



REQUEST FOR PROPOSAL

P-2095112

***TRE Double Tracking
Construction***

EXHIBIT D
Special Provisions

Dallas Area Rapid Transit Authority

Exhibit D**SPECIAL PROVISIONS****Table of Contents**

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Attachment 1 to Exhibit D - Escrow Bid Document Certification

Attachment 2 to Exhibit D – TRE Train Schedule for Construction.

1) **Contract Type**

This is a fixed price General Contractor's services contract.

2) **Contract Term/Period of Performance**

The term of this contract shall be from Notice to Proceed (NTP) plus 18 months.

3) **Workdays and Hours**

All work schedules shall be approved by the Authority. No work activities with the potential to delay train traffic will be permitted during FIFA and the State Fair of Texas.

Tentative dates for the State Fair of Texas

September 26, 2026 – October 19, 2026

Tentative dates for 2026 World Cup

June 8, 2026 – July 19, 2026

4) **Independent Contractor (6-302.02. JUN 86)**

The Contractor at all times shall be an independent Contractor. The Contractor shall be fully responsible for all acts and omissions of its employees, subcontractors, and their suppliers and shall be specifically responsible for sufficient supervision and inspection to ensure compliance in every respect with the contract requirements. There shall be no contractual relationship between any subcontractor or supplier of the Contractor and the Authority by virtue of this contract. No provision of this contract shall be for the benefit of any party other than the Authority and the Contractor.

5) **Escrow Price Proposal Documents**

- (a) General - Within two (2) working days of an Offeror being notified that its proposal for Construction Services is accepted, Offeror shall submit one (1) copy of all documentary information generated in preparation of its Price Proposal. This document is hereinafter referred to as "Escrow Bid Documents."
 - i. If the contract is not awarded to the highest ranked Offeror, then the Authority will impose the same requirements on any subsequent Offeror.
 - ii. The successful Offeror will certify in Attachment 1, Escrow Bid Document Certification, as a condition of award, that the "Escrow Bid Documents" constitute all the information used in preparation of its pricing and that no other cost reparation information may be submitted by the Offeror in resolving disputes.
- (b) Ownership - The Escrow Bid Documents are and shall remain the property of the offeror subject only to joint review by the Authority and the Offeror as provided herein. The Authority acknowledges that the Escrow Bid Documents, as defined herein, may contain trade secrets. The Authority agrees to safeguard the Escrow Bid Documents and all information contained therein against disclosure to third parties to the fullest extent permitted by law; provided, however, that use or disclosure of all or portions of the Escrow Bid Documents in any legal proceedings shall be subject to the rules and orders in such proceedings.
- (c) Purpose - Escrow Bid Documents will be used where appropriate and retained to assist in the negotiations of price adjustments and change orders and in the settlement of disputes, claims, and other controversies. Nothing in the Escrow Bid Documents or the Authority's review thereof shall alter or modify the contract documents or be considered a part thereof. The Authority's review of the Escrow Bid Documents shall not constitute approval of the Offeror's proposed methods, estimating assumptions, prices, or contract interpretations or be deemed a notice thereof from the Authority.
- (d) Format and Content - Offeror shall submit the Escrow Bid Documents in cost estimating format used to prepare its proposal. It is not the intention of this clause to require the Offeror to perform unreasonable efforts during the preparation of the proposal but to ensure that the Escrow Bid Documents will be adequate to enable complete understanding and proper interpretation for their intended use. The Escrow Bid documents shall be in English. The Escrow Bid Documents shall include all the following:
 - i. Clearly itemized estimated costs of performing the work in accordance with the Work Breakdown Structure used to develop the proposed cost.
 - ii. Easy identification of pre-construction and construction costs.

- iii. Assumptions used to determine crew sizes and productivity rates, any quotations received from subcontractors, or suppliers, memoranda, narratives, and reports used to develop the price.
 - iv. A breakdown of costs into categories such as direct labor, equipment, materials, and supplies.
 - v. Overhead rates for the prime contractor and each subcontractor.
 - vi. Fee allocated to each subcontractor.
 - vii. Contingency and risk allocations.
 - viii. All other significant assumptions or factors used to develop the price.
 - ix. A submission complying with this clause from all subcontractors whose participation exceeds fifteen (15) percent of the price.
- (e) Submission of the Escrow Bid Documents - The Escrow Bid Documents shall be submitted in a sealed container clearly marked with the Offeror's name, date of submittal, project name, solicitation number, and the words "Escrow Bid Documents." The submittal shall be accompanied by a certification statement (Form DB-I-107) signed by an individual authorized to execute the contract affirming that the material provided constitutes all the documentary information used in preparation of the bid and stating that s/he has personally examined the contents of the Escrow Bid Documents container and has found that the documents are complete and otherwise comply with the terms of this clause.
- (f) Storage of the Escrow Bid Documents - The successful Offeror shall provide a lockable fireproof cabinet or safe of a size sufficient to hold the Escrow Bid Documents. The cabinet shall be delivered to the Authority with the documents and the Offeror shall retain custody of the key(s) to the cabinet.
- (g) Pre-Award Examination - Prior to receipt of the Notice of Award, the Escrow Bid Documents of the Offeror will be examined, organized, and inventoried by representatives of the Authority and members of the Offeror's staff (who are knowledgeable of how the cost proposal was prepared) to ensure that the documents are authentic, legible and complete.
- i. If all the documentation required has not been included in the original submittal, additional documentation shall be submitted, at the Authority's discretion, prior to award of the contract.
 - ii. Discrepancies in the Escrow Bid Documents shall be reconciled by agreement between the Offeror and the Authority prior to award.
 - iii. Submission of complete Escrow Bid Documents is an essential element of the award process and a prerequisite for contract award. Failure to provide the documents in a timely manner may be a basis for rejection of the proposal.
- (h) Post-Award Examination - The Escrow Bid Documents shall be examined by both the Authority and the successful Offeror at any time deemed necessary by either party to assist in the negotiation of price adjustments and change orders or the settlement of disputes. Examination of the Escrow Bid Documents is subject to the following conditions:
- i. On a minimum of ten (10) calendar days prior to any planned examination, the Authority and the successful Offeror shall each designate, in writing to the other, the names of representatives who are authorized to examine the documents. No other person(s) shall have access to the Escrow Bid Documents except as required by law or under the rules or orders of any legal proceeding.
 - ii. Access to the Escrow Bid Documents shall only take place during normal business hours of the Authority and in the presence of representatives of both the Authority and the successful Offeror.
- (i) Post-Award Subcontracts - For portions of the work subcontracted after award, the Authority retains the right to require the successful Offeror to submit Escrow Bid Documents from the subcontractor prior to the subcontractor receiving NTP.
- (j) Final Disposition - The Escrow Bid Documents will be returned to the successful Offeror at such time as final settlement of all matters relating to the contract has been resolved and contract close-out has been completed.

6) **Construction Services Contract Milestones**

- (a) The Contractor shall not proceed with any Construction Services work required under this contract without a written NTP for Construction Services from the Authority and shall not proceed with any work on site without a written site Access Notice issued by the Contracting Officer. Any work performed or expense

incurred by the Contractor prior to the Contractor's receipt of NTP shall be entirely at the Contractor's risk. The Contractor shall commence performance of the work under this contract within ten (10) calendar days from the date the Contractor receives NTP. The Contractor shall prosecute the work diligently so as to meet the following Milestones.

(b) Construction Services Milestones

- i. **Inwood Bridge Steel Span Fabrication** (Milestone A): Completion of all Inwood Bridge Steel shop drawings, approval, and submission for steel fabrication must be completed within sixty (60) days of the NTP.
- ii. **Substantial Completion** (Milestone B): All work outlined in the bid schedule shall be completed within fourteen (14) months of NTP.
- iii. **Final Acceptance** (Milestone C): Contract Completion for Final Acceptance (Completion of all Work) Complete all requirements of the Contract within eighteen (18) months of NTP.

Completion of the work means completion of all Contract requirements to achieve Final Acceptance, including delivery and Authority acceptance of Project Record Documents as outlined in the specifications.

The punch list for Final Acceptance shall be generated jointly by the construction manager and Agency at least thirty (30) days prior to the anticipated Final Acceptance date.

- (c) If the Contractor submits a schedule showing a completion of any or all milestones before the scheduled dates, the Authority shall have the unilateral right to modify the contract changing the milestone dates in accordance with the schedule submitted by the Contractor with no equitable adjustment being made.
- (d) Notwithstanding any other provisions in this contract, the contractor shall reach a point of Final Acceptance of the contract within the time provided for the Contract Completion for Final Acceptance Milestone above.
- (e) The Contractor is not entitled to any monetary damages for delays to interim milestones; that is, milestones other than Contract Completion for Final Acceptance. Any entitlement to damages for delay to the Contract Completion for Final Acceptance milestone date is subject to the Exhibit F, General Provision entitled "No Damages for Delay." The Contractor shall not be entitled to monetary delay damages for delay to any milestone including the "Contract Completion for Final Acceptance" milestone, for delay caused by a third party (i.e., any entity not fitting into the definition of either Authority or the Contractor in Exhibit F, General Provisions, Section 1 Definitions). The Contractor has the express obligation to mitigate delay including, but not limited, to third-party delays.

7) Liquidated Damages

In accordance with the General Provision entitled "Liquidated Damages" and other relevant Special Provisions, the Contractor shall pay to the Authority the sums set forth below for each calendar day of delay in completion of the work or other measure of time as indicated for unauthorized impact to the Authority's operations outside the time periods established. Liquidated Damages shall be cumulative. Liquidated Damages shall not take into consideration any other contractor impact to rail. Each delay or interruption by any contractor shall be assessed Liquidated Damages in accordance with the contract terms.

Impact to Operations

The liquidated damages apply to any situation when the Authority or Freight Rail operations are delayed due to contractor activities beyond the authorized allotted time period agreed to by the Authority including, but not limited, to circumstances when: (i) TRE, Freight trains, or on track equipment request to pass through the Form B limits and the contractor fails to clear the foul zone resulting in delays and/or preventing passage through the Form B limits at the maximum authorized speed resulting in delays; or (ii) the contractor fails to clear the foul zone at the end of an approved absolute window resulting in delays.

If circumstances (i) or (ii) occur within the hours of 4:00 am and 9:00 am or between 2:00 pm and 7:00 pm (i.e., rush hours), the amounts shall be \$3,000 for the first fifteen (15) minutes of delay; then \$50,000 for the remainder of the first hour, \$40,000 for the second hour or any part thereof, and \$30,000 for each hour or part thereof of delay thereafter. If an unscheduled service interruption occurs during any other hours, liquidated damages shall be assessed at the rates shown above discounted by ten percent (10%).

Impact to operations during special events (Texas State Fair and FIFA World Cup)

The liquidated damages apply to any situation when the Authority or Freight Rail operations are delayed due to contractor activities beyond the authorized allotted time period agreed to by the Authority including, but not limited, to circumstances when: (i) TRE, Freight trains, or on track equipment request to pass through the Form B limits and the contractor fails to clear the foul zone resulting in delays and/or preventing passage through the Form B limits at the maximum authorized speed resulting in delays; or (ii) the contractor fails to clear the foul zone at the end of an approved absolute window resulting in delays.

If circumstances (i) or (ii) occur within the hours of 4:00 am and 9:00 am or between 2:00 pm and 7:00 pm (*i.e.*, rush hours), the amounts shall be \$6,000 for the first fifteen (15) minutes of delay; then \$100,000 for the remainder of the first hour, \$80,000 for the second hour or any part thereof, and \$60,000 for each hour or part thereof of delay thereafter. If an unscheduled service interruption occurs during any other hours, liquidated damages shall be assessed at the rates shown above discounted by ten percent (10%).

8) **Prosecution of the Work**

- (a) The Contractor shall proceed with the services and work only upon receipt of a formal written NTP from the Authority. The NTP shall state the services and work that the Contractor is authorized to perform. The performance of any portion of the services and work prior to receipt of the Authority's written and signed NTP shall be at the risk and expense of the Contractor. No work shall be performed on site prior to receiving a written site Access Notice from the Contracting Officer, pursuant to Special Provision "Construction Planning" below.
- (b) The Contractor shall begin work promptly within the time specified in the contract documents. After the work has started, it shall be prosecuted on all acceptable working days without stoppage until the entire contract is complete. Should the prosecution of the work be discontinued for any reason, the Contractor shall notify the Contracting Officer in writing of the Contractor's intent to stop.
- (c) Prior to work on site and prior to demolition of an area, the Contractor shall perform a Pre-Construction survey with photographs and video accurately showing the existing conditions at the construction site and any property intended to be used by the Contractor prior to work or demolition and submit such survey(s) to the Authority.
- (d) Prior to work on site, the Contractor shall complete the Contractor's Right of Entry Agreement (CROE) and must be approved by DART. CROE shall include the prime contractor and all subcontractors in one agreement.
- (e) The Contractor shall employ sufficient labor, material, and equipment for prosecuting all work to full completion in the manner and time required by the contract.
- (f) The Contractor shall conduct the work at all times in such a manner and in such sequence as will assure full completion of the work in accordance with the time specified in the contract and with least interference to active DART and City contractors.
- (g) Work hours at construction sites shall be per the requirements of the Technical Specifications and all local authorities having jurisdiction over the work area.
- (h) The Contractor shall comply with all federal, state, and local rules and regulations in execution of the work and cause each of its subcontractors and/or suppliers or any of their respective employees to comply with all such rules at no additional cost to the Authority.

9) **Construction Planning:**

Construction shall be planned and conducted in accordance with the following information:

- (a) No work shall be performed on site prior to receiving a written site Access Notice from the Contracting Officer. Contractor shall submit a written request for site access no less than ten (10) calendar days prior to Contractor's planned start date for the work on site.
- (b) Any work requiring suspension of rail service or testing on freight operating tracks shall require prior written approval from the Contracting Officer. Contractor shall request approval(s) at least thirty (30) days in advance of the work to allow Authority-approved notice to affected parties and full coordination with others. The contractor shall reimburse DART if any approved suspension of operations or rail service requires a bus bridge.

- (c) Freight tracks will remain open to rail testing and operating activities during construction and for the duration of the contract. The Contractor shall assume that freight rail tracks are operational and active at all times during construction period.
- (d) Work operations performed on Authority's property or adjacent properties shall be conducted in such a manner as to cause minimal inconvenience to the public and to owners of abutting property. Existing access to property shall be maintained as far as possible. If new access must be provided, every effort shall be taken to provide the new access before the existing access is removed. The Contractor shall not access stored materials or equipment or cross any adjacent property without providing the Authority written permission from the property owner.
- (e) No work performed by the Contractor shall cause any interference with the constant, continuous, and uninterrupted use of the tracks for freight service and freight operations, except as approved by the Authority in writing in advance of the requested track usage.
- (f) Contractor shall coordinate with the Authority, Operating Railroad Contractor for Roadway Worker Protection (RWP) and flagging service, at a minimum, 10 days prior to proposed work schedule. Contractor shall provide 48-hour minimum notice to the Authority and Operating Railroad Contractor for cancellation of such requested service(s). Authority's other designee shall furnish a maximum of three (3) flagging personnel per day to be paid by the Contractor. In the event of Contractor delay, the Contractor will be responsible for and pay for the cost of flagging services, without reimbursement from the Authority.
- (g) Contractor shall provide a three (3) week look ahead schedule to the Authority and operating railroad, for all construction activities.
- (h) Contractor shall coordinate and schedule the work with the other contractor(s) to maintain reasonable access to the site and protect any new construction at or adjacent to the site.
- (i) Contractor shall stay within the identified construction limits and shall neither disturb nor alter the designated adjacent property outside the limits of construction.
- (j) Rail Service Interruption if applicable
 - i. All service interruption requests shall be made in writing and must contain a detailed track outage plan, schedule detailed to half hour time periods, description of required Authority and Authority's contractor(s) resources, and a mitigation plan with defined trigger points. Plan must be submitted forty-five (45) days prior to scheduled activity.
 - ii. Contractor shall coordinate the scheduling of track outage plans to a level of detail to ensure adequate time for the signal and track contractor(s) time within the outage window to complete their installation, inspection, testing and preparation for rail traffic.
- (k) Contractor shall coordinate all grading work that has the potential to disturb the existing infrastructure, including the signal systems with the Authority and operating railroad contractor.
- (l) Contractor shall be responsible to always maintain clean and clear access into and out of the site through adjacent properties at all times. Damage to the existing access drive during construction activities shall be the responsibility of the Contractor.
- (m) For other instructions, the Contractor shall comply with the current version of TRACK MAINTENANCE AND ENGINEERING INSTRUCTIONS," dated July 19, 2007.

10) **Staging/Storage Areas**

The Contractor shall identify sites for its use for staging and storage that will not require acquisition of property. All sites the Contractor intends to use for staging or storage shall be submitted in advance to the Authority for approval together with written agreements from the owner of the property on the form required by the Authority in accordance with the Unauthorized Use of Property clause below. The submittal shall include the size, location, and planned use as well as the type of adjacent land uses and ownership. Unless otherwise approved by the Authority, any location used by the Contractor for staging and storage shall have the site and natural drainage pattern restored to its original condition upon completion of the project at no additional cost to the Authority. All construction staging and storage areas shall also include temporary erosion and sediment control plans if necessary. The Contractor will be responsible for all security and maintenance of the staging and storage areas.

11) **Unauthorized Use of Property**

Prior to use of any property not authorized by the Contract or law, the Contractor shall provide the Authority with written agreements on the form provided by the Authority authorizing use of property and signed by the owners of any property the Contractor intends to use or cross. Any modification of that form must be approved by the Authority. Any use of private property rights above, under, over, or through including, but not limited to

storage, staging, parking, or travel across any property, shall constitute use for the purpose of this provision. Any other use of property shall be considered unauthorized use. Unauthorized use of property may not be covered by Owner Controlled Insurance Policy (OCIP) or allowed by the Authority and any and all costs associated with unauthorized use shall be borne solely by the Contractor. The Contractor is also required to provide notification of such property uses to the Authority and/or OCIP Administrator and prepare a pre-use survey or photographic documentation prior to use in accordance with the requirements of the OCIP Administrator and the Authority.

THE CONTRACTOR SHALL INDEMNIFY THE AUTHORITY AND ITS AGENTS, CONTRACTORS, EMPLOYEES, BOARD, FOR ANY AND ALL DAMAGES ARISING OUT OF OR RESULTING FROM UNAUTHORIZED USE OF PROPERTY INCLUDING, BUT NOT LIMITED TO, ATTORNEY FEES AND LEGAL COSTS RELATED TO CLAIMS FOR INVERSE CONDEMNATION.

12) Omissions and Misdescriptions

- (a) The Contractor shall study and compare all contract drawings, Technical Specifications, and other contract documents, verifying all figures on the contract drawings before laying out the work. The Contractor shall promptly notify the Authority of all errors, omissions, and inconsistencies which it may discover. The Contractor shall obtain specific instructions in writing from the Authority prior to proceeding with the work related to such requests for clarification.
- (b) The Contractor shall not take advantage of any apparent error, omission, or inconsistency, which may be found in the Contract Drawings or Technical Specifications. The Authority shall be entitled to make such corrections therein and interpretations thereof as may be deemed necessary for the fulfillment of their intent.
- (c) The Contractor shall be liable to the Authority for all errors in the work, which could have been avoided by such examination and clarification. The Contractor shall correct, at its own expense, and without extension of contract time, all work improperly constructed due to Contractor's failure to notify the Authority requesting specific instructions.
- (d) Omission from the Contract Drawings or Technical Specifications or the misdescriptions of details of the work which are manifestly necessary to carry out the intent of the contract drawings and Technical Specifications, or which are customarily performed shall not relieve the Contractor from performing such omitted work. Contractor shall perform such work as if fully and correctly set forth and described in the Contract Drawings and Technical Specifications at no additional cost or delay to the Authority.

13) Project Management

- (a) The Contractor is the General Contractor for this contract and the Contractor shall have the responsibility for construction management. All reviews and approval and other Contracting Officer responsibilities are unchanged, and all Authority duties and rights remain in effect.
- (b) Contractor Representative - The Contractor shall appoint an individual acceptable to the Authority to serve as Project Manager for this contract. This individual shall be fully responsible for the day-to-day activities under this contract. The Project Manager or his Authority approved designee shall have the authority to represent the Contractor on all technical and contractual issues relating to the work and shall serve as the primary point of contact for the Authority. In the event of multiple work site, and with advance approval from the Authority, the Project Manager responsibilities may be delegated to an Authority approved superintendent or foreman. The Contractor shall not replace without prior written notice to and consent by the Contracting Officer, remove or reassign any key personnel. However, the Contractor shall, if requested to do so by the Authority, remove or reassign any personnel not acceptable to the Authority. The Contractor shall designate a primary and alternate contact for notification of emergency work. The Contracting Officer shall be furnished appropriate phone numbers for contacting these individuals twenty-four (24) hours a day. It is anticipated the Project Manager will be full time on the project to cover the full range of project activities outlined in Exhibit H including, but not limited to, phasing, assistance with scoping, negotiation of individual task orders, scheduling of the work, oversight of construction, production of as-builts, and project closeout.
- (c) Authority Representatives - The Authority's Contracting Officer may appoint, in writing, a Contracting Officer's Representative (COR). This person shall have the authority and responsibilities identified in the letter appointing the COR. It is anticipated that the COR will handle all Authority matters of a technical nature arising under the performance of the work.

14) Project Key Personnel

- (a) This Special Provision shall supplement Exhibit F, "Superintendence by Contractor."

- (b) The Contractor shall appoint an individual acceptable to the Authority to represent the General Contractor on all technical and contractual issues relating to the work and who shall serve as the primary point of contact. This person shall be the Project Manager and is defined in Exhibit D Project Management. Additionally, the Authority has identified a number of specific positions that it considers key in performance of the work and the ability of the Contractor to achieve Authority objectives. Those positions are identified below.
- (c) In the conduct of the work the Contractor shall utilize only key personnel approved by the Contracting Officer. Any substitution of Contractor key personnel shall be approved by the Contracting Officer prior to changes being implemented.
- (d) The Contractor shall, if requested to do so by the Contracting Officer, remove or reassign any key personnel not acceptable to the Contracting Officer at no additional cost to the Authority, even if such personnel had been previously approved. The Authority has the continuing right to remove for reasonable cause any employee or subcontractor from the project, at no cost to the Authority.
- (e) Positions to which Administrative Damages Apply

In the event the key personnel designated in the proposal are removed from the project at the sole discretion and convenience of the Contractor, the amounts listed below, per individual, shall be deducted from future invoices. The amount of the deduction, while not reflecting the total damages of such action to the Authority, would be considered the limit of damages to the Authority of such action.

<u>Key Personnel Position</u>	<u>Amount</u>
Officer-in-Charge	\$ 50,000
Project Manager	\$ 50,000
Contractor's Quality Control Representative	\$ 25,000
Construction Safety Supervisor/Manager	\$ 25,000

Officer-in-Charge: Responsible for the overall performance of the project and liaison with the Authority.

Project Manager: Responsible for all day-to-day activities of the General Contractor's team, and liaison with the Authority's representative.

Contractor's Quality Control Representative: Reporting to the Officer-in-Charge, responsible for ensuring compliance with the quality requirements of the contract and responsible for Quality Control Program.

Construction Safety Supervisor/Manager: Reporting to the Officer-in-Charge, responsible for the overall Safety and Security Program for the project.

- (f) Positions to which Administrative Damages Do Not Apply

The positions identified below are considered key to the Authority and candidates for these positions are subject to specific written approval of the Authority. Exhibit A, Required Forms, and Certifications Form No. DB-1-108 "Key Personnel" which must be completed and returned with the proposal that provides specific information on each person proposed to fill a position on this list. The form supplements any resumes provided for these positions. After award, resumes and appropriate qualifications are required to be submitted for Authority approval prior to any proposed replacements for these key positions.

Environmental Compliance Manager: Responsible for complying with all regulatory environmental requirements.

D/M/WBE Coordinator or Compliance Officer: Reporting to the Officer-in-Charge, responsible for the overall implementation of the D/M/WBE Program and for ensuring goals are met.

15) **Employees, Subcontractors, and Outside Consultants**

- (a) Any subcontractors and outside associates or consultants required by the Contractor in connection with the services covered by the contract will be limited to such individuals or firms as were specifically identified and agreed to by the Authority in connection with the award of this contract. Any substitution of such

subcontractors, associates, or consultants will be subject to the prior written approval of the Contracting Officer.

- (b) The request for such approval must include the firm's or individual's name, proposed task, and the proposed manner and rate for charging the individual's time. The Contractor must give the Authority at least thirty (30) days written notice of its intention to remove any personnel from the work or to reassign any personnel to other portions of the work. Moreover, the Authority reserves the right to require the Contractor to remove any entities or individuals from tasks to which they have been assigned with cause, at no additional cost to the Authority.
- (c) Contractor shall include in its subcontract agreements prompt payment terms substantially the same as are included in General Provision entitled "Prompt Payment."

16) **Coordination With Others**

- (a) In addition to and in accordance with the General Provision, entitled "Other Contracts," the Contractor has the express duty and obligation to coordinate its work with the other contractors and entities, as appropriate during both Pre-Construction and Construction Services. At a minimum, the Contractor shall coordinate its work with the following entities and their contractors, as appropriate for each scope of work:

- DART (Authority)
- City of Dallas
- Medical District Center
- FRA
- TxDOT
- Railroad operators in the area, specifically, Amtrak, BNSF, UP and all railroads utilizing the rail impacted by this Contract
- Contractors performing other work (signal system and track)
- Flood Control Districts
- TRE
- TRE O&M Contractor
- Private and Public Utility Contractors
- Other Authority Contractors
- Other Authorities having Jurisdiction.
- Communities adjacent to the project alignment
- Private developers working near the project site.
- Adjacent property owners

- (b) The Contractor shall not unreasonably impede, hinder, or delay the Authority or any other contractor in performance of their work. It is the Contractor's duty under this contract to communicate with any contractor who will be performing work, which may connect, complement, or interfere with the contractor's work and to resolve any disputes or coordination problems with such contractor. Unless otherwise specifically identified, all costs and/or time related to such coordination, including any adjustment to construction efforts and performance of work to accommodate other entity or contractors, shall be the responsibility of the Contractor.

17) **Work Adjacent to Active Railroads**

- (a) This clause shall apply to those construction sites that are adjacent to freight or commuter railroads governed by Federal Railroad Administration. Railroad flaggers and other railroad personnel must be trained and provided by the TRE Operations Contractor unless other provider is designated by the Authority. All costs related to railroad safety shall be the responsibility of and paid for by the Contractor. Contractor and subcontractors requiring access to TRE right of way shall comply with and conform to all policies, procedures and requirements mandated by the Authority. Failure to comply with the Authority's and the TRE Operations Contractor's safety rules, regulations, policies, and procedures can result in personnel being removed from the jobsite. The Authority will not incur or honor any requests or claims for financial damages resulting from such removal. Train or equipment movement should be expected on any track, in any direction, at any time. Work will not be performed at less than twenty-five (25) feet from the centerline of any track without the TRE Operations Contractor's representative present unless work has been authorized by the Authority or the TRE Operations Contractor or the work area is separated by a wall, or a positive barrier approved by the Authority.

(b) Compliance with Laws and Regulations

Contractor and all subcontractors agree to abide by and be governed by all federal and municipal governmental entities having jurisdiction, public laws, ordinances, and railroad regulations, policies and operating rules established by any railroad or other applicable railroad regulating body. The Contractor shall develop a written formal "On-Track" safety plan in accordance with Federal Railroad Administration (FRA) requirements. The plan shall address construction activities conducted adjacent to or located physically on active railroad systems. The plan must define work assignments, personal protective equipment (PPE), emergency response actions and on-track protection procedures when construction activities and/or employees are expected to encroach or foul active railroad tracks in accordance with 49 CFR Part 214 Railroad Workplace Safety. The plan must be formally reviewed and approved by the applicable Authority representatives prior to commencement of any job site construction activities. All personnel working within the governing railroad property must complete Roadway Worker Protection (RWP) training.

IF ANY FAILURE BY THE CONTRACTOR TO COMPLY WITH ANY SUCH LAWS, REGULATIONS, AND ENACTMENTS SHALL RESULT IN ANY FINE, PENALTY, COST OR CHARGE BEING ASSESSED, IMPOSED OR LEVIED AGAINST THE RAILROAD, THE CONTRACTOR SHALL REIMBURSE AND INDEMNIFY THE RAILROAD FOR SUCH FINE, PENALTY, COST OR CHARGE, INCLUDING WITHOUT LIMITATION ATTORNEY'S FEES, COURT COSTS AND EXPENSES. THE CONTRACTOR SHALL, IN THE EVENT OF ANY SUCH ACTIONS AND UPON NOTICE THEREOF BEING PROVIDED BY THE RAILROAD, DEFEND SUCH ACTION FREE OF COST, CHARGE, OR EXPENSE TO THE RAILROAD.

(c) Notification

The Contractor shall provide written notice to the governing railroad representative at least fourteen (14) days in advance of commencing any work in which any person or equipment will be within twenty-five (25) feet of the nearest rail, the "field side" of active railroad, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of the field side, the "foul zone." Said notice shall include, based on the Contractor's Work Schedule, the total duration of all construction activities during which any manpower or equipment will be required to be working or positioned within foul zone of the railroad, thus dictating the need for a flagger. Upon receipt of such notification, the governing railroad representative will assist the Contractor in arranging for a flagger and will confirm if additional protective or safety measures are to be performed by the Contractor or others. Any and all such services by others will be provided at Contractor's expense with the understanding that if the railroad provides any flagging, Daily Operating Bulletin or other services, the Contractor shall not be relieved of any of its responsibilities or liabilities set forth herein. Any damage to property will be reported immediately to the TRE Operations Contractor's "Employee-in-Charge" (EIC), the Authority, and the Safety Officer. Any vehicle or machine contact with a track, signal equipment or structure (bridge) could result in derailment and is to be reported by the quickest means possible to the EIC or the TRE Operations Contractor Operations Center. Emergency numbers are to be obtained from the TRE Operations Contractor representative in charge of the project prior to the start of any work and posted at the job site for the duration of the project.

(d) Performance of Work

No work performed by the Contractor shall cause any interference with the constant, continuous and uninterrupted use of the tracks, property and facilities of the railroad unless specifically authorized in advance by the governing railroad's representative. Nothing shall be done or offered to be done by the Contractor at any time that would in any manner impair the safety thereof. A governing railroad flagger will be required if the Contractor undertakes any work activities closer than twenty-five (25) feet from the nearest railroad track (the "field track") or if the work requires that any equipment extension (such as, but not limited to, a crane boom) must reach to within foul zone unless noted otherwise under Section 21(a) of "Exhibit D". When not in use, Contractor's machinery and materials shall be kept a minimum of twenty-five (25) feet from the adjacent field track. Additionally, there shall be no crossings of the tracks except at existing open public crossings, unless specifically authorized in writing and in advance by the railroad's representative. Contractor shall request from governing railroad a permit for any and all temporary construction crossings.

Additional requirements: A Point of Contact (POC) will formally coordinate with the EIC. The EIC will conduct mandatory job safety (work group) briefings addressing the following on-track safety item:

- i. Procedures to be followed for notifying railroad officials of work locations, work group size, track obstructions and affected start and stop times,

- ii. On-track protection procedures to be implemented i.e., flagmen, alerting systems, limits of work area, emergency response actions e.g., telephoned, medical equipment, fire/rescue access locations, derailling devices, etc.,
- iii. Minimum PPE requirements e.g., hard hat, safety glasses (with fixed side shields), reflective vest (orange), steel toed work boots, trousers (full length), and sleeved shirt.
- iv. All employees within twenty-five (25) foot railroad work zone shall attend Roadway Worker On-Track Safety training conducted by the TRE Operations Contractor.
- v. Do not walk between rails or foul track, except when duties require, and proper protection is provided. When necessary to cross tracks, look in both directions and keep a minimum of twenty-five (25) feet from the nearest end of stationary rail equipment. Do not crawl under or between rail cars. Under certain conditions, trains, and equipment can approach without being heard. Proper attention and protection are essential to personal safety when working near railroad tracks.
- vi. When a train is approaching, people or equipment working less than twenty-five (25) feet from the centerline of track will stop work and move as far away from the track as practical, facing the track, until the entire train has passed. This assures the train engineer that the train has been seen, and it is safe to proceed. Failure to do this could result in the engineer placing the train into emergency, which could result in personal injury to passengers, damage to the train, and delay to rail traffic. After notification by the TRE Operations Contractor's flagman that no other trains are within the working limits, work may then resume.
- vii. Excavating on the right of way could result in damage to buried cables resulting in delay to railroad traffic. Before any excavation commences, contact the Authority and the TRE Operations Contractor's representative. All underground and overhead wires are to be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. It is the contractor's responsibility to notify any other companies that have underground utilities in the area before excavating. All excavation will be protected as required by the TRE Operations Contractor's representative, and back filled as quickly as possible.

18) **Private Utility Construction**

- (a) The Contractor shall schedule and coordinate its work effort with the Authority and any private utility Contractor who may be relocating private utilities that impact the project during Construction Services. The utility companies are to be notified in writing ten (10) calendar days prior to commencing any work effort affecting the utility. Reconfirmation will be obtained by the Contractor by telephone forty-eight (48) hours prior to beginning work.
- (b) Such notice shall be given in the time frame specified for that utility so as to permit such relocation without delaying the work. The Authority will be responsible for relocation of utilities identified in the Contractor's notice, as necessary, but may require such relocation to be performed by the Contractor pursuant to the General Provision entitled "Changes" unless relocation of the utility and its ancillary items are shown and included in the scope of work for the contractor for the project. The Contractor shall be responsible for all damages or destruction of utilities caused by the Contractor, its subcontractors, suppliers and agents.
- (c) The Contractor shall provide the deliverable to the Authority of all utilities, which require relocation in connection with the work during Construction Services as identified in Exhibit H.

19) **Safety and Security Requirements**

The contractor shall comply with required safety requirements within the DART Construction Safety & Security Program (CSSP) in Exhibit M. The contractor shall comply with federal, state and Authority safety certification requirements defined in FTA Circular 5800, Texas Dept. of Transportation (TxDOT), State Safety and Security Oversight Program Standard, DART(s), System Safety & Security Program (SSSP), System Safety Management Plan (SSMP), System Safety Certification Plan (SSCP) and all applicable FRA 49 CFR, 200 series regulations.

20) **Environmental Requirements**

- (a) Specification 01560 "Environmental Protection" and 01562 "Soil Erosion and Sediment Control" shall govern actions taken by the Contractor. All materials utilized by Contractor on the site or staging areas for this project shall be stored and used in accordance with all applicable Federal, state, and local regulations, laws, and ordinances. as well as those stipulated by the manufacturer.

- (b) This project is anticipated to disturb more than five (5) acres. The Texas Commission on Environmental Quality (TCEQ) considers projects of this size to meet the definition of "Large" Construction Activity, as defined in the TCEQ Texas Pollution Discharge Elimination System (TPDES) [Construction] General Permit TXR150000. Contractor shall follow all requirements of the TPDES permit as well as Specification Section 01562 and the baseline Storm Water Pollution Prevention Plan contained within the design drawings. The contractor shall file Notice of Intent (NOI) with TCEQ as well as fulfill all other TPDES "Large" Construction Activity requirements.
- (c) Contractor shall provide qualified personnel (provided by the operator of the construction site) to inspect disturbed areas of any construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site, at least once every seven (7) calendar days and within twenty-four (24) hours of the end of a storm that is 0.5 inches or greater. In addition, the Contractor shall be responsible for identifying and complying with the latest requirements of the City of Dallas. Storm Water Pollution Prevention Plan shall be sealed by a Professional Engineer for all construction site areas greater than 5 acres.
- (d) Control and Disposal of Excess Material
Use excess excavated material onsite if approved by the Authority. If onsite use is not approved or is not feasible, the Contractor shall prepare a plan for analyzing, profiling, and disposing that is consistent with the requirements of all applicable Jurisdictional Entities. The plan shall include the name and address of the facility or facilities where the material will be transported and disposed, sample collection frequency, laboratory analyses, etc. Soils transported to non-permitted sites shall minimally meet "Class 3" waste standards and the Contractor shall obtain a written statement from the property owner accepting the soil. Contractor shall provide proof that disposed material was properly transported and received by the disposal facility.
- (e) If materials encountered during the construction process are suspected of being hazardous or regulated, the Contractor shall follow the procedures in DART Standard Specifications Section 01560.
- (f) Contractor shall assume the associated responsibilities and cost if Contractor or Contractor's activity introduces regulated levels of contamination onto or into this or surrounding property.
- (g) Asbestos Containing Material (ACM), as defined by Texas Administrative Code Title 25 part 1, Chapter 295.32, shall not be introduced or reintroduced onto the Project. Pursuant to 25 TAC 295.34(i), a person may not install building materials or replacement parts into a public building unless the Material Safety Data Sheets (MSDS) indicate these materials or replacement parts contain 1.0% or less asbestos.
- (h) Lead Base Paint (LBP), as defined by Texas Administrative Code Chapter 295, Subchapter I, Rule §295.202, Definitions, (52); shall not be introduced or reintroduced onto the Project. A person may not install building materials or replacement parts in any DART property unless the Material Safety Data Sheet (MSDS) indicates that the materials or replacement parts contain paint or other surface coatings with lead concentrations less than 1.0 milligram(s) per square centimeter or less than 0.5% by weight.
- (i) A "structure" shall be as defined by the Texas Administrative Code Title 25 part 1, Chapter 295.32. In the event all or a portion of a "structure" is to be demolished, Contractor shall notify the Authority at least thirty (30) days in advance of said activities. The Authority will provide demolition notification to the Department of State Health Services (DSHS). Contractor shall strictly adhere to the timelines established within the DSHS demolition notification.
- (j) CONTRACTOR SHALL INDEMNIFY THE AUTHORITY FOR AMOUNTS OF ANY AND ALL DAMAGES INCURRED BY THE AUTHORITY AS A RESULT OF CONTRACTOR BREACH OF THIS PROVISION, INCLUDING BUT NOT LIMITED TO AMOUNTS OF FINES, PENALTIES, COSTS OF REMEDIATION AND REASONABLE ATTORNEY FEES. NO TIME EXTENSION SHALL BE GRANTED FOR BREACH OF THIS PROVISION.

21) **Quality Requirements**

The contractor shall comply with required Quality requirements within the DART Quality Program Plan (QPP) in Exhibit X and DART Specification 01450 "Quality Control". Contractor shall develop, establish, implement, maintain, and evaluate an organization and system called the Contractor's Quality Control Plan (CQCP) to perform inspections and tests to ensure compliance with the contract. Contractor shall provide qualified personnel for their Quality Control staff and must be approved by DART.

22) Seasonal Weather Conditions

In accordance with the General Provision in Exhibit F entitled "Seasonal Weather Conditions," the average lost days due to weather conditions applicable to this contract are as follows:

Average lost time per month (calendar days)

Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec
8	6	6	6	6	4	4	4	4	4	5	6

The Contractor and the Authority's Contracting Officer Representative must agree to all weather delay days on the day that any such days occur.

23) Progress Payments Construction Services

- (a) This Special Provision shall supplement General Provisions, Exhibit F, entitled "Progress Payments" and "Invoicing and Payment".
- (b) Payment to the Contractor shall be made monthly as the work proceeds, for Contractor's actual completed elements of work. For Construction Services the elements of work are defined in the approved baseline Construction Schedule. If the baseline Construction Schedule is not yet approved, payment of General Requirements will be withheld from the monthly payment.
- (c) The Contractor shall submit to the Authority, by the fifteenth day of the calendar month following, an invoice in the format approved by the Contracting Officer.
- (d) The Contractor's invoice shall utilize the form and formats as included in the sample invoice included in this contract. Should the Contractor fail to submit its invoice using the forms and formats included in this contract, the Authority shall have just cause to reject the Contractor's invoice(s) until the Contractor utilizes the required forms.
- (e) Prior to submission of Contractor's invoice to the Authority, the Contractor shall review the current period invoice details with the Contracting Officer's Representative (COR) and designated Authority's Contract Administrator.
- (f) Material delivered to the Contractor at locations other than the project site may also be taken into consideration pursuant to the applicable Exhibit F, General Provisions, "Payments", subparagraph (b).
- (g) The Contracting Officer may authorize payment for material subject to the following:
 - i. Material delivered to the Contractor shall be properly secured in bonded storage. Prior to inclusion of such materials in any progress payment invoice, the Contractor shall submit bills of lading to the Authority.
 - ii. Materials approved for payment pursuant to this Special Provision shall be conspicuously marked as the property of the Authority.
 - iii. The Contractor shall not permit such material to be co-mingled with non-Authority property,
 - iv. Any Liquidated Damages which have accrued as of the date of the current invoice may be withheld.
 - v. The failure, by the Authority, to deduct any amounts, pursuant to the aforementioned provisions, from a progress payment request shall not constitute a waiver of Authority's rights to such amount nor waive the right to withhold other amounts pursuant to the contract terms.

24) Dispute Resolution Board

- (a) In order to facilitate timely and equitable resolution of disputes that may arise during the course of the project, the following outlines a process for preliminary review of disputes. This process will entail reviews at two levels prior to invoking the Disputes process outlined in the contract (Exhibit F, General Provisions, Section 15).
- (b) Reviews will be organized into the following two levels:
 - a. Level I Review Panel: Project Manager representatives from both the Authority and the Contractor
 - b. Level II Review Panel: Vice President level representatives from the Authority and the Contractor
 - c. Should any issue remain unresolved after review by both Level I and Level II Panels, the Authority shall invoke the procedure specified in Exhibit F, General Provisions, Section 15, Disputes.

25) Invoicing and Payment

- (a) This Special Provision Exhibit D shall supplement the General Provision Exhibit F entitled "Invoicing and Payment".
- (b) The invoice shall clearly identify the Approved Baseline Critical Path Method Activity Number(s) for this contract, for each item invoiced.
- (c) Payment of invoices by the Authority shall not constitute the Authority's agreement that all costs therein are allowable and/or allocable and the allowability and/or allocability of particular costs may be questioned at any time in accordance with the terms of this contract.

26) Disadvantaged/Minority/Women Owned Business Enterprise (D/M/WBE) Participation

When the Contractor is claiming credit toward meeting this contract's DBE participation goals, it should comply with Exhibit G. When the contractor is claiming credit toward meeting this contract's MBE or WBE participation goals, it should comply with Exhibit G-1.

27) Payment and Performance Bonds

The Contractor shall include only the actual costs of payment and performance bonds in the line item on the Schedule. The Contractor will be paid the lesser of its line item bid amount or the actual cost of the bonds. The Authority will not consider any amount in excess of the actual costs of these bonds.

28) Supplemental Agreements Release of Claims (D-400.23B JAN 02)

All supplemental agreements executed under this contract shall contain the following language:

Except as modified by this supplemental agreement, all terms and conditions of the contract, as previously modified, remain unchanged and in full force and effect. The parties agree that this supplemental agreement is a final and equitable adjustment of the contract time and contract amount and constitutes a release and mutual accord and satisfaction of all claims, current or future, of whatever nature caused by or arising out of the facts and circumstances surrounding this supplemental agreement including, but not limited to, direct, indirect and consequential costs; additional time for performance; and the impact of the modifications specified in this supplemental agreement, alone or taken with other changes, on the unchanged work.

The intent of this release is to have the personnel on the project resolve as many disputes and issues as possible on the project contemporaneously with the performance of the work and when the costs are incurred.

29) Insurance Requirements

Required Coverage. The Contractor shall, at all times during the term of this contract and extended terms thereof, provide and maintain the following types of insurance protecting the interests of the Authority and the Contractor with limits of liability not less than those specified below.

1. Commercial General Liability with Contractual Liability Endorsement
 - a) Per occurrence limit of at least \$5,000,000 with a \$5,000,000 general aggregate and \$5,000,000 products-completed operations aggregate
 - b) Contractual Liability – Railroads Endorsement (CG 2417 or equivalent)
 - c) Primary and Non-Contributory Endorsement
 - d) Cross liability or separation of insureds Endorsement
 - e) Endorsement naming DART, TRE, Fort Worth Transit Authority dba Trinity Metro, BNSF Railway Company, Union Pacific Railroad Company, Fort Worth & Western Railroad Company, Dallas, Garland and Northeastern Railroad, Inc., National Railroad Passenger Corporation (Amtrak), Herzog Transit Services, Inc., Herzog Technologies, Inc., and Herzog Contracting Corp., and their respective directors, officers, representatives, contractors, agents, and employees as additional insureds with respect to ongoing and completed operations performed by or on behalf of Contractor (CG 2010 and CG 2037, or equivalent)
 - f) Waiver of Subrogation Endorsement
2. Commercial Automobile Liability Policy
 - a) Combined single limit of at least \$2,000,000 per occurrence
 - b) Coverage for Owned, Hired and Non-owned vehicles

- c) Endorsement deleting all exclusions for work performed near a railroad (CA 2070, or equivalent)
- d) Endorsement naming DART, TRE Fort Worth Transit Authority dba Trinity Metro, BNSF Railway Company, Union Pacific Railroad Company, Fort Worth & Western Railroad Company, Dallas, Garland and Northeastern Railroad, Inc., National Railroad Passenger Corporation (Amtrak), Herzog Transit Services, Inc., Herzog Technologies, Inc., and Herzog Contracting Corp., and their respective directors, officers, representatives, contractors, agents, and employees as additional insureds and their respective directors, officers, representatives, contractors, agents, and employees as additional insureds
- e) Primary Non-Contributory Endorsement
- f) Waiver of Subrogation Endorsement

3. Workers' Compensation Insurance

- a) Providing statutory benefits under the Workers' Compensation Act of the State of Texas and/or any other state or federal law applicable to Contractor's employees performance of the Work
- b) Employer's Liability Insurance with limits of liability of not less than \$1,000,000 each accident, \$1,000,000 each employee for disease, and \$1,000,000 policy limit for disease
- c) Waiver of Subrogation Endorsement

4. Railroad Protective Liability

- i. Amount not less than \$5,000,000 per occurrence, \$10,000,000 aggregate
- ii. DART as Named Insured

(b) Certificates of Insurance. Before commencing execution of this contract, the Contractor shall respond to insurance related questions and attach a certificate of insurance satisfactory to the Authority (or, as and when the Authority may direct, copies of the actual insurance policies) in the Questions section of the Supplier Portal, as follows:

- Go to <https://suppliers.dart.org>
- Login
- Click on "Update Account Information"
- Under Questions section, click Answer

The certificates of insurance shall evidence insurance required by paragraph (a), stating policy number, dates of expiration, and limits of liability thereunder. The certificates shall also attach all relevant endorsements required in subparagraphs to (a), and shall be acceptable to the Authority.

(c) Approval of Forms and Companies. All coverage described in this contract shall be in a form and content satisfactory to the Contracting Officer. All insurance should be provided by insurance companies with a Best's Rating of A-/ VIII, or better.

(d) Additional Insured Endorsement. The policy or policies providing Commercial Automobile Liability and Commercial General Liability shall be endorsed to name DART, its directors, officers, representatives, agents and employees, as well as any other interests directed by DART, as Additional Insureds under this contract.

(e) All policies shall be endorsed to provide thirty (30) days advanced written notice of policy cancellation or modification.

(f) Multiple Policies. The limits of liability as required above may be provided by a single policy of insurance or a combination of primary, excess or umbrella liability policies. But in no event shall the total limit of liability of any one occurrence or accident be less than the amount shown above.

(g) Deductibles. Companies issuing the insurance policies and the Contractor shall have no recourse against the Authority for payment of any premiums or assessments for any deductibles, as all such premiums and deductibles are the sole responsibility and risk of the Contractor.

(h) Subcontractors. If any part of the work is sublet, Contractor shall require any and all subcontractors performing work under this contract to carry Workers' Compensation Insurance, in accordance with paragraph (a) (3) above.

The Contractor shall determine any other types of insurance and the limits of liability that Contractor shall deem appropriate and adequate to protect the interests of the Authority. In the event a subcontractor is unable to furnish any insurance required under this Contract, the Contractor shall endorse the subcontractor as an Additional Insured or become an Alternate Employer. The Contractor shall obtain and furnish to the Authority certificates of Insurance evidencing subcontractors' workers' compensation insurance coverage. All other insurance certificates for subcontractors shall be furnished to the Authority upon request.

(i) No Release. The carrying of the above-described coverage shall in no way be interpreted as relieving the Contractor of any other responsibility or liability under this agreement or any applicable law, statute, regulation or order.

30) Rights in Land and Improvements

In no event shall the Contractor permit the project site to be occupied by any person for purposes other than those related to the project and except as otherwise provided in the contract. The Contractor shall not occupy Authority-owned property outside the project site without obtaining the prior written approval of the Contracting Officer.

31) Disclosure and Dissemination of Information

- (a) Except as expressly approved by the Authority, the Contractor shall not disclose, communicate or divulge to any person or entity other than the Authority or the Federal Transit Authority, or use for its own benefit or the benefit of any other entity, any materials prepared, or any information acquired in the course of performance of this contract.
- (b) The Contractor and/or its subcontractors shall not publish, permit to be published or distribute for public consumption, any information, oral or written, concerning the results or conclusions made pursuant to performance of this contract without prior written consent of the Authority. Two (2) copies of any materials proposed to be published or distributed shall be submitted to the Authority for its approval.
- (c) The Contractor shall have access to confidential and/or sensitive Authority information in the course of contract performance including design drawings and specifications. Additionally, the Contractor may be provided access to proprietary information obtained from other contracted entities during contract performance. The Contractor agrees to protect all such information from disclosure unless so authorized, in writing, by the Contracting Officer, and to refrain from using such information for any purpose other than that for which it was furnished.

32) Brand Name or Equal Brand Name Specifications (B-100.Q4B. OCT04)

The items called for in this solicitation are identified by brand name with their respective salient characteristics. These brand name identifications are not intended to be restrictive. The salient characteristics provided are the minimum criteria that shall be acceptable to the Authority. Items offered must be the same brand names specified or different brand names that meet or exceed the salient characteristics listed. Offers for items that do not satisfy the required salient characteristics shall not be considered for award. The Authority reserves the right to determine if items meet or exceed the salient characteristics. Offers for "Equal Brand Name" items shall be considered for award if such items are clearly identified in the offer and are determined by the Authority to satisfy the stipulated salient characteristics.

33) Drawings and Other Data

All designs, drawings, specifications, notes, and other work developed in the performance of this Contract shall become the sole property of the Authority and may be used on any other design or construction without additional compensation to the Contractor. The Authority shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under Section 201 (b) of Title 17, United States Code. With respect thereto, the Contractor agrees not to assert or authorize others to assert any rights or establish any claim under the design patent or copyright laws. The Contractor, for a period of three years after completion of the project, agrees to furnish all retained works on the request of the Contracting Officer. Unless otherwise provided in this contract the Contractor shall have the right to retain copies of all works beyond such period.

34) Rights In Technical Data and Copyrights

- (a) Technical data, as used herein, means any form of technical writing, pictorial reproductions, drawings or other graphic representations, and documents of a technical nature, including computer software and program listings (including, but not limited to, debug files, edit files, make files, and source code), shop drawings, and product data which are developed or used pursuant to the contract. All technical data is the

property of the Authority, and the Authority may use, duplicate, or disclose the technical data listed above and the information conveyed therein, in whole or in part, in any manner and for any purpose whatsoever, and have or permit others to do so.

- (b) The Contractor agrees to grant to the Authority and to its officers, agents and employees acting within the scope of their official duties, a royalty-free license to publish, translate, reproduce, deliver, and use as it deems fit, all technical data covered by copyright supplied for the contract. The Contractor shall secure and deliver to the Authority written permission of the copyright owner for the Authority to use such in the manner herein described. The Contractor shall report to the Authority promptly and in reasonable written detail each notice or claim of copyright infringement received, by the Contractor with respect to any technical data delivered hereunder.

35) **Revisions and Clarifications to General Provisions**

The following Exhibit F General Provision shall be supplemented as indicated.

(a) "Equitable Adjustments"

This clause is supplemented by adding the following:

Under no circumstances will the following items constitute an element of direct labor applicable to any change and shall be considered to be included in the overhead component of any change: (1) Office Management and Support; whether technical or non-technical, including Home Office and Field Office; and (2) Jobsite superintendence and supervision.

(b) "Examination and Retention of Records"

The entirety of this clause applies to this entire contract.

(c) "Inspection of Construction"

This clause is supplemented by adding the following:

The operations of the Contractor, its subcontractors and suppliers shall be subject at any time to Authority audit and verification of compliance to all requirements of the contract document relative to practices, methods, procedures, and documentation.

(d) "Value Engineering"

This provision, in its entirety, does not apply to this contract.

36) **U.S. Department of Homeland Security's E-Verify System (D-700.02, APR 15)**

By entering this Contract, the Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

- (a) All persons employed to perform duties within Texas, during the term of the Contract; and
- (b) All persons (including subcontractors) assigned by the Respondent to perform work pursuant to the Contract, within the United States of America.

The Contractor shall provide, upon request of DART, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three (3) most recent hires that match the criteria above, by the Contractor, and Contractor's subcontractors, as proof that this provision is being followed.

If this certification is falsely made, the Contract may be immediately terminated, at the discretion of the Authority and at no fault to the Authority, with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that the Authority must undertake to replace the terminated Contract.

37) **Disclosure Of Interested Parties (For contracts of \$1 million or more or that require Board authorization) (D-700.03, FEB 16)**

As a condition for Contract award, the bidder or offeror selected for award in accordance with Texas Government Code, Section 2252.908, shall submit within 5 days of notification of Board approval a Disclosure of Interested Parties form electronically on the Texas Ethics Commission website and a signed notarized copy of the form to the Authority.

The Disclosure of Interested Parties form must be submitted as prescribed by the Texas Ethics Commission located at:

<https://www.ethics.state.tx.us/filinginfo/1295/>

38) Delineation of Work by Others

(a) Installation of signals will be completed by others. Work by railroad contractor shall be split at the pre-ballast limit. Contractor will provide grading up through subgrade and to top of sub ballast.

39) Buy America Requirements

As identified in Exhibit C Solicitation Instructions and Conditions, Section 5, Buy America requirements of 49 CFR 661, et seq., shall apply to all portions of the work, whether performed by the Contractor or subcontractors, including utility relocation and materials procurements. This requirement shall be included in subcontracts and supplier agreements. The Authority shall strictly enforce this provision.

40) Buy America Build America Requirements

This contract includes the provisions and certifications as required by FAR 25.1101, Acquisition of Supplies, FAR 25.1102, Acquisition of Construction, and FAR 25.1103, Other Provisions and Clauses, including but not limited to, the requirements and certifications of the Buy America/Build America (BABA) included with the Infrastructure and Investment Jobs Act (IIJA), dated November 2021.

41) TRE Commuter Rail Schedule (For Informational Purposes Only)

The information contained in Attachment 2 to Exhibit D, entitled "TRE Commuter Rail Schedule" is provided for informational purposes only. This information may change without notice. Contractor is responsible to coordinating with the TRE representative to ensure that coordination occurs with all railroads using the rail impacted by this Contract.

42) Railroad "On-Track" Safety Requirements

(b) The Contractor and all subcontractors agree to abide by and be governed by all federal and municipal governmental entities having jurisdiction, public laws, ordinances, and railroad regulations, policies and operating rules established by any railroad or other applicable railroad regulating body.

(c) The Contractor shall develop a written formal "On-Track" safety plan in accordance with Federal Railroad Administration (FRA) requirements. Plan shall address construction activities conducted adjacent to or located physically on active railroad systems. The plan must define work assignments, personal protective equipment (PPE), emergency response actions and on-track protection procedures when construction activities and/or employees are expected to encroach or foul active railroad tracks (consult 49 CFR 214 for railroad terms, definitions and procedures.) Plan must be formally reviewed and approved by the applicable Authority representatives prior to commencement of any job site construction activities. The On-Track safety plan/program at a minimum shall address the following:

(1) Point of Contact (POC), who will formally coordinate with the TRE O&M Contractor's "Employee-in-Charge" (EIC). The EIC will conduct mandatory job safety (work group) briefings as required;

(2) Procedures to be followed for notifying railroad officials of work locations, work group size, track obstructions and affected start and stop times;

(3) On-track protection procedures to be implemented i.e., flagmen, alerting systems, limits of work area, emergency response actions e.g., telephoned, medical equipment, fire/rescue access locations, derailling devices, etc.;

(4) Minimum PPE requirements e.g., hard hat, safety glasses (with fixed side shields), reflective vest

(orange), steel toed work boots, trousers (full length), and sleeved shirt.

(5) All employees within the 25-foot railroad work zone shall attend Roadway Worker On-Track Safety training conducted by the TRE O&M Contractor.

(d) The Contractor and subcontractors requiring access to Trinity Railway Express ("TRE") right of way shall comply with and conform to all policies, procedures and requirements mandated by TRE. Failure to comply with TRE safety rules, regulations policies and procedures can result in personnel being removed from the jobsite. DART, the Fort Worth Transportation Authority, and TRE will not incur or honor any requests or claims for financial damages resulting from such removal.

(e) Train or equipment movement should be expected on any track, in any direction, at any time. Work will not be performed at less than 25 feet from the centerline of any track without a TRE representative present, unless work has been authorized by the TRE representative.

(f) Do not walk between rails or foul track, except when duties require, and proper protection is provided. When necessary to cross tracks, look in both directions and keep a minimum of 25 feet from the nearest end of stationary rail equipment. Do not crawl under or between rail cars. Under certain conditions, trains and equipment can approach without being heard. Proper attention and protection are essential to personal safety when working near railroad tracks.

(g) When a train is approaching, people or equipment working less than 25 feet from the centerline of track will stop work and move as far away from the track as practical, facing the track, until the entire train has passed. This assures the train engineer that the train has been seen, and it is safe to proceed. Failure to do this could result in the engineer placing the train into emergency, which could result in personal injury to passengers, damage to the train, and delay to rail traffic. After notification by the TRE flagman that no other trains are within the working limits, work may then resume.

(h) Any damage to property will be reported immediately to the EIC and TRE representative and the Safety Officer. Any vehicle or machine contact with a track, signal equipment or structure (bridge) could result in derailment and is to be reported by the quickest means possible to the EIC or the TRE Network Operations Center. Emergency numbers are to be obtained from the TRE representative in charge of the project prior to the start of any work and posted at the job site for the duration of the project.

(i) Excavating on the right of way could result in damage to buried cables resulting in delay to railroad traffic. Before any excavation commences, contact the TRE signal and track representative. All underground and overhead wires are to be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. It is the contractor's responsibility to notify any other companies that have underground utilities in the area before excavating. All excavation will be protected as required by the TRE representative and back filled as quickly as possible.

43) **Tariffs and Duties**

Unless otherwise provided in this contract, the contract price includes all applicable Federal, State, local taxes, tariffs, duties, and related import fees.

(a) The Contractor represents that all unit prices for goods and materials furnished under this contract imported from outside of the United States include all applicable taxes, tariffs, duties, and related import fees in effect on the contract date.

(b) At the time of each shipment for goods and materials required for the performance of this contract, the Contractor shall furnish the Authority with proof of customs entry documentation (<https://www.cbp.gov/sites/default/files/assets/documents/2023-Nov/CBP%20Form%207501.pdf> or equivalent), commercial invoices, and packing lists evidencing payment of all duties, tariffs, and fees imposed on imported goods and materials.

(c) Unless the contract explicitly provides otherwise, the Contractor will not be reimbursed by the Authority for applicable taxes, duties, tariffs or related import charges on goods and materials required for the

performance of this contract that are in effect on the contract date. The Contractor agrees all such charges are already included in the contract price.

- (d) If, after the contract date, new or increased applicable federal, state, local tax, tariffs, or duties, which were previously excluded on the contract date, is imposed on goods or materials required for the performance of this contract that the Contractor is now required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date, the Contractor may submit a request for an Equitable Adjustment, provided Contractor state in writing that:
 - (1) The contract price does not include any contingency for such tax, tariffs, or duties; and
 - (2) The liability for such was not incurred through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.
- (e) The Contractor shall also submit adequate customs entry documentation or equivalent, itemizing the new applicable federal, state, local tax, tariffs, duties, or import fees the Contractor must pay. Any such equitable adjustment request shall be negotiated and, if agreed, incorporated via a contract modification under the Equitable Adjustments and/or Change Orders provisions of the contract. No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.
- (f) The Contractor agrees the contract price shall be decreased by the amount of any federal, state, local taxes, tariffs, duties, or related import fees for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.
- (g) The Contractor agrees that the contract price shall be decreased by the amount of any federal, state, local taxes, tariffs, duties, or related import fees that the Contractor does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.
- (h) The Contractor shall promptly notify the Contracting Officer of all matters relating to any federal, state, local taxes, tariffs, duties, or related import fees that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.
- (i) The Authority shall, without liability, furnish evidence appropriate to establish exemption from any federal, state, or local tax, tariffs, duties, or related import fees when the Contractor requests such evidence and reasonable basis exists to sustain the exemption.
- (j) The Authority reserves the right to audit all customs and import records related to this contract under the Examination and Retention of Records provision of the contract to verify accuracy of all Contractor declared tariffs/duties and compliance with this clause.

DALLAS AREA RAPID TRANSIT

Attachment 1 to Exhibit D - Escrow Bid Document Certification

I, _____, hereby certify that I have personal knowledge of the matters stated herein, that I have personally examined the bid documentation submitted herewith, and that such documentation is complete and otherwise complies with the Authority's "Escrow Bid Documents" clause relating to this solicitation.

SIGNATURE: _____

TITLE: _____

FIRM: _____

DATE: _____

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
4:00						No TRE Trains, Occational Freight Train	No TRE Trains, Occasional Freight Train
4:30							
5:00						Rush Hour: 20 minute headways	
5:30							
6:00							
6:30							
7:00							
7:30							
8:00							
8:30	1 Hour TRE Headways, Occasional Freight Train, Amtrak	1 Hour TRE Headways, Occasional Freight Train, Amtrak	1 Hour TRE Headways, Occasional Freight Train, Amtrak	1 Hour TRE Headways, Occasional Freight Train, Amtrak	1 Hour TRE Headways, Occasional Freight Train		
9:00							
9:30							
10:00							
10:30							
11:00							
11:30							
12:00	Rush Hour: 20 minute headways, Occasional Frieight Train	Rush Hour: 20 minute headways, Occasional Frieight Train	Rush Hour: 20 minute headways, Occasional Frieight Train	Rush Hour: 20 minute headways, Occasional Frieight Train			
12:30							
13:00							
13:30							
14:00							
14:30							
15:00					1 Hour TRE Headways, Occasional Freight Train, Amtrak	1 Hour TRE Headways, Occasional Freight Train, Amtrak	1 Hour TRE Headways, Occasional Freight Train, Amtrak
15:30							
16:00							
16:30							
17:00							
17:30							
18:00							
18:30	1 Hour TRE Headways, Occasional Freight Train, Amtrak	1 Hour TRE Headways, Occasional Freight Train, Amtrak	1 Hour TRE Headways, Occasional Freight Train, Amtrak	1 Hour TRE Headways, Occasional Freight Train, Amtrak			
19:00							
19:30							
20:00							
20:30							
21:00							
21:30							
22:00	1 Hour TRE Headways, Occasional Freight Train, Amtrak	1 Hour TRE Headways, Occasional Freight Train, Amtrak	1 Hour TRE Headways, Occasional Freight Train, Amtrak	1 Hour TRE Headways, Occasional Freight Train, Amtrak	No TRE Trains, Occational Freight Train		
22:30							
23:00							
23:30							
0:00							
0:30							

1:00						
1:30						

Special Event Exceptions:	Texas State Fair - 9/26/25 to 10/19/25
No track outages permitted during these dates	Saturday and Sunday are on normal weekday schedule.
	FIFA World Cup - 6/11/26 to 7/19/26
	Normal weekday schedule 7 days a week plus additional trains
	2026 Texas State Fair Dates TBD
	Saturday and Sunday are on normal weekday schedule.

Amtrak Schedule Monday - Sunday:	Amtrak 21 West bound departure time 12:00 pm (Union Station to Ft. Worth)
	Amtrak 22 East Bound departure time 2:18 pm (Ft Worth to Union Station)
	Amtrak can re-route trains with 30 days notice.