to comply with, and assure that any subcontractor, or third party contractor under this Project complies with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 *et seq.* and 49 U.S.C. 322; section 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.

8. DISADVANTAGED BUSINESS ENTERPRISE

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

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

9. FORMS

9.1 Forms to be Submitted with Proposal:

9.1.1 Offer and Certifications Form:

The undersigned Contractor having read and examined the Procurement (see section entitled "Definitions") documents, and which will ultimately comprise the Contract for the above designated Work, and thoroughly familiarized himself/herself with the factors which will affect the execution of the Work and the cost thereof, does hereby offer to furnish all materials and labor to complete the work set forth in this offer.

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

The following certifications are made in connection with the offer and the performance of the Contract:

9.1.1.1 Good Faith Offer:

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

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

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

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

9.1.1.3 Affidavit of Non-Collusion:

The Offeror certifies that:

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

9.1.1.4 Certification of Restrictions on Lobbying:

The offeror certifies that:

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

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

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

9.1.1.5 Offer:

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

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

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

Signed this ____ day of _____, 20__.

PROPOSED CONTRACTOR (offeror)

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

By: _____

(individual or officer authorized to sign on behalf of offeror)

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

ATTEST: (if offeror is a corporate entity)

By: _____

[Affix CORPORATE SEAL here]

(title - usually, "corporate secretary")

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

Notary Public

AWARDED, executed and effective this ____ day of _____ 20__.

VIA Metropolitan Transit

By: _____

9.1.2 ACKNOWLEDGMENT OF ADDENDA

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

ADDENDUM NO. _____, DATED _____

ADDENDUM NO. _____, DATED _____

ADDENDUM NO. _____, DATED _____

ADDENDUM NO. _____, DATED _____

ADDENDUM NO. _____, DATED _____

ADDENDUM NO. _____, DATED _____

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

Name of Offeror

Street Address

City State Zip

Signature of Authorized Official

Name

Type of Entity

Position and/or Title

Date

9.1.4 CERTIFICATION OF RESTRICTIONS ON LOBBYING

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

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

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

Executed this _____ day of _____, 20 _____

Company Name: _____

By: _____
(Signature of Company Official)

(Title of Company Official)

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

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

CERTIFICATION

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

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

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

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

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

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

2. Business Mailing Address: _____

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

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

4. Business Type: Individual Corporation Partnership Joint Venture

5. Number of Years in Business: _____

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

7. Number of Employees:
 100 or fewer 101-500 501-750 751-1,000 1,001 or over

8. Is Business Owned by Minority Ethnicity? Yes No

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

10. Woman Owned? Yes No

11. Physically Challenged? Yes No

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

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

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

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

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

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

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

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

20. Has the government or other public entity requested or required enforcement of any of its rights under a surety agreement on the basis of a default or in lieu of declaring the Business in default? Yes No

21. Is the Business in arrears upon a contract or debt? Yes No
22. Are there any proceedings pending relating to the Business' responsibility, debarment, suspension, voluntary exclusion or qualification to receive a public contract? Yes No
23. Have liquidated damages or penalty provisions been assessed against the Business for failure to complete the work on time or for any other reason? Yes No
24. If a "yes" response is given under questions 14 through 23, please provide a detailed explanation including dates, references to contract information, contacts, etc. (attach additional pages as necessary). VIA reserves the right to inquire further with respect thereto.

25. List the name and business address of each person or legal entity which has a 10% or more ownership or control interest in the Business (attach additional pages as necessary).

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

Name of Bank: _____

Address: _____

City and State: _____

Officer familiar with bidder's account: _____

Federal Taxpayer I.D. number: _____

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

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

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

Printed Name: _____ Title _____

Signature of Owner: _____ Date: _____
 (Owner, CEO, President, Majority Stockholder or Designated Representative)

Questions about this document should be directed to the Contract Administrator.

9.1.7 SCHEDULE OF PARTICIPATION

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

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

The undersigned may enter into a formal agreement with subcontractors for work listed in this schedule. This Schedule of Participation may be modified at any time prior to the expiration of five working days after bid opening/deadline to submit proposals. 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 Offeror)

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

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

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

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

OFFICE USE ONLY

Date Received

1

Name of person doing business with local governmental entity.

2

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

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

3

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

Name of Officer

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

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

YES NO

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

YES NO

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

YES NO

D. Describe each affiliation or business relationship.

4.

Signature of person doing business with the governmental entity

Date

DISCLOSURE OF CONFLICTS OF INTEREST

VIA Metropolitan Transit (VIA) intends to award contracts to only those offerors whose objectivity is not impaired because of any related past, present, or planned interest, financial or otherwise, in organizations whose interests may be substantially affected by VIA activities. Based on this intent:

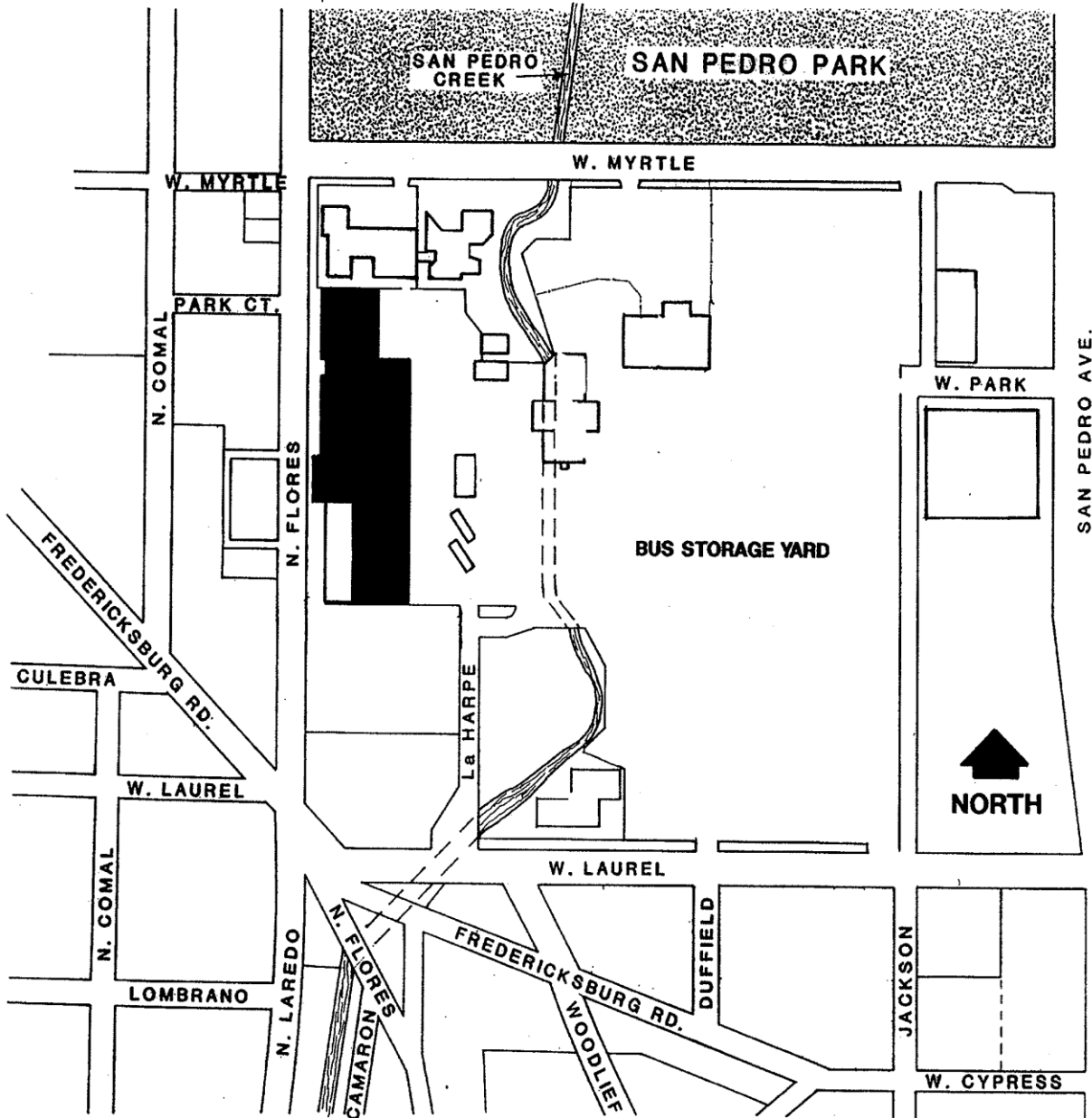
(a) The offeror shall provide a statement in its proposal which describes in a concise manner all past, present or planned organizational, financial, contractual or other interest(s) with an organization whose interests may be substantially affected by VIA activities, and which is related to the work under this solicitation. The interest(s) described shall include those of the proposer, its affiliates, proposed consultants, proposed subcontractors and key personnel of any of the above. Past interest shall be limited to within one year of the date of the offeror's technical proposal. Key personnel shall include any person owning more than 20% interest in the offeror, and the offeror's corporate officers, its senior managers and any employee who is responsible for making a decision or taking an action on this contract where the decision or action can have an economic or other impact on the interests of a regulated or affected organization.

(b) The offeror shall describe in detail why it believes, in light of the interest(s) identified in (a) above, that performance of the proposed contract can be accomplished in an impartial and objective manner.

(c) In the absence of any relevant interest identified in (a) above, the offeror shall submit in its proposal a statement certifying that to its best knowledge and belief no affiliation exists relevant to possible conflicts of interest. The offeror must obtain the same information from potential subcontractors prior to award of a subcontract.

(d) VIA will review the statement submitted and may require additional relevant information from the offeror. All such information, and any other relevant information known to VIA, will be used to determine whether an award to the offeror may create a conflict of interest. If any such conflict of interest is found to exist, VIA may (1) disqualify the offeror, or (2) determine that it is otherwise in the best interest of VIA to contract with the offeror and include appropriate provisions to mitigate or avoid such conflict in the contract awarded.

(e) The refusal to provide the disclosure or representation, or any additional information required, may result in disqualification of the offeror for award. If nondisclosure or misrepresentation is discovered after award, the resulting contract may be terminated. If after award the Contractor discovers a conflict of interest with respect to the contract awarded as a result of this solicitation, which could not reasonably have been known prior to award, an immediate and full disclosure shall be made in writing to VIA. The disclosure shall include a full description of the conflict, a description of the action the contractor has taken, or proposes to take, to avoid or mitigate such conflict. VIA may, however, terminate the contract for convenience if it is deemed that termination is in the best interest of VIA.



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.