

RICHMOND METROPOLITAN TRANSPORTATION AUTHORITY

RICHMOND EXPRESSWAY SYSTEM

CONTRACT NO. FAMS-2018

ADDENDUM NO. 3

April 12, 2018

DESCRIPTION

The attached pages are issued to amend, and become part of the Contract Documents.

Contractor shall acknowledge receipt of this Addendum on the Receipt of Addenda form (Contract Page RA-1). Failure to complete and include the RA-1 form in the bid package may cause bid to be found irregular.

There is no change in the date that bids are due, and no change in the contract completion date from the dates contained in the Invitation to Bid.

P. 4 - Table of Contents

Bidders are instructed to replace P. 4 with the attached replacement page entitled Addendum 3, P. 4.

This Addendum has been issued to add Attachment 27.

P. 51 – Section 9.15.8

Bidders are instructed to replace P. 51 with the attached replacement page entitled Addendum 3, P. 51.

This Addendum has been issued to clarify the contract bond requirements.

P. 159 – Standard Bid Bond

Bidders are instructed to replace P. 159 with the attached replacement page entitled Addendum 3, P. 159.

This Addendum has been issued to correct the contract name within the Form.

ADDENDUM NO. 3
4/12/2018

P. 162, 162-A, 162-B – Performance Bond

Bidders are instructed to replace P. 162 and insert P.162-A and P. 162-B with the attached replacement page entitled Addendum 3, P. 162, P. 162-A, P. 162-B.

This Addendum has been issued to add the Performance Bond Form.

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9.15.2.8.3 Shall be consistent in all other respects with the terms and conditions of this Contract to the extent such terms and conditions are applicable to the scope of work or such subcontractors.

- 9.15.3 The Contractor shall not amend any subcontract with respect to any of the foregoing matters without the prior written consent of the Authority.
- 9.15.4 The Contractor shall not enter into any subcontracts with any person then debarred or suspended from submitting bids by any agency of Virginia.
- 9.15.5 The Contractor shall include a provision in each subcontract requiring the subcontractor to maintain all licenses required by applicable laws, regulations and ordinances.
- 9.15.6 The hiring of subcontractors by the Contractor will not relieve the Contractor of its responsibility hereunder or for the quality of work, materials and services provided. The Contractor will at all times be fully responsible to the Authority for the acts and omissions of its subcontractors and persons employed by them and no subcontract entered into by the Contractor will impose any obligation or liability upon the Authority to any such subcontractor or any of its employees. Nothing in this Contract will create any contractual relationship between the Authority and a subcontractor of the Contractor.
- 9.15.7 All subcontracts with affiliates shall be arm's-length, and on terms no less favorable to the Contractor than to non-affiliates of the Contractor. Performance and Payment Bond(s)
- 9.15.8 Concurrently with the execution of any Contract hereof and year by year for the duration of the Contract and any renewal terms/options, the Contractor shall provide the Authority a yearly performance bond, in the sum of 100% of the annual Contract amount per year, conditioned upon the faithful performance of the Contract in strict conformity with the specifications and conditions of the Contract. The Contractor shall maintain at all times during the initial term of this Contract, and any renewals thereof, a performance bond which shall guarantee the performance of the work all in accordance with §§2.2-4337 and 2.2-4340 of the *Code of Virginia*. The Contractor shall also provide a payment bond, in the sum of 100% of the annual Contract amount per year conditioned upon the prompt payment for all labor, materials, public utility services, and rental of equipment used in the prosecution of the work of the Contract which shall also guarantee payment to persons performing any work for the Contractor under this Contract, all in accordance with §§2.2-4337 and 2.2-4341 of the *Code of Virginia*. The bonds shall be made on official forms furnished by the Authority and shall be executed by the Contractor and the surety of the bond (s) shall be with a surety company or companies approved by the State Corporation Commission to transact business in the Commonwealth of Virginia and shall have a current A.M. Best unit rating not less than "A-". The performance and payment bond (s) shall be cancelable only for non-payment of premium.
- 9.16 Local and SWaM Participation
- 9.16.1 The Authority strongly encourages the submission of bids by qualified contractors whose principal businesses are located in the Richmond Metropolitan Area and further encourages such contractors to utilize the services of local subcontractors and vendors.

ATTACHMENT 25 – Standard Bid Bond

RMTA STANDARD BID BOND

KNOW ALL MEN BY THESE PRESENTS, that _____
_____, as Principal/Contractor, and
_____, as Surety, legally authorized to do
business in the Commonwealth of Virginia, are held and firmly bounded unto the Richmond
Metropolitan Transportation Authority, as Authority, in the amount of FIVE (5) PERCENT OF
THE DOLLAR VALUE OF THE TOTAL AMOUNT WRITTEN IN THE BID, on which the
Contract is awarded lawful money of the United States of America, for the payment of which, well
and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and
assigns, jointly and severally and firmly by these presents:

WHEREAS, the Contractor is herewith submitting its Bid for Contract No. FAMS-2018
entitled Flexible Asset Maintenance Services, in connection with the Richmond Expressway System;
and

NOW, THEREFORE, the condition of this obligation is such, that if the Contractor shall be
awarded the Contract upon said Bid and shall, within fifteen (15) calendar days after the date of
written notice of such award, enter into and deliver a Contract and the prescribed Contract Bond
for the faithful performance of the Contract, together with the required proof of proper insurance
coverage and other necessary documents, then this obligation shall be null and void; otherwise, to
remain in full force and effect, and the Contractor and Surety will pay unto the Authority the
difference in money between the amount of the Total Amount written in the Bid of said Contractor
and the amount for which the Authority may legally contract with another party to perform the
said work, if the latter amount be in excess of the former; but in no event shall the Surety's liability
exceed the penal sum hereof.

SIGNED AND SEALED this _____ day of _____, 20____.

ATTACHMENT 27 – Performance Bond

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that _____ as Principal (also known herein as “Contractor”), whose principal place of business is located at _____, and _____ a corporation duly organized under the laws of the State of _____, as Surety, whose address for delivery of notices is located at _____, are held and firmly bound unto the Richmond Metropolitan Transportation Authority, a political subdivision of the Commonwealth of Virginia (“RMTA”), as Obligee in the amount of _____ Dollars (\$ _____), for the payment whereof the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Contractor has by written agreement, effective _____, 2018 entered into a contract with the Obligee for the management and delivery of various maintenance services (the “FAMS-2018 Agreement”), which FAMS-2018 Agreement is by reference expressly made a part hereof; and,

WHEREAS, Section 9.15.8 of the FAMS-2018 Agreement requires the Principal to provide the Obligee with a bond to guarantee the faithful performance of the Principal of its obligations with respect to work under the FAMS-2018 Agreement;

NOW, THEREFORE, the Principal and the Surety do hereby represent and agree as follows:

The Principal does hereby provide this contract performance bond to guarantee the faithful performance of the Principal of the Principal’s obligations to the Obligee under the FAMS-2018 Agreement. This bond shall be a continuing obligation that is renewable annually, with the amount of this bond for any such renewal year based on the annual cost under the FAMS-2018 Agreement for the forthcoming year. Annual extensions of this bond shall be evidenced by the issuance of a continuation certificate or other appropriate document executed by Surety unless Surety shall give RMTA written notice at least 90 calendar days prior to the end of any one year period (i.e., notice given by March 31) of its intention not to continue this bond for the next one year period; and all such continuations shall be cumulative and shall have the legal effect of a new and separate obligation issued in the applicable amount set forth above for the period covered by any such continuation certificate the same as if a new bond was entered into for each and every separate continued period.

If the Principal shall promptly and faithfully perform all its obligations under the FAMS-2018 Agreement in strict conformity with the plans, specifications and conditions of the FAMS-2018 Agreement during the time specified in the FAMS-2018 Agreement and any extensions thereof as may be granted by the Obligee with or without notice to Surety, and shall also promptly and faithfully perform all requirements of any amendment to the FAMS-2018 Agreement made as provided in the FAMS-2018 Agreement, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Any alteration, amendment, modification, omission, or addition which may be made in or to the terms of the FAMS-2018 Agreement, including, without limitation, the amount to be paid or the obligations to be performed under it, or the giving by RMTA of any extension of time for the performance of the RMTA or any other forbearance of any nature whatsoever on the part of either RMTA or the Principal to the other shall not in any way affect or release the Principal and/or the Surety, or either of them, their heirs, executors, administrators, successors or assigns with regard to their obligations and liability hereunder, and notice of any such alteration, amendment, modification, omission, addition, extension or forbearance is hereby expressly waived by Surety. Any delay, omission, or failure by RMTA to call upon the Surety in any instance shall not release the Surety from any obligation hereunder.

Whenever the Principal is in breach of the FAMS-2018 Agreement and the Obligee has given Surety written notice of such breach and written demand for Surety to act under this paragraph, the Surety

shall contact the Obligee in writing and arrange an in-person or telephone conference to be held with Obligee within ten days of such written demand to discuss methods of remedying the breach. Within forty days after such written demand, the Surety shall take one of the following actions: (1) fully remedy the breach; (2) unconditionally pay the Bonded Sum to the Obligee; (3) if acceptable to Obligee (in Obligee's sole discretion), enter into a written takeover agreement with Obligee by which Surety (through specified agents or independent contractors) undertakes to perform all of Principal's obligations under the FAMS-2018 Agreement and pay all damages and other costs and amounts for which Principal is liable under the FAMS-2018 Agreement; or (4) agree to pay Obligee all amounts (not exceeding the Bonded Sum) by which Obligee is damaged as a result of Principal's breach, as such damages are or were incurred, including without limitation, the net cost of obtaining some or all of the FAMS-2018 Agreement performance from an alternative source through the Virginia Public Procurement Act or other legally available procedure, plus all damages resulting from the nonperformance or from the delay between the FAMS-2018 Agreement deadline(s) and the actual completion of the FAMS-2018 Agreement performance.

The time required for the above conference or to complete the above actions shall not toll any deadlines under or in respect of the FAMS-2018 Agreement or operate as a waiver of any of the Obligee's rights under the FAMS-2018 Agreement or under this Performance Bond. If Surety fails to take one of the four specified actions within forty days after such written demand, Surety shall, within such time, provide Obligee with a written statement of any basis upon which it denies obligation to take such action, and at any time after such forty-day period, Obligee may proceed to complete the work in any reasonable manner without further notice to Surety and recover from Surety (up to the Bonded Sum) the damages caused by Principal's breach.

The obligations evidenced hereby shall constitute the joint and several obligations of the Principal, the Surety, and their respective heirs, executors, administrators, successors and assigns.

No action shall be brought on this bond unless brought within one year after the later to occur of (a) completion of the FAMS-2018 Agreement, including the expiration of all warranties and guarantees, or (b) discovery of the defect or breach of warranty that gave rise to the action. No other delay by Obligee in exercising rights under this bond shall operate as a waiver of such rights. The Principal, for itself and its successors and assigns, and the Surety, for itself and its successors and assigns, do hereby expressly waive any objection that might be interposed as to the right of RMTA to require a bond containing the provisions contained herein, and they do hereby further expressly waive any defense which they or either of them might interpose to an action brought hereon upon the ground that there is no law authorizing RMTA to require the provisions herein.

The validity, interpretation, and enforcement of this Bond shall be governed in all respects by Virginia law. Any suit or action hereunder shall be brought in a Virginia court of competent jurisdiction in and for the City of Richmond, Virginia, or in the United States District Court for the Eastern District of Virginia, Richmond Division, and not elsewhere.

Signed and sealed this ____ day of _____, 2018.

Principal (SEAL)

Witness

Title

_____(SEAL)
Surety

By: _____
Attorney-in-Fact

Typed Name: _____

AFFIDAVIT AND ACKNOWLEDGEMENT OF ATTORNEY-IN-FACT

COMMONWEALTH/STATE (strike one) OF _____

CITY/COUNTY (strike one) OF _____

I, the undersigned notary public, hereby certify that _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is signed to the foregoing performance bond in the sum of _____, which is dated _____ and which names the Richmond Metropolitan Transportation Authority as Obligee, personally appeared before me today in the above jurisdiction and, being duly sworn, stated that s/he is the attorney-in-fact of _____, a _____ corporation which is the Surety in the foregoing bond, that s/he is duly authorized to execute on the above Surety's behalf the foregoing bond pursuant to the power of attorney that is dated _____ and attached hereto, and that on behalf of the above Surety, s/he executed the foregoing bond and acknowledged the foregoing bond before me as the above Surety's act and deed. S/he has further stated under oath before me at this same time and place that the attached power of attorney has not been revoked and that s/he has not and had not, at the time of signing and delivering the bond or doing any other act pursuant to the power of attorney, received actual knowledge or actual notice of the revocation or termination of the power of attorney, by death, disability or otherwise, or notice of any facts indicating the same.

Given under my hand this ___ day of _____, 2018.

_____(SEAL)
Notary Public

My name (printed) is:

My commission expires: _____