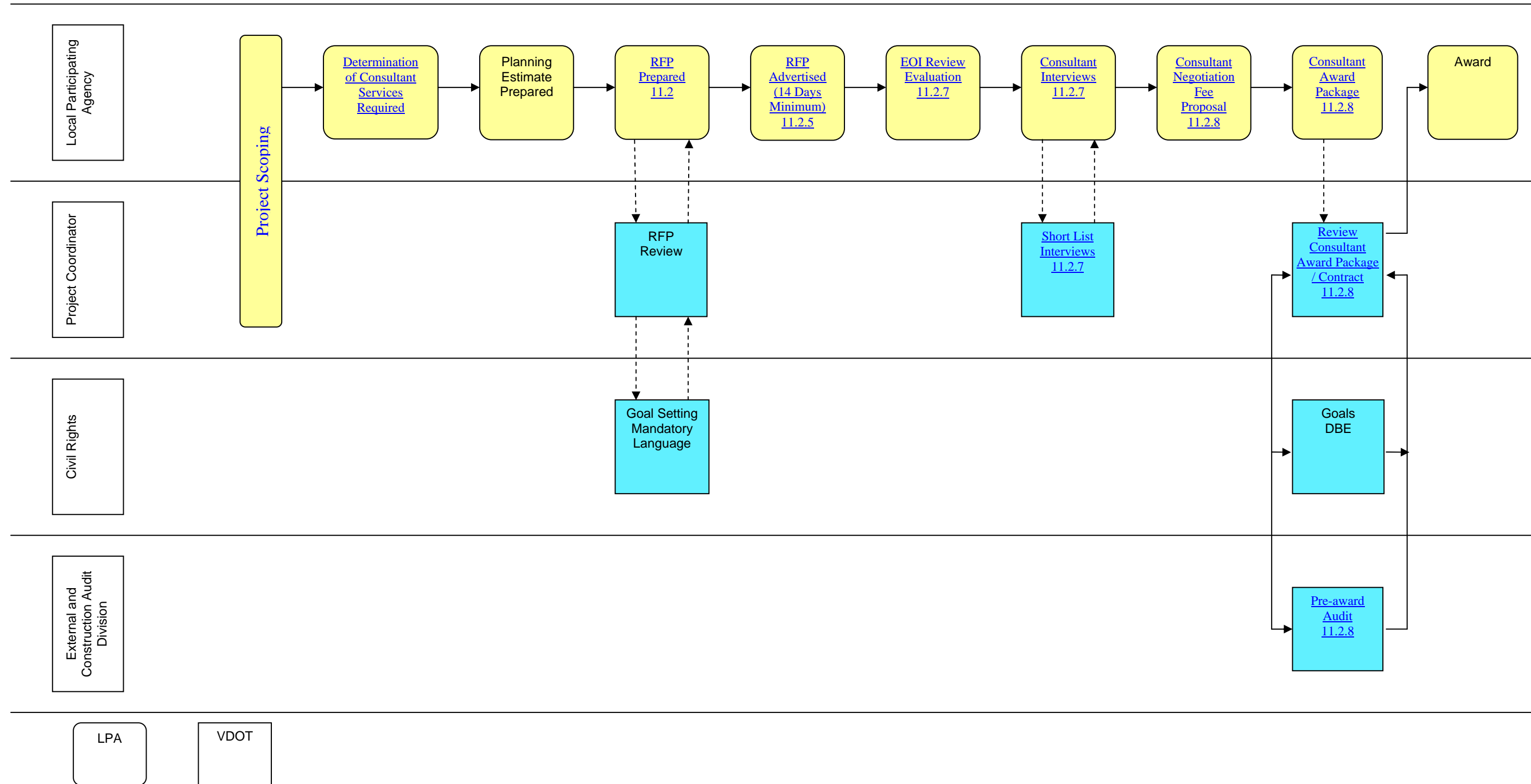


PART 2
Project Management
Chapter 11
Consultant Procurement

Locally Administered Projects (LAP) Manual

CHAPTER 11 - CONSULTANT PROCUREMENT



Chapter 11 - Consultant Procurement

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11.1 OVERVIEW

11.1.1 Introduction

Federal and state laws require professional consultant services to be acquired through a qualifications-based process. For federal-aid projects, procurement requirements are outlined in [23 CFR Part 172](#), Public Law 92-582 (Brooks Act) and [40 USC, Chapter 11, Sections 1101 – 1104](#). Additional guidance can be found on FHWA's [Engineering and Design Services website](#). State requirements for professional consultant procurement are found in the [Virginia Public Procurement Act](#) (Virginia Code Title 2.2.4301). This chapter will provide the LPA project manager with a summary of the professional services procurement requirements as well as any required and recommended submittals to VDOT for review and/or approval. **The [VDOT Manual for Procurement and Management of Professional Service](#) (Professional Procurement Manual) is the primary reference for the procurement of professional services of federal-aid projects administered by the LPA.**

Services or consultants not meeting the definition of professional services or professional occupations by Virginia Code may be procured through non-professional procurement processes. However, the local government must coordinate closely with the VDOT Project Coordinator when this option is being considered. Acquisition of pre-approved Right of Way Consultants and Counsel is discussed in [Chapter 16.4.2](#) (Right of Way).

LPA-administered transportation projects funded through VDOT state-aid or special programs such as Revenue Sharing and Access, and will not otherwise include federal aid, shall follow local professional services contract procurement processes developed pursuant to [Code of Virginia §2.2.4301](#) and in compliance with the [Virginia Public Procurement Act](#) (VPPA), rather than those outlined in this manual. The LPA is solely responsible for compliance with the VPPA and will be required to certify compliance with

Virginia’s PPA prior to the initial reimbursement request for such activities, in accordance with [Chapter 5](#) of this manual. LPAs are advised that reimbursements for consultant services procured using local guidelines which do not meet federal-aid requirements may not be provided if the project is converted to include federal aid.

Additionally, FHWA has determined that the use of state procurement procedures is acceptable for projects not located within highway rights of way. [Title 49 CFR 18.37\(a\)](#) specifies that a state shall follow state law and procedures when awarding and administering subgrants to local governments. For such federal-aid projects, most common when dealing with the Enhancement Program, VDOT requires LPAs to follow the VPPA. Further discussion of Enhancement Program projects is contained in [Chapter 5](#). **LPAs administering Enhancement projects must coordinate closely with their VDOT Project Coordinator when employing these efficiencies.**



11.1.2 Applicability

- Federal-aid professional services contracts and those developed to qualify for federal aid.
- For state-aid projects, LPAs must retain adequate documentation to demonstrate compliance with the Virginia Public Procurement Act and ensure those records are available for audit for a minimum of three years after fiscal close-out of the project.


<i>Professional Procurement Provisions</i>		
<i>Federal-aid</i>	<i>State-aid / VDOT Maintained</i>	<i>State-aid /LPA Maintained</i>
X	*	*

* LPAs must meet provisions of Virginia Public Procurement Act

11.2 PROFESSIONAL CONSULTANT PROCUREMENT PROCESS

11.2.1 Development of Request for Proposal

The LPA is responsible for preparing the consultant Request for Proposal (RFP) and subsequent Contract/Memorandum of Agreement with the consultant. LPAs may use their own RFP formats; however, to ensure all federal-aid provisions are met, the MOA (consultant contract) must contain the applicable federal requirements provisions highlighted in the RFP/MOA templates contained in [Appendix B](#). For federal-aid professional consultant contracts the selection factors found in Chapter 3.1 of the [VDOT Manual for Procurement and Management of Professional Services](#) should be included in the RFP. Selection factor “Present Workload” however, is not required.

The LPA may develop or use their own existing selection criteria, with approval of VDOT, as it relates to the qualification of the consultant with respect to the proposed services; however, it must not contain price or local preference criteria.  Any conflicts with local procurement requirements must be discussed and resolved with VDOT prior to advertisement of the RFP. Failure to receive VDOT concurrence for the selection criteria could result in loss of federal participation if the criteria are found to violate federal requirements.

11.2.2 Scope of Services

The LPA is encouraged to work closely with VDOT, early on in the project development process to prepare a preliminary scope for the project. The preliminary project scope should be used, during the RFP development, to determine scope of services needed from the consultant and the schedule the consultant must meet. The consultant scope of services also serves as the basis for estimating consultant costs for the project, although this estimate will be further refined after negotiations with the most qualified consultant. VDOT can provide sample RFPs for various types of professional services at the request of the LPA. VDOT staff is also available to review and comment on the

RFP including the scope of services, especially for those areas where the LPA may be less experienced with federal requirements, such as environmental services. VDOT provides resources for the preparation of professional services contracts on their [Consultant Guide Fee Proposal](#) Web site.

11.2.3 Consultant Qualifications

Professional consultants are not pre-qualified, however, state or federal laws may require other minimum qualifications to perform certain types of work. In Virginia, professional services are regulated by the [Department of Professional and Occupational Regulation](#) (DPOR). All firms, including branch offices located in Virginia, must meet DPOR requirements. It is strongly recommended that the LPA coordinate with the VDOT Project Coordinator and obtain guidance regarding necessary qualification and selection criteria for their consultants. As with scopes of services, VDOT staff is available to provide support regarding the necessary consultant qualifications.

11.2.4 Contract Compensation Methods

VDOT allows the use of three types of compensation methods for “professional engineering” services: cost plus fixed-fee, fixed billable rates, and lump sum. A complete description of these contract types is provided in VDOT’s 2007 [Manual for the Procurement and Management of Professional Services](#), Section 5.3.

11.2.5 Advertisement

The LPA must advertise the RFP in a newspaper of general circulation in the area in which the contract is to be performed, and a minority owned newspaper in those areas, when available.

An RFP must be advertised for a minimum of 14 calendar days; however, VDOT recommends an advertisement of at least 30 calendar days to ensure full consideration by as many potential consultants as possible.

The LPA should date-stamp each offeror's expression of interest (EOI), to validate the EOI was received prior to the due date.

11.2.6 Selection Committee

The LPA must establish a selection committee to objectively evaluate submitted EOIs. The LPA should assign a selection committee chairperson and a selection committee comprised of local government staff representing technical experts as well as procurement and administrative experts. The VDOT Project Coordinator or other technical staff are available to assist during the interview process but will not be voting members of the selection committee.

Throughout consultant interviews and selection process, the LPA must provide a staff person, independent of the project, to observe the selection process. The purpose of this individual is to act as an impartial observer and to verify that the selection process followed the procedures outlined in this chapter for federal-aid projects. This responsibility generally falls to the purchasing/procurement staff.

11.2.7 Consultant Evaluation and Selection

Using the scoring criteria available in the RFP, each EOI must be individually scored by selection committee team members. Individual scores and rankings will be evaluated to determine the qualifications ranking for all EOIs. The LPA must keep, in the project file, signed or initialed originals of each individual score and rationale for the final ranking.

For federal-aid projects, a minimum of three consultants must be selected for further evaluation and technical presentations (the “short list”). If less than three expressions of interest were received, the LPA must contact the VDOT Project Coordinator to determine if the selection may continue. VDOT will obtain concurrence from FHWA to proceed with the selection process. For non-federal-aid projects, a minimum of two must be selected, in accordance with the VPPA.

VDOT recommends that short-listed firms be notified in writing and may request that the firms jointly attend a detailed project briefing meeting. This notification should include the schedule of their interview/technical presentation. If a project briefing is not held, the notification letter should inform the consultant as to what points the selection committee expects to be covered at the interviews/technical presentations.

After the interview/technical presentations are completed, the selection committee should hold a meeting to discuss and rank the teams using narrative statements of strengths and weaknesses based on the teams EOI, response to questions and interview/technical presentation.

After discussions regarding strengths and weaknesses of each firm, the Selection Committee must take a vote to determine the ranking order (“Final Ranking”). The Final Ranking must be based on a majority decision and does not need to be unanimous. Written justification of the final rankings and selection must be included in the project file. The notification regarding final selection must be sent to all shortlisted firms and posted publicly, typically on the LPA’s procurement Web site.

11.2.8 Consultant Negotiations and Pre-Award Audit

Upon final ranking of the offerors, the LPA may contact the top ranked offeror and begin negotiations. The purpose of the negotiations is to agree upon a contract which is reasonably acceptable to all parties. A written record must be kept of the negotiations. Only one consultant may be negotiated with at any one time. If a mutually agreeable

contract cannot be finalized with the top-ranked firm, then negotiations with that firm will be formally terminated and negotiations with the second-ranked offeror will begin.



At the end of negotiations, the following must be provided to the Project Coordinator for review by VDOT External and Construction Audit

Division:

- Fee Proposal – this must contain sufficient information to support the basis for the costs contained in it and must contain a certification that the costs were proposed in a manner consistent with the requirements of the consultant's accounting system, specifically stating that costs proposed as direct expenses are not included in their overhead.
- Supporting Documentation found in [Appendix C](#):
 - Fee contingency, as determined by LPA
 - Net fee – negotiation guidelines are found in the VDOT Manual for Procurement and Management of Professional Services and best management practices for the LPA
 - Consultant direct labor costs
 - Consultant indirect (overhead) costs
 - Non-salary (other) direct costs
- Certification regarding debarment or suspension by any federal department or agency; for primary and sub consultants
- Insurance certifications
- Title VI evaluation report form (T6-9-12-06) or Title VI approval letter from VDOT's Civil Rights Division.

Upon receipt of a complete package, VDOT will provide comments within 20 business days.

After resolution of comments provided by VDOT, the local government may execute the contract with the consultant. LPAs may use any contract format; however, for federal-

aid projects specific provisions must be included in the contract. VDOT uses a [Memorandum of Agreement \(MOA\)](#) as the standard contract. If desired, the VDOT Project Coordinator can provide an example of an MOA for the LPA's use.

11.2.9 Use of “On-Call” Consultants

In certain cases the LPA may want to utilize a consultant that is already under contract. In these cases it is important that the LPA have sufficient file documentation to ensure that the procurement process has conformed to **Brooks Act** requirements and the task order(s) covering the additional work must include all required mandatory provisions as identified in Appendix B. File documentation should also include copies of the advertisement, selection criteria, interview questions and responses for each firm interviewed, award notification, signed contract and fee information.

VDOT Responsibilities:

- *Qualifications/Consultant Services: The PC will provide support, as requested, to determine consultant needs and scope of services for LPA. Provide local government with recommendations regarding consultant scope of services and qualifications to include in the RFP.*

- *Review of RFP:*
 - *The PC will review the draft RFP for mandatory federal provisions*
 - *The PC will distribute draft RFP to Civil Rights Manager and other disciplines as appropriate for comment.*
 - *If requested, VDOT staff may review, comment and assist in developing and defining consultant scope of services, consultant qualifications, selection criteria and coordination with VDOT technical staff as necessary;*
 - *Alternative selection criteria proposed by the LPA must be reviewed and approved or rejected. Contact Local Assistance Division to coordinate compliance questions.*
 - *Any comments must be provided to LPA within ten business days.*

- *Final Scope of Services and Consultant Fee Proposal: VDOT will review the final scope of services, hours, and fee schedule, if requested. This information will become part of the final pre-award evaluation package.*
- *Final Package to include External and Construction Audit Division (ECAD) Pre-award Evaluation Package: The entire package must be submitted, by the PC, to ECAD for evaluation. The Project Coordinator should ensure that the LPA has submitted a complete package and that overhead rates have been determined by an independent CPA firm following FAR regulations. After ECAD evaluation and approval, provide written notification of approval to the LPA. The written approval and any written information provided by ECAD should be uploaded into the project documents tab in iPM.*

11.4 KEY SUBMITTALS / REQUIREMENTS

<i>Task/Submittal / File Documentation</i>	<i>Locality Responsibility</i>	<i>VDOT PC Responsibility</i>	<i>Submittal Timing or Recordkeeping Requirements</i>
Draft RFP/MOA	Use templates/samples provided and ensure contains necessary contract language.	Ensure RFP contains proper selection criteria and contractual language; submit to CR Section for review	Submit prior to advertisement; generally 30 days; VDOT will return within ten business days or other agreed upon schedule
Submit Pre-Award Audit Package	Ensure package is complete prior to submittal	P.C. will review to ensure complete package is submitted and submit to Central Office ECAD for review	Immediately after negotiations are complete; ECAD will provide approval / comments to the PC within 20 business days of submittal
Record of Selection Process, identified in Appendix A of this Chapter	N/A	N/A	Keep on file for three years after financial closeout of project

11.5 REFERENCES

- [23 CFR 172](#)
- [48 CFR 31](#)
- [23 USC 112](#)
- [49 CFR 18.36](#) (off-system procurement)
- [49 CFR 18.42](#) (Records Retention)
- [VA Public Procurement Act; Code of Virginia Title 2.2 Chapter 43](#)
- [40 USC Chapter 11](#), Selection of Architects and Engineers

- [VDOT Manual for the Procurement and Management of Professional Services](#)
- [FHWA Contract Administration Core Curriculum Participants Manual](#), Section IV.B
- FHWA Consultant Procurement Web Page:
<http://www.fhwa.dot.gov/programadmin/consultant.cfm>
- FHWA Memorandum “Awarding Engineering and Design Services Contracts Based on Brooks Act Requirements” dated December 12, 2005:
<http://www.fhwa.dot.gov/programadmin/121205.cfm>
- FHWA FAQs on Brooks Act:
<http://www.fhwa.dot.gov/programadmin/172qa.cfm#r02>
- FHWA, Administration of Engineering and Design Related Services Contracts - Questions and Answers: <http://www.fhwa.dot.gov/programadmin/172qa.cfm>

Chapter Appendices

- Appendix A – Consultant Procurement Checklist
- Appendix B – RFP and MOA (Consultant Contract) with mandatory provisions highlighted
- Appendix C – ECAD Pre-Award Evaluation Checklist
- Appendix D – Certification of Debarment or Suspension by any Federal Department/Agency

APPENDIX A
PROFESSIONAL PROCUREMENT CHECKLIST

Consultant Procurements Checklist – Federal-aid Projects

- ___ Ensure mandatory language provided in Manual for LAPs is included in the RFP.
- ___ VDOT evaluation criteria, minus “present workload with the department,” have been included in the RFP; alternative evaluation criteria must be submitted for approval prior to use.
- ___ RFP posted in a newspaper of general circulation of the project and a minority-owned newspaper, if one is available, for a minimum of 14 calendar days.
- ___ Selection committee established, to include one individual, independent of the project, to observe the selection process.
- ___ Each EOI is individually scored, using the established evaluation criteria; all evaluations / scores are maintained in the project file.
- ___ A minimum of three (3) consultants must be evaluated (short-listed). If three are not selected, the PC was notified to confirm that the RFP was adequately advertised and that the selection process could continue.
- ___ Final ranking was based on a majority decision; written justification has been provided in project files.
- ___ Negotiations made with the highest ranking firm. If no agreement could be made, the negotiation was formally ended and negotiations began with the next highest ranking firm.
- ___ Written records of all negotiations and decisions are provided in the project files.
- ___ Contract/MOA contains all mandatory language provided in the Manual for LAPs.

APPENDIX B

**MANDATORY FEDERAL-AID PROFESSIONAL SERVICES
RFP TEMPLATE/MOA (CONTRACT) PROVISIONS**

TEMPLATE

**REQUEST FOR
PROPOSAL**



GENERAL

The < Local Government > is seeking expressions of interest from consulting engineering firms who wish to be considered to provide professional engineering services for ...

... The estimated project cost is \$_____

This work is to be accomplished utilizing computerized design and drafting systems compatible with the VDOT's automated design and drafting systems. VDOT's roadway design system is GEOPAK Civil Design Software and the drafting system is Microstation. This project will be developed utilizing VDOT's policies and procedures and FHWA's guidelines. This Request for Proposal does not commit the < Local Government > to award a contract, to pay any costs incurred in the preparation of a proposal for this request, or to procure or contract for services. [Include the following wording on all projects except multiple awards contract: The < Local Government > reserves the right to accept or reject any or all proposals received as a result of this request, to negotiate with any qualified firm or to modify or cancel in part or in its entirety the Request for Proposal if it is in the best interest of the < Local Government > to do so.] [Include the following wording on multiple awards contract: The < Local Government > reserves the right to award contracts to more than one qualified firm, to accept or reject any or all proposals received as a result of this request, to negotiate with any qualified firm or to modify or cancel in part or in its entirety the Request for Proposal, if it is in the best interest of the < Local Government > to do so. Each multiple award contract will be negotiated and awarded sequentially following the same procedures set forth in the 2007 Manual for the Procurement and Management of Professional Services.]

SCOPE

The scope of work shall consist of providing....

... All procurement related questions or information should be directed to Jane Doe at 804-666-6667 or email Jane.Doe @< Local Government >.xxx.

[CONFLICT OF INTEREST: Include this wording on all engineering design services contracts for projects that are not considered design-build candidates: At this time, < Local Government > is not considering this project to be delivered through a design-build option. If the < Local Government > decides to deliver the project through design-build option, the successful consultant and any of its team members may not be allowed to participate in ANY subsequent design-build contracts. Furthermore, the < Local Government > will notify the successful

consultant regarding the change in its intent of delivery method in advance. The Conflict of Interest determination will be made on a case by case basis at such time.]

OR

[CONFLICT OF INTEREST: Include this wording on all contracts for projects that are most likely to be considered as design-build candidates: If the < Local Government > determines to deliver the project through a design-build delivery option, the < Local Government > reserves the right to revise the scope of this professional service contract. The revised scope may include preparation of design-build contract documents, technical evaluations of design-build proposals, and contract administration of design-build project. Therefore, the successful consultant and any of its team members will not be allowed to participate in ANY subsequent design-build contracts related to this project. Upon < Local Government >'s determination of design-build delivery of the project, a fair and reasonable compensation to perform the required services will be negotiated through a Supplemental Agreement.]

OR

[CONFLICT OF INTEREST: Include this wording on all Limited Service Term contracts for engineering design: At any time, the < Local Government > may consider projects assigned under this contract to be delivered through a design-build option. If the < Local Government > decides to deliver a project through design-build option, the successful consultant and any of its team members may not be allowed to participate in ANY subsequent design-build contracts related to that project. Furthermore, the < Local Government > will notify the successful consultant regarding the change in its intent of delivery method in advance. The Conflict of Interest determination will be made on a case by case basis at such time.]

EXPRESSION OF INTEREST (EOI)

1. The Expression of Interest shall be organized in the following order:
 - Transmittal letter
 - Table of Contents
 - Understanding of Scope of Work
 - Response to RFP Expression of Interest Items 2-14
 - Present workload with Department form
 - Team organization chart
 - GSA Form 255 – one combined for the project team
 - GSA Form 254 – one for each firm
 - Firm data sheet

- Certification Regarding Debarment form
 - DBE Commitment and Confirmation Letter (if applicable)
2. Furnish three copies of current GSA Forms 254 for each firm involved and three copies of one combined GSA Form 255 for the project team. The GSA Form 255 must specify the number of personnel by discipline for each office where the work is to be performed. In Section 4 of GSA Form 255, list only the full time employees assigned to the office(s) at the time of this submission. Section 8 of GSA Form 255 is limited to one page with not more than 10 projects total (prime and subconsultants combined) on the one page and should primarily list experience of offices where the work will be performed and of the people shown in the organizational chart. If the experience shown is for a branch office other than where the work will be performed, it should be clearly indicated as such. More detailed descriptions for Section 8b may be expanded into Section 10. In Section 9 of GSA Form 255, references to **"Federal agencies" are to be replaced by "Virginia Department of Transportation or Local Government."**
 3. If more than one firm will participate in the contract, state the type of arrangement between the firms, the names and addresses of all firms, description of the work that each firm will perform, and the percentage of work to be performed by each in Section 5 and 6 of GSA Form 255. Indicate office locations at which the work will be performed. A one page organizational chart showing all firms involved and key personnel assignments and responsibilities is required to be included.
 4. In Section 7 of GSA Form 255, indicate KEY PERSONNEL ONLY who will be assigned to this project and give the experience record of each. Key personnel are defined as those to whom the project will be assigned and who will be performing the actual design/services. The project manager shall have a minimum of five years experience in managing similar type and size projects. In Section 7c, indicate the location of the office where the person is currently working if different from where work is to be performed. In Section 7c, part time personnel, personnel not employed on the date of the form, or personnel used on an "as needed basis" must have their status clearly indicated. Section 7g may be expanded to provide a total of a one page resume per individual.

Furthermore, all individuals identified as Key personnel in the EOI shall remain on the Consultant's Team for the duration of the procurement process and, if the consultant is awarded a contract, the duration of the contract. If extraordinary circumstances require a proposed change, it must be submitted in writing to the < Local Government's > Project Manager, who, at his/her sole discretion, will determine whether to authorize a change. Unauthorized changes to the Consultant's Team at any time during the procurement process may result in elimination of the Consultant's Team from further consideration.

5. Section 10 of GSA Form 255 is limited to a maximum of ten pages. This section should describe the organization of the proposed project staff indicating the role of each by individual. If subconsultants are proposed, the role of each subconsultant should be

discussed. It should also include statements that are responsive to the attached Consultant Short List Score Sheet that will be used to evaluate your submission. This is the ONLY section of the submission which may include pictures or graphics (included in the ten page limit). List any computer and CADD equipment and any specialized computer software packages that you will use on this VDOT project.

6. *"It is the policy of the Virginia Department of Transportation and <insert LPA> that Disadvantaged Business Enterprises (DBEs) as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of federally funded consultant contracts. A list of Virginia Department of Minority Business Enterprise certified DBE firms is maintained on their web site (<http://www.dmb.state.va.us/>) under the **DBE Directory** link. Consultants are encouraged to take all necessary and reasonable steps to ensure that DBEs have the maximum opportunity to compete for and perform services on the contract, including participation in any subsequent supplemental contracts. If the consultant intends to subcontract a portion of the services on the project, the consultant is encouraged to seek out and consider DBEs as potential subcontractors. The consultant is encouraged to contact DBEs to solicit their interest, capability and qualifications. Any agreement between a consultant and a DBE whereby the DBE promises not to provide services to other consultants is prohibited."*

In accordance with the Governor's Executive Order No. 33, the Virginia Department of Transportation also requires a utilization of Small, Women and Minority (SWaM) Businesses to participate in the performance of state funded consultant contracts. A list of Virginia Department of Minority Business Enterprise (DMBE) certified SWaM firms is maintained on the DMBE Web site (<http://www.dmb.state.va.us/>) under the **SWaM Vendor Directory** link. Consultants are encouraged to take all necessary and reasonable steps to ensure that SWaM firms have the maximum opportunity to compete for and perform services on the contract, including participation in any subsequent supplemental contracts. If the consultant intends to subcontract a portion of the services on the project, the consultant is encouraged to seek out and consider SWaM firms as potential subconsultants. The consultant is encouraged to contact SWaM firms to solicit their interest, capability and qualifications. Any agreement between a consultant and a SWaM firm whereby the SWaM firm promises not to provide services to other consultants is prohibited.

[Include the following wording and two bullets on state or federally funded projects with a DBE or SWaM goal. In the following sentence and these two bullets, remove references to SWaM on federally funded projects and DBE on a state funded project and all SWaM references where not applicable for local governments] If portions of the services are to be subcontracted to a DBE or SWaM, the following needs to be submitted with your EOI and both must reference the project number(s) for the services:

- Written documentation of the prime's commitment to the DBE or SWaM firm to subcontract a portion of the services, a description of the services to be performed and the percent of participation.

- Written confirmation from the DBE or SWaM firm that it is participating, including a description of the services to be performed and the percent of participation.

49 CFR Part 26 requires VDOT to collect certain data about firms attempting to participate in VDOT contracts. This data must be provided on the enclosed Firm Data Sheet.

VDOT is also required to capture DBE and SWaM payment information on all professional services contracts. The successful prime consultant will be required to complete C- 63 form for both state and federally funded projects on quarterly basis.

Any DBE or SWaM firm must become certified (with the Virginia Department of Minority Business Enterprise) prior to your response being submitted. If DBE or SWaM firm is the prime consultant, the firm will receive full credit for planned involvement of their own forces, as well as the work that they commit to be performed by DBE or SWaM subconsultants. DBE or SWaM prime consultants are encouraged to make the same outreach efforts as other consultants. DBE or SWaM credit will be awarded only for work actually being performed by them. When a DBE or SWaM prime consultant subcontracts work to another firm, the work counts toward DBE or SWaM goals only if the other firm is itself a DBE or SWaM. A DBE or SWaM prime consultant must perform or exercise responsibility for at least 30% of the total cost of its contract with its own force.

DBE or SWaM certification entitles consultants to participate in VDOT's DBE and SWaM programs. However, this certification does not guarantee that the firm will obtain VDOT work nor does it attest to the firm's abilities to perform any particular work.

Business Opportunity and Workforce Development (BOWD) Center - The BOWD Center is a VDOT developmental supportive services program and partnering initiative funded by FHWA for selected DBE firms of various skill and competence levels interested in entering, enhancing or expanding highway contracting opportunities with prime consultants. The partnering initiative between prime consultants and BOWD DBE firms provides the opportunity for the further development of DBE firms through performance on contracts and guidance from prime consultants. The intent of this partnering initiative is to increase capacity by perfecting existing skills and knowledge, expanding into new work areas, and prime consultant joint venturing with DBE firms.

The prime consultants are encouraged to achieve all or a percentage of the required DBE participation/goals determined for this project by the utilization of BOWD approved firms. To assist consultants in taking advantage of this opportunity for utilization of approved BOWD firms, please contact the BOWD Center for additional information, details, resources and support. For further information on the BOWD Center and to view the DBE profiles, go to www.virginiadot.org/business/BOWD.asp. The BOWD Center can be contacted at (804) 662-9555 or via email to BOWDCenter@vdot.virginia.gov.

7. If any firms involved with this submission currently have work with VDOT, indicate the projects, the division managing the projects, the amount of outstanding fee remaining, and the estimated date of completion. For limited services term contracts, include only the amount of all tasks orders executed or under negotiation. Also, include your estimated fees for pending supplemental agreements and any projects for which the firms have been selected, but have not executed an agreement. Work of affiliated and/or subsidiary companies is to be included. The outstanding workload of any Virginia Department of Minority Business Enterprise certified DBE or SWaM prime or subconsultant is not to be included. When a DBE or SWaM firm graduates from the program, their workload incurred while a DBE or SWaM will be exempted for the next three years. Any workload obtained after graduating from the program will be counted. Work being performed under the Public Private Transportation Act (PPTA) or as a subcontractor on a Design-Build project shall not be included. Work being performed as a prime or joint venture on a Design-Build project shall be included. The outstanding fee remaining is the maximum total compensation payable less the amount previously paid to date. Only Category ___ work will be counted in the scoring criteria. This information shall be submitted using the attached Present Workload with Department form. Please carefully read the instructions on the Present Workload with Department form.

8. Give names and detailed addresses of all affiliated and/or subsidiary companies. Indicate which companies are subsidiaries. If a situation arises in responding to this questionnaire where you are unsure whether another firm is or is not an affiliate, doubt should be resolved in favor of affiliation and the firm should be listed accordingly.

Affiliate - Any business entity which is closely associated to another business entity so that one entity controls or has the power to control the other entity either directly or indirectly; or, when a third party has the power to control or controls both; or where one business entity has been so closely allied with another business entity through an established course of dealings, including but not limited to the lending of financial wherewithal, engaging in joint ventures, etc. as to cause a public perception that the two firms are one entity. Firms which are owned by a holding company or a third party, but otherwise meet the above conditions and do not have interlocking directorships or joint officers serving are not considered affiliates.

9. In ___ page(s) or less, provide information that will indicate your firm's ability to meet the time schedule for this project. The schedule is as follows:

10. In ___ page(s) or less, please emphasize your qualifications in the following areas:

11. A project approach discussion is neither required nor desired for this project.
or (select one)

A project approach discussion is required for this project and shall be limited to a maximum of _____ page(s).

12. In addition to the page restrictions listed above, a maximum of ____ additional pages may be included in the EOI. All pages are to be 8 1/2" X 11" and printed on one side with single-spaced type no smaller than 12 font size.
13. Please indicate, by executing and returning the attached Certification Regarding Debarment forms, if your firm, subconsultant, subcontractor, or any person associated therewith in the capacity of owner, partner, director, officer or any position involving the administration of federal or state funds:
- Is currently under suspension, debarment, voluntary exclusion or determination of ineligibility by any federal agency.
 - Has been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years.
 - Has a proposed debarment pending; or has been indicted, convicted, or had a civil judgment rendered against it or them by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

Any of the above conditions will not necessarily result in denial of award, but it will be considered in determining offeror responsibility. For any condition noted, indicate to whom it applies, initiating agency, and dates of action. Providing false information may result in federal criminal prosecution or administrative sanctions.

14. If the prime consultant or subconsultant does not have the in-house capability to provide non-professional services, each with an estimated cost of \$5,000 or greater, such as diving services, soil drilling, sampling services or laboratory testing, these services must be subcontracted in accordance with State procurement procedures once a contract is executed, with no DBE or SWaM credit in the selection of the most qualified firm or team. Clearly indicate these services in the EOI.

ADMINISTRATIVE

1. The following services marked with an X will **NOT** be required:

- | | |
|----------------------------------------|----------------------------------------|
| Surveying ____ | Specifications ____ |
| Bridge and Structure Plans ____ | Materials Analysis ____ |
| Permit Drawings ____ | Environmental ____ |
| Hydraulic and Hydrologic Analysis ____ | Road Plans ____ |
| Traffic Data ____ | Traffic Analysis ____ |
| Signs and Signals Plans ____ | Lighting Plans ____ |
| Scour Analysis ____ | Geotechnical Borings and Analysis ____ |
| Utility Plans ____ | Landscape Plans ____ |

2. All business entities, except for sole proprietorships, are required to register with the Virginia State Corporation Commission (A Business Registration Guide is available on the Internet at <http://www.state.va.us/scc/division/clk/brg.htm>). Foreign Professional corporations and Foreign Professional Limited Liability Companies must possess a Commonwealth of Virginia Certificate of Authority from the State Corporation Commission to render professional services. Any business entity other than a professional corporation, professional limited liability company or sole proprietorships that do not employ other individuals for which licensing is required must be registered in the Commonwealth of Virginia with the Department of Professional and Occupational Regulation, Virginia Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects (<http://www.state.va.us/dpor>). Board regulations require that all professional corporations and business entities that have branch offices located in Virginia which offer or render any professional services relating to the professions regulated by the Board be registered with the Board. Registration involves completing the required application and submitting the required registration fee for each and every branch office location in the commonwealth. All branch offices which offer or render any professional service must have at least one full-time resident professional in responsible charge who is licensed in the profession offered or rendered at each branch. All firms involved that are to provide professional services must meet this criterion prior to submitting an EOI to the < Local Government >. Individual engineers shall meet the requirements of Chapter 4, Title 54.1 of the Code of Virginia.

3. The < Local Government > will not consider for award any cost proposals submitted by any consultants and will not consent to subcontracting any portions of the contract to any

subconsultants in violation of the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.

4. The method of payment for this contract will be cost plus fixed fee. This contract shall be performed and audited in compliance with cost principles contained in the Federal Acquisition Regulations (FAR) of Part 31 of Title 48 of the Code of Federal Regulations. The overhead rate shall be established by an audit by a cognizant government agency or independent CPA firm. Subconsultant contracts may be lump sum if they are for \$2 million or less, have a clearly defined scope of work, and will take two years or less to complete.

or

The method of payment for this contract will be lump sum. For purpose of determining the lump sum fee, an overhead rate shall be established in compliance with cost principles contained in the Federal Acquisition Regulations (FAR) of Part 31 of Title 48 of the Code of Federal Regulations. The overhead rate shall be established by an audit by a cognizant government agency or independent CPA firm.

or

The method of payment will be [lump sum/actual costs] for each project assignment based on fixed billable rates. For purpose of determining the [lump sum fee/fixed billable rates], an overhead rate shall be established in compliance with cost principles contained in the Federal Acquisition Regulations (FAR) of Part 31 of Title 48 of the Code of Federal Regulations. The overhead rate shall be established by an audit by a cognizant government agency or independent CPA firm.

5. All firms submitting EOI (prime consultants, joint ventures and subconsultants) must have internal control systems in place that meet federal requirements for accounting. These systems must comply with requirements of 48CFR31, "Federal Acquisition Regulations, Contract Cost Principles and Procedures," and 23CFR172, "Administration of Negotiated Contracts." All firms selected for a project (prime consultants, joint ventures and subconsultants) must submit their FAR audit data to the < Local Government > within ten work days of being notified of their selection. Should any firm on the consultant team fail to submit the required audit data within the ten work days, negotiations will be terminated by the < Local Government > and the next most qualified team invited to submit a proposal.
6. Records Exclusion from Public Disclosure: Pursuant to the provisions of §2.2-3705.6 (22) of the Code of Virginia, trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), including, but not limited to, financial records, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, and revenue and cost projections supplied by a private or nongovernmental entity to the Inspector General of the Virginia Department of

Transportation for the purpose of an audit, special investigation, or any study requested by the Inspector General's Office in accordance with law may, subject to a determination by the Inspector General as described herein, be withheld from public disclosure under the Virginia Freedom of Information Act (FOIA). To enable the Inspector General to identify data or records that may be subject to this exclusion from disclosure under FOIA the private or nongovernmental entity shall, in accord with procedures adopted by the Inspector General, make a written request to the Inspector General of the Virginia Department of Transportation:

- Invoking such exclusion upon submission of the data or other materials for which protection is sought
- Identifying with specificity the data or other materials for which protection is sought and stating the reasons why protection is necessary

The VDOT Inspector General shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial records of the private entity. The < Local Government > shall make a written determination of the nature and scope of the protection to be afforded by it. Notwithstanding the foregoing, contractor's failure to comply with the requirements stated herein and procedures established by the Inspector General for seeking an exclusion pursuant to §2.2-3705.6 (22) of the Code of Virginia shall result in a denial of the exclusion. Requests for exclusion that are submitted after data or other materials for which protection is sought have been submitted will be denied.

If litigation directly or indirectly results from or arises out of a granted exemption, the contractor will be responsible for all litigation costs incurred by contractor and/or the < Local Government > associated with such litigation. In no event shall the < Local Government > or its officers, employees or agents be liable to the contractor as a result of any disclosure of records or data collected by the < Local Government >, its officers, employees or agents, pursuant to an audit, special investigation, or any study requested by the Inspector General's Office, whether or not the Inspector General has determined that the requested exclusion from disclosure under FOIA is necessary to protect the trade secrets or financial records of the private entity, and in no event shall the < Local Government >, or its officers, employees, or agents be liable to the contractor for any damages or other claims arising directly or indirectly from a determination that the exclusion from public disclosure will not be granted.

7. Submittals shall be prepared simply and economically, providing a straightforward, concise description of the firm's capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content. Elaborate brochures and other representations beyond that sufficient to present a complete and effective proposal are neither required nor desired. Please do not duplicate information furnished in the GSA Form 254 or 255 elsewhere in the submittal. All information must be submitted in

TRIPLICATE and received no later than 4:00 p.m. on _____.
Responses received after this time will not be considered.

US Postal Service regular mail, send to:

< Local Government >

Hand delivery, US Postal Service express mail, or private delivery service (FEDEX, UPS, etc.), send to:

< Local Government >

8. The <Local Government> assures compliance with Title VI of the Civil Rights Act of 1964, as amended. The consultant and all subconsultants selected for this project will be required to submit a Title VI Evaluation Report (EEO-D2) within ten work days of notification of selection when requested by VDOT. This requirement applies to all consulting firms when the contract amount equals or exceeds \$10,000.
9. The < Local Government > does not discriminate against an offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.
10. Any offeror who desires to protest the award of a contract shall submit such protest in writing to the < Local Government > no later than ten days after the announcement of the award. Public announcement of the award shall be posted on the Department's Business Center Internet site.
11. eVA Business-to-Government Vendor Registration: The eVA Internet electronic procurement solution, Web site portal (<http://www.eva.state.va.us>), streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution through either eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. For more detail information regarding eVA, registrations, fee schedule, and transaction fee, use the Web site link: <http://www.eva.state.va.us>. All bidders or offerors must register in eVA; failure to register will result in the bid/proposal/expression of interest being rejected.
11. [Include the following when the required services include handling CII/SSI material, accessing Critical Infrastructure or performing services such as bridge/tunnel inspections] The required services will involve the handling of Critical Infrastructure Information/Sensitive Security Information (CII/SSI) material. Firm(s) handling CII/SSI material will be required to sign non-disclosure agreements. Individuals with the firm(s) that handle CII/SSI material will be required to sign non-disclosure agreements. Once negotiations have been completed and prior to executing a contract, personnel handling CII/SSI material, visiting Critical Infrastructure (CI) facilities or performing bridge/tunnel inspections may be required to pass a fingerprint-based Criminal History

Background Check (CHBC). An individual employee's failure to successfully pass the fingerprint-based CHBC will not negate the selection and offerors will be allowed to replace those individuals. However, if key personnel fail the fingerprint-based CHBC, the selection may be cancelled and negotiations begun with the next ranked offeror. VDOT reserves the right to conduct fingerprint-based CHBC on all employees of the prime consultant, on any employees of subconsultants or on any proposed replacements during the term of the contract who will be involved in this project. All costs associated with the fingerprint-based CHBC are the responsibility of the prime consultant. A VDOT issued photo-identification badge is required for each employee of the prime consultant or any subconsultant who will need access to VDOT CI facilities or who will be performing bridge/tunnel inspections. Based upon the results of the fingerprint-based CHBC, VDOT reserves the right to deny issuance of a VDOT security clearance or a VDOT issued photo-identification badge.

12. [Include the following wording when contract involves purchases of computer hardware, software, firmware, and other microprocessor based products] Year 2000 Compliant (and Enablement) Warranty: The consultant warrants that all software, firmware and hardware product(s) delivered to the < Local Government > under any agreement, and which is used in accordance with the product documentation provided by the consultant, shall be 4-digit Year 2000 compliant (or approved enabled). All products shall accurately process all date-change data from start to finish, including, but not limited to, twentieth, twenty-first centuries and leap year calculations.

Any product provided under the agreement discovered not to be Year 2000 compliant after acceptance shall be corrected by the consultant at no additional cost to the < Local Government >. Failure to correct the deficiency shall subject the consultant to default action.

[Include the following wording when contract involves a system and/or customized software which will be used in combination with VDOT owned product(s) or source(s) of data and which are identified in the solicitation] The consultant shall not be responsible for correcting any product(s) (e.g., hardware, software, firmware) which were not provided under the agreement or for correcting any previously owned VDOT products that are used in combination with the VDOT's product(s). However, if this solicitation identifies any product or sources of data to be used in combination with the product(s) delivered under the resulting agreement, the consultant shall be responsible for providing all necessary interface(s) or other appropriate means for assuring that date data output from such other product(s) or source(s) is automatically corrected before being processed by the product(s) or system provided under this agreement.

FIRM DATA SHEET

Funding: ____ (S=State F=Federal) Project No.: _____

Division: _____

EOI Due Date: _____

The prime consultant is responsible for submitting the information requested below on all firms on the project team, both prime and all subconsultants. All firms are to be reported on one combined sheet unless the number of firms requires the use of an additional sheet. Failure to submit all of the required data will result in the Expression of Interest not being considered.

Firm's Name, Address and DBE and/or SWAM Certification Number	Firm's DBE or SWaM Status *	Firm's Age	Firm's Annual Gross Receipts

* YD = DBE Firm Certified by DMBE
DMBE

N = DBE or SWaM Firm Not Certified by

NA = Firm Not Claiming DBE or SWaM

Status

YS = SWaM Firm Certified by DMBE. Indicate whether small, woman-owned, or small business.

DMBE is the Virginia Department of Minority Business Enterprise

CERTIFICATION REGARDING DEBARMENT
PRIMARY COVERED TRANSACTIONS
(To be completed by a Prime Consultant)

Project: _____

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.

b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; and have not been convicted of any violations of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1) b) of this certification; and

d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

The undersigned makes the foregoing statements to be filed with the proposal submitted on behalf of the offeror for contracts to be let by the Commonwealth Transportation Board.

_____	_____	_____
Signature	Date	Title

Name of Firm

CERTIFICATION REGARDING DEBARMENT
LOWER TIER COVERED TRANSACTIONS
(To be completed by a Sub-consultant)

Project: _____

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

The undersigned makes the foregoing statements to be filed with the proposal submitted on behalf of the offeror for contracts to be let by the Commonwealth Transportation Board.

_____	_____	_____
Signature	Date	Title

Name of Firm

DIVISION:

EOI NO.:

CONSULTANT SHORT LIST SCORE SHEET – FEDERALLY / STATE FUNDED PROJECT
(FOR PROFESSIONAL SERVICES)

PROJECT: _____ FIRM: _____

DESCRIPTION: _____ SUBS: _____

DATE:

		NUMERICAL VALUE				AVG.	WEIGHT	WEIGHTED EVALUATION
FIRM/TEAM'S EXPERIENCE IN SIMILAR TYPE OF SERVICES (Expertise, experience and qualifications of team in providing services as related to the scope of services) (1=least, 10=most)		1-10					25%	
PERSONNEL'S EXPERIENCE IN SIMILAR TYPE OF SERVICES (Expertise, experience and qualifications of team in providing services as related to the scope of services) (1=least, 10=most)		1-10					40%	
QUALIFICATIONS OF PROJECT MANAGER (Expertise, experience and qualifications in project management as related to the scope of services) (1=least, 10=most)		1-10					5%	
ORGANIZATIONAL CAPABILITY (Ability to complete work in a timely manner, size of firm(s) relative to size of project, proposed project staff resources, proposed use of subconsultants) (1=least, 10=most)		1-10					20%	
PRESENT WORKLOAD WITH DEPARTMENT ** (Dollar value of present outstanding fee including estimated pending contracts under negotiation. For limited services term contracts, include the amount of all task orders executed or under negotiation Work being performed under the Public Private Transportation Act (PPTA) or as a subcontractor on a Design-Build project shall not be included. Work being performed as a prime or joint venture on a Design-Build project shall be included.) † (Only Category ___ workload is counted on this selection*)	Above \$8,000,000	0					10%	
	7,000,001-8,000,000	1						
	6,000,001-7,000,000	2						
	5,000,001-6,000,000	3						
	4,000,001-5,000,000	4						
	3,000,001-4,000,000	5						
	2,000,001-3,000,000	6						
	1,500,001-2,000,000	7						
	1,000,001-1,500,000	8						
	500,001-1,000,000	9						
0-500,000	10							
							TOTAL	

*CATEGORIES OF WORKLOAD:

A - TERM SURVEYING AND UTILITY DESIGNATION/LOCATION CONTRACTS

B - PRELIMINARY ENGINEERING CONTRACTS - includes transportation planning and environmental studies, utility relocation and design, and roadway and bridge design.

C - CONSTRUCTION ENGINEERING CONTRACTS - includes construction inspection, preparation of final estimates, and bridge and traffic structure safety inspection.

D - OPERATION AND MAINTENANCE CONTRACTS - includes operation and maintenance of traffic management systems.

**When determining total Present Workload with Department, the outstanding workload of each DBE/SWaM subconsultant will not be counted.

† The outstanding workload of any certified DBE or SWaM prime and subconsultant is not to be included. When a DBE or SWaM firm graduates from the program, their workload incurred while a DBE or SWaM will be exempted for the next three years. Any work obtained after graduating from the program will be counted.

In determining the final short list, the top ranked firms and their subconsultants will have their VDOT Consultant Performance Reports reviewed and/or references checked.

4.1 GOOD FAITH EFFORT

(Federally funded project with DBE Goal; until further notice, DBE goals will not be assigned to consultant service contracts)

The Department will accept what consultants submit in their EOI regarding good faith efforts. If a firm that has submitted good faith effort documentation makes the short list, the procuring Division Administrator (cannot be delegated unless he/she will be out of the office for more than five work days) along with a representative of the EO Division will determine if the good faith effort is acceptable.

When there is a contract goal, a consultant must make good faith efforts to meet it. The consultant can do so either through obtaining enough DBE participation to meet the goal or documenting the good faith efforts it made to do so. These means of meeting contract goal requirements are fully equivalent. 49 CFR Part 26 (the Rule) explicitly provides that the Department must not disregard showings of good faith efforts, and it gives consultants the right to have the Department reconsider a decision that their good faith efforts were insufficient. The Department is prohibited from denying a contract to a consultant simply because it did not obtain enough DBE participation to meet the goal. The Department must seriously consider consultants' documentation of good faith efforts. To make certain that consultants' showings are taken seriously, the Rule requires the Department to offer administrative reconsideration to consultants whose good faith efforts showings are initially rejected.

The Rule also ensures flexibility for consultants by requiring that any contract goal be waived entirely for a prime consultant that demonstrates that it made good faith efforts but was still unable to meet the goal.

When the Department sets a contract goal, the basic obligation of consultants is to make good faith efforts to meet it. They can demonstrate these efforts in either of two ways, which are equally valid. First, they can meet the goal, by documenting that they have obtained commitments for enough DBE participation to meet the goal. Second, even though they have not met the goal, they can document that they have made good faith efforts to do so. A refusal by the Department to accept valid showings of good faith is not acceptable under the Rule.

The Rule makes clear that the Department is not to use a "conclusive presumption" approach, in which the apparent successful consultant is summarily found to have failed to make good faith efforts simply because another consultant was able to meet the goal. However, the performance of other consultants in meeting the contract can be a relevant factor in a good faith effort determination, in more than one way. For example, when the apparent successful consultant fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful consultant could have met the goal. It does not, by itself, prove that the apparent successful consultant did not make a good faith effort to get DBE participation, however. On the other hand, if the apparent successful consultant fails to meet the goal, but meets or exceeds the average DBE participation obtained by other consultants, the Department may view this, in conjunction with other factors, as evidence of the apparent successful consultant having made good faith efforts.

The fact that some additional costs may be involved in finding and using DBEs is not in itself sufficient reason for a consultant's failure to meet a DBE contract goal, as long as such costs are reasonable.

If the Department determines that the apparent successful consultant has failed to meet the requirements of a good faith effort, the Department must, before awarding the contract, provide the consultant an opportunity for administrative reconsideration. The Department intends that the process be informal and timely. The Department will ensure that the process is completed within a brief period (e.g., 5-10 days) to minimize any potential delay in procurements. The consultant will have an opportunity to meet with the reconsideration official, but a formal hearing is not required. As part of this reconsideration, the consultant must have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Department's decision on reconsideration will be made by an official who did not take part in the original determination that the consultant failed to meet the goal or make adequate good faith efforts to do so. The consultant must have the opportunity to meet in person with the reconsideration official to discuss the issues of whether it met the goal or made adequate good faith efforts to do so. The Department will send the consultant a written decision on reconsideration, explaining the basis for finding that the consultant did or did not meet the goal or make adequate good faith efforts to do so. The Department's reconsideration personnel consists of the Commissioner's DBE Review Panel.

It is up to the Department to make a fair and reasonable judgment whether a consultant that did not meet the goal made adequate good faith efforts. It is important for the Department to consider the quality, quantity, and intensity of the different kinds of efforts that the consultant has made. The efforts employed by the consultant should be those that one could reasonably expect a consultant to take if the consultant were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. The Department's determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.

If DBE is prime, they will be allowed to count toward goals the work they commit to performing with their own forces, as well as the work that they commit to be performed by DBE subcontractors. DBE consultants on prime contracts will be expected to make the same outreach efforts as other consultants.

When a DBE participates in a contract, the Department will count only the value of the work actually performed by the DBE toward DBE goals. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals. Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function. If a DBE firm loses certification, its work no longer counts toward the DBE goal.

All consultants will be required to submit the following information to the Department with the EOI:

- The names and addresses of DBE firms that will participate in the contract;
- A description of the work that each DBE will perform;
- The percentage amount of the participation of each DBE firm participating;

- Written documentation of the prime consultant's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
- Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
- If the contract goal is not met, evidence of good faith efforts.

The Department has prepared a list based on Federal Regulations of some of the kinds of efforts that consultants may make in obtaining DBE participation. It is not intended to be a mandatory checklist. The Department does not require that a consultant do any one, or particular combination, of the things on the list, nor is the list intended to be exclusive or exhaustive; it merely offers examples. Other factors or types of efforts may be relevant in appropriate cases. In determining whether a consultant has made good faith efforts, it will usually be important for the Department to look not only at the different kinds of efforts that the Consultant has made, but also of the timeliness, quantity, and intensity of these efforts.

The Department offers the following examples of efforts that may be considered:

A. Soliciting through all reasonable and available means (e.g., attendance at project showings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The consultant must solicit this interest within sufficient time to allow the DBEs to participate effectively. The consultant must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime consultant might otherwise prefer to perform these work items with its own forces.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract.

D. (1) Negotiating in good faith with interested DBEs. It is the consultant's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

D. (2) A consultant using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's costs, qualifications and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a consultant's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime consultant to perform the work of a contract with its own organization does not relieve the consultant of the responsibility to make good faith efforts. Prime consultants are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough

investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority community organizations; minority contractors' groups; local, state, and Federal minority business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

Revised: May 23, 2008



MEMORANDUM OF AGREEMENT

FOR

[INSERT BRIEF DESCRIPTION]

STATE PROJECT NUMBER: [STATE PROJECT NUMBER]

FEDERAL PROJECT NUMBER: [FED. PROJECT NUMBER]

ROUTE NUMBER: [ROUTE NUMBER]

[CITY/COUNTY]



LETTER OF AGREEMENT

1. CONTRACTING PARTIES: This Agreement is between the <Local Government>, hereinafter referred to as “the Locality,” and

[NAME OF CONSULTANT]

[ADDRESS]

[CITY, STATE, ZIP]

Fed. ID #: [FED. ID #]

hereinafter referred to as “the Consultant.”

[INCLUDE THE FOLLOWING LANGUAGE IF THE VOUCHER PAYMENT IS TO BE SENT TO AN ADDRESS DIFFERENT FROM THE ABOVE ADDRESS.]

Payment remittance shall be sent to the following address:

[NAME OF CONSULTANT]

[ADDRESS]

[CITY, STATE, ZIP]

Fed. ID #: [FED. ID #]

2. DESCRIPTION AND LIMITS OF PROJECT: This Agreement is for:

[BRIEF DESCRIPTION OF SERVICES TO BE PROVIDED].

The following items of work shall be subcontracted to:

[NAME OF SUBCONSULTANT]

[ADDRESS OF SUBCONSULTANT]

[ITEMS OF WORK]

*Disadvantaged Business Enterprise

3. INCLUDED DOCUMENTS: This Agreement shall consist of the following documents:

a. This signed Letter of Agreement;

- b. Certifications of the Consultant and the <Local Government>;
- c. The following Attachments:
 - Attachment A – General Terms and Conditions
 - Attachment B – Special Terms and Conditions
 - Attachment C -- Payment
 - Attachment D – Scope of Work and Fee Proposal
 - Attachment E – Year 2000 Compliance

In the event of any conflict between a provision in Attachment A and a provision in Attachment B, the conflicting provision in Attachment B shall govern this Agreement.

4. CONSIDERATION: This is a [Lump Sum/Cost Plus Net Fee/Fixed Billable Rate] contract.

The Consultant will be paid a maximum compensation of \$[LUMP SUM FEE] for services authorized by this Agreement. [USE THIS WORDING ON LUMP SUM AGREEMENTS]

The maximum total compensation payable to the Consultant for services authorized by this Agreement will not exceed \$[MAXIMUM COMPENSATION PAYABLE]. [USE THIS WORDING ON COST PLUS NET FEE/FIXED BILLABLE RATE AGREEMENTS]

[The maximum compensation payable for each [SHOW PHASE/STAGE AS REQUIRED] is as follows:]

[COST PLUS-SHOW NET FEE AND MAXIMUM COMPENSATION]

5. TIME TO COMPLETE WORK: [Plans/Reports/etc.] shall be completed and delivered to the <Local Government> within the periods specified in the progress schedule included in Attachment D.

[INCLUDE THE FOLLOWING LANGUAGE IF A TERM CONTRACT: Any work underway at the expiration of this Agreement shall be completed by the Consultant under the terms of the Agreement. Services to be performed by the Consultant under this Agreement shall be for project assignments made during a period of the earlier of one calendar year, commencing on the date of this Agreement, or when the cumulative total of fees for project assignments issued reaches the maximum total compensation. The Agreement may be renewable for two additional one year terms at the option of the <Local Government>.]

6. INTENT: It is the intent of this Agreement that the Consultant, employing qualified, competent and experienced personnel, shall perform the stated services equal to the practice prevalent among consultants within the subject area of work and commensurate with the magnitude and intricacy of the work under consideration. These services shall be so complete that it will not be necessary for the <Local Government> to supplement any of the operation by its own personnel, except as noted.

[INCLUDE THE FOLLOWING LANGUAGE IF A MULTI-PHASE CONTRACT: The services under this Agreement will be performed as a multi-phase professional services contract. Upon satisfactory completion of Phase I and the determination of the scope of the

additional services to be performed in subsequent phases, fair and reasonable compensation will be negotiated for a Supplemental Agreement to perform the services. In the event that the <Local Government> and the Consultant cannot agree on fair and reasonable compensation for the additional phases, the <Local Government> reserves the right to terminate this Agreement in accordance with the relevant provisions in Attachment A.]

7. SIGNATURES: The parties hereto agree to abide by all the provisions of this Agreement.

IN WITNESS WHEREOF, the parties sign and cause this Agreement to be executed on this the _____ day of _____, 20_____.

[NAME] Date [NAME] [TITLE] Date

[NAME OF CONSULTANT'S FIRM]

<Local Government Authorized Official> Date

Signature of Witness Date Signature of Witness Date

VDOT REVIEW
EXTERNAL & CONSTRUCTION AUDIT _____ Date: _____

CERTIFICATION OF CONSULTANT

I hereby certify that I am a duly authorized representative of [CONSULTANT], located at [ADDRESS OF CONSULTANT], and that neither I, nor the above firm I here represent, has:

- a. Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this Agreement,
- b. Agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out the Agreement, or
- c. Paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant), any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the Agreement, except as here expressly stated (if applicable):

_____.

I acknowledge that this certificate is to be furnished to the <Local Government>, in connection with any agreement involving participation of Federal-Aid highway funds, and is subject to applicable state and federal laws, both criminal and civil.

Signature	Title	Date
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CERTIFICATION OF THE <LOCAL GOVERNMENT>
[NAME OF CONSULTING FIRM]

I hereby certify that I am a duly authorized representative of the <Local Government> , and that the above consulting firm or its representative has not been required, directly or indirectly, as an express or implied condition in connection with obtaining or carrying out this Agreement to:

- a. employ or retain, or agree to employ or retain, any firm or person, or
- b. pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind, except as here expressly stated (if applicable):

_____.

I acknowledge that this certificate is to be furnished to the Federal Highway Administration, U. S. Department of Transportation, in connection with this Agreement involving participation of federal-aid highway funds, and is subject to applicable state and federal laws, both criminal and civil.

Signature	Title	Date
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ATTACHMENT A

GENERAL TERMS AND CONDITIONS



ATTACHMENT A – GENERAL TERMS AND CONDITIONS

1. **COMPLIANCE WITH LAWS AND REGULATIONS:** The Consultant shall keep fully informed of all federal, state, and local laws, ordinances, and regulations, and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on this Agreement, or which in any way affect the conduct of the services provided by the Consultant. It shall at all times observe and comply with, and shall cause its agents, subcontractors and employees to observe and comply with, all such laws, ordinances, regulations, orders, and decrees; and shall protect and indemnify the <Local Government> and its employees and appointees against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by itself or its agents, subcontractors or employees. If any discrepancy or inconsistency is discovered between this Agreement and any such law, ordinance, regulation, order, or decree, the Consultant shall immediately report the same to the Department in writing.

2. **VIRGINIA PROHIBITED EMPLOYMENT DISCRIMINATION:** The Consultant, its agents, employees, assigns or successors, and any person, firm, or agency of whatever nature with whom it may contract or make an agreement, shall comply with the provisions of the Section 2.2-4311 of the Code of Virginia (1950), as amended. During the performance of this Agreement, the Consultant agrees as follows:

- a. The Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Consultant. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- b. The Consultant, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, will state that the Consultant is an equal opportunity employer.
- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

The Consultant will include the provisions of the foregoing paragraphs “a”, “b” and “c” in every subcontract or purchase order of over ten thousand dollars, so that such provisions will be binding upon each subcontractor or vendor.

3. **NON-DISCRIMINATION PROVISION:** The Consultant agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibits discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, sex or national origin; and further agrees to abide by Executive Order No. 11246 entitled “Equal

Employment Opportunity,” as amended by Executive Order No. 11375 and as supplemented in the Department of Labor Regulations (41 CFR Part 60), which prohibit discrimination on the basis of age. Section 49 CFR 21 is incorporated by reference in all contracts and subcontracts funded in whole or in part with federal funds. The Consultant shall comply with the Americans with Disabilities Act (ADA), and with the provisions of the Virginians with Disabilities Act, Sections 51.5-40 through 51.5-46 of the Code of Virginia (1950), as amended, the terms of which are incorporated herein by reference.

In the event of the Consultant’s noncompliance with the nondiscrimination provisions of this Agreement, the <Local Government> shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:

- a. withholding of payments to the Consultant under this Agreement until the Consultant complies; and/or
- b. cancellation, termination or suspension of this Agreement, in whole or in part.

4. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964: During the performance of this Agreement, the Consultant, for itself, its assignees and successors in interest (herein referred to as “the Consultant”), agrees as follows:

- a. Compliance with Regulations: The Consultant will comply with the Regulations of the U.S. Department of Transportation relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (Title 49), Code of Federal Regulations, Part 21, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.
- b. Nondiscrimination: The Consultant, with regard to the services provided by it after award and prior to completion of this Agreement, will not discriminate on the grounds of race, religion, color, sex, national origin, age or handicap in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the services cover a program set forth in Appendix B of the Regulations.
- c. Solicitations for Subconsultants: In all solicitations, either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant’s obligations under this Agreement.
- d. Information and Reports: The Consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Department or the Federal Highway Administration to be pertinent to ascertain compliance with

such Regulations, orders and instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information. Consultants and subconsultants with 15 or more employees will submit an updated Title VI Evaluation Report (EEO-D2) annually as long as the consultant or subconsultant is performing in accordance with this Agreement.

- e. Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Agreement, the Department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:
 - 1) withholding of payments to the Consultant under this Agreement until the Consultant complies, and/or
 - 2) cancellation, termination or suspension of this Agreement, in whole or in part.
- f. Incorporation of Provisions: The Consultant will include the provisions of paragraphs "a" through "f" in every subcontract of \$10,000 or more, including procurements of materials and leases of equipment, unless exempt by the Regulations, order or instructions issued pursuant thereto. The Consultant will take such action with respect to any subcontractor or procurement as the <Local Government> or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, in the event the Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the <Local Government> to enter into such litigation to protect the interests of the <Local Government> and, in addition, the Consultant may request VDOT and the United States to enter into such litigation to protect the interests of the Commonwealth and United States.

5. CERTIFICATION REGARDING NON-SEGREGATED FACILITIES: By the execution of this Agreement, the Consultant certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location under its control, where segregated facilities are maintained. The Consultant further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, national origin, age or handicap, because of habit, local custom or otherwise. It agrees that, except where it has obtained identical certification

from proposed subcontractors and material suppliers for specific time periods, it will obtain identical certification from proposed subcontractors or material suppliers prior to the award of subcontracts or the consummation of material supply agreements exceeding ten thousand dollars, and that it will retain such certifications in its files.

6. DISADVANTAGED BUSINESS ENTERPRISES/SMALL, WOMAN AND MINORITY BUSINESS: The Consultant, its agents, employees, assigns, or successors, and any person, firm or agency of whatever nature with whom it may contract or make an agreement, shall comply with the provisions of 49 CFR Part 26, as amended, which is hereby made part of this Agreement by reference. The Consultant shall take all necessary and reasonable steps in accordance with 49 CFR Part 26, as amended, to ensure that DBE firms have the maximum opportunity to compete for and perform contracts and subcontracts under this Agreement. Subpart E of 49 CFR 26, Section 26.13 requires each contract signed with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

Further, the Consultant agrees to provide the <Local Government> with the dollar amount contracted and name of each subcontractor which identifies itself as a DBE. [Include the following wording on contract with DBE Goals: The DBE goal for this Contract is ____%.] {necessary when goals are set}

In accordance with the Governor's Executive Order No. 33, the VDOT also requires the utilization of Small, Women and Minority (SWaM) Businesses to participate in the performance of consultant contracts. The Consultant shall take all necessary and reasonable steps in accordance with Executive Order No. 33, to ensure that SWaM firms have the maximum opportunity to compete for and perform contracts and subcontracts under this Agreement. Further, the Consultant agrees to provide the <Local Government> with the dollar amount contracted and name of each subcontractor which identifies itself as a SWaM. [Include the following wording on contract with SWaM Goals: The Swam goal for this Contract is ____%.]

VDOT is also required to capture DBE and SWaM payment information on all professional services contracts. Therefore, the prime consultant will be required to complete the DBE and SWaM Payment Compliance Report, C-63 form on a quarterly basis.

In the event of the Consultant's noncompliance with the DBE/SWaM participation for the services indicated in Expression of Interest in response to the RFP, Attachment D, Scope of Work and Fee Proposal of this Agreement, the <Local Government> shall

impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:

- a. Withholding of payments to the Consultant under this Agreement until the Consultant complies, and/or
- b. Cancellation, termination or suspension of this Agreement, in whole or in part.

7. TDD/TTY EQUIPMENT FOR THE DEAF: When seeking public participation through the maintenance of a toll free hot line number and/or publishing project-related materials, the Consultant agrees to ensure that all citizens have equally effective communication. The Consultant agrees to provide or identify a telecommunications device for the deaf/teletypewriter (TDD/TTY) or acceptable means of telephone access for individuals with impaired speech or hearing. The Consultant will provide notice of a TDD/TTY number whenever a standard telephone number is provided.

8. IMMIGRATION REFORM AND CONTROL ACT OF 1986: By signing this Agreement, the Consultant certifies that it does not and will not during the performance of this Agreement violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.

9. OCCUPATIONAL SAFETY AND HEALTH STANDARDS: The Consultant shall not require any individual employed in the performance of this Agreement to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to health or safety as determined under the Occupational Safety and Health Standards promulgated by the United States Secretary of Labor. This provision shall be made a condition of any subcontract entered into pursuant to this Agreement.

In addition, the Consultant shall abide by the Virginia Occupational Safety and Health Standards adopted under Section 40.1-22 of the Code of Virginia (1950), as amended, and will fulfill the duties imposed under Section 40.1-51.1 of the Code of Virginia. Any violation of the aforementioned requirements or duties which is brought to the attention of the Consultant by any person shall be immediately abated.

10. CERTIFICATION REGARDING DEBARMENT: By the execution of this Agreement, the Consultant certifies to the best of its knowledge and belief, that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal

offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; and have not been convicted of any violations of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

11. LEGAL JURISDICTION: This Agreement shall be construed and shall be governed in accordance with the Constitution and the laws of the Commonwealth of Virginia.

12. SEVERABILITY: The declaration by any court, or other binding legal source, that any provision of this Agreement is illegal and void shall not affect the legality and enforceability of any other provision of this Agreement, unless said provisions are mutually dependent.

13. FINAL ACCEPTANCE AND FINAL PAYMENT: All services performed under this Agreement shall be performed in accordance with the current standards, policies, and procedures of the <Local Government>, and in the case of projects using federal funds, the Federal Highway Administration (FHWA). All services shall be subject to the approval of the VDOT through its designated representatives.

Upon receipt of a written notice from the Consultant of completion of the services, the <Local Government> will make a review to determine if all services specified in the Agreement have been satisfactorily completed. If all services have been satisfactorily completed, the <Local Government> will make final acceptance. The Consultant will be notified of final acceptance in writing.

If the review discloses that any services, in whole or in part, are incomplete or unacceptable, the Consultant shall immediately correct the deficiency. Upon completion or correction of the services, another review will be made that will constitute the final review. In such event, providing the services are complete and acceptable, the <Local Government> will make the final acceptance and the Consultant will be notified of final acceptance in writing.

When final acceptance has been duly made by the <Local Government>, the Consultant shall submit a final estimate voucher. Except as provided for in Section 17, any disputes or claims between the Consultant and the <Local Government> or between the Consultant and any subconsultant shall have been resolved prior to the final estimate being submitted. Upon review and approval of the final estimate voucher

by the <Local Government>, the Consultant will be paid the entire sum due after previous payments are deducted and other amounts are retained or deducted under the provisions of the Agreement. Final payment will become due and the final estimate paid within sixty (60) calendar days after approval of the final estimate voucher. The <Local Government> will notify the Consultant in writing when the final payment is made. Payments shall be subject to correction at the time of the final audit.

14. CLAIMS FOR ADDITIONAL TIME OR COMPENSATION: Claims for services not clearly authorized by this Agreement, or not ordered by the <Local Government> by prior written authorization, shall not be paid, nor shall any additional time be granted to complete the services. The Consultant shall notify the <Local Government> in writing, and wait for written approval, before it begins providing services not previously authorized. If such notification and approval is not given or the claim is not properly documented, the Consultant shall not be paid the extra compensation, nor be granted any additional time. Proper documentation alone shall not prove the validity of the claim. If the claim is found to be valid, it shall be allowed and paid for in accordance with the terms of a supplemental agreement.

15. AGREEMENT MODIFICATION: The <Local Government> may, at any time, by written order, make any changes in this Agreement which either increase or decrease the services hereunder. If such change causes an increase or decrease in the cost of or the time required for performance of this Agreement, an equitable increase or decrease in consideration may be made and this Agreement shall be modified in writing by a Supplemental Agreement between the <Local Government> and the Consultant. The Supplemental Agreement shall set forth the proposed changes in services, extension of time for completion and adjustment of the compensation, including net fee, to be paid the Consultant, if any. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in this Agreement, but nothing in this section shall excuse the Consultant from promptly and diligently proceeding with the prosecution of the services so changed.

16. DELAYS: If the services provided for under this Agreement should be delayed due to factors or conditions beyond the control of the Consultant and through no fault or negligence on its part, the Consultant may apply in writing for an extension of time and/or an adjustment in compensation. This request shall be accompanied by substantiating data to justify any extension of time and/or adjustment in compensation. If, in the opinion of the <Local Government>, a delay due to factors and conditions beyond the Consultant's control is justified, the Consultant may be granted an extension of time and/or adjustment in compensation.

17. DISPUTES: Any contractual claim in connection with the services provided, whether for money or other relief, not disposed of by mutual agreement shall be submitted in writing no later than sixty (60) days after final payment; however, written notice of the Consultant's intention to file such a claim shall have been given at the time

of the occurrence or beginning of the services upon which the claim is based. Submission of a notice of claim as specified shall be mandatory. Failure to submit such a notice shall be a conclusive waiver of such claim by the Consultant. An oral notice or statement will not be sufficient nor will a notice or statement after the event.

At the time of occurrence or prior to providing the services, the Consultant shall furnish the <Local Government> an itemized fee proposal for which additional compensation will be claimed. The Consultant shall keep a separate record of actual cost for the services. Failure on the part of the Consultant to afford the <Local Government> proper records of actual costs will constitute a waiver of a claim for such extra compensation except to the extent that it is substantiated by the <Local Government>'s records. The filing of such notice by the Consultant and the keeping of cost records by the Consultant shall in no way establish the validity of a claim. The data furnished by the Consultant shall be subject to a complete audit by the <Local Government> or its authorized representative if they are to be used as a basis for claim settlement.

Upon completion of the Agreement, the Consultant may, within sixty (60) days from the date of final payment, submit to the <Local Government> a written claim for the amount he deems he is entitled to under the Agreement. The final payment date shall be that date set forth in a letter from the <Local Government> to the Consultant at the time the final estimate is submitted to the <Local Government>'s Fiscal Division for vouchering. The claim shall set forth the facts upon which the claim is based. The Consultant shall include all pertinent data and correspondence that may substantiate the claim. Within ninety (90) days from receipt of the claim, the <Local Government> will make an investigation and notify the Consultant of its decision.

If the consultant is dissatisfied with the decision, he shall notify the <Local Government> Chief Administrative Officer in writing within thirty (30) days from receipt of the <Local Government>'s decision that he desires to appear before him, whether in person or through counsel, and present additional facts and arguments in support of his claim. The <Local Government> Chief Administrative Officer will schedule and meet with the Consultant within thirty (30) days after receiving the request. Within forty-five (45) days from the date of the meeting, the <Local Government> Chief Administrative Officer will investigate the claim, including the additional facts presented, and notify the Consultant in writing of his decision. If the <Local Government> Chief Administrative Officer deems that all or any portion of a claim is valid, he shall have the authority to negotiate a settlement with the Consultant subject to the provisions of Section 2.2-514 of the Code of Virginia 1950 as amended. If dissatisfied with the decision, the Consultant shall be entitled to institute judicial review if such action is brought within six months of receipt of the <Local Government> Chief Administrative Officer's written decision. Any civil action by the Consultant shall be subject to the provisions of Section 2.2-4363 (D) of the Code of Virginia (1950), as amended.

Upon completion of the final audit, the Consultant may, within sixty (60) days from the date of receipt of the final audit letter from the <Local Government>, submit to the <Local Government> a written claim for the amounts he disputes in the final audit. The dispute resolution process will be the same as outlined above for claims.

Any monies that become payable as the result of claim settlement after payment of the final estimate or final audit dispute resolution will not be subject to payment of interest unless such payment is specified as a condition of the claim settlement.

18. CONFLICTS OF INTEREST: No member of or delegate to the Congress of the United States shall be entitled to any share or part of this Agreement or to any benefit arising there from. The Consultant shall not engage the services of any person employed by the <Local Government> on any services covered by this Agreement without written permission of the <Local Government>. Written permission will not be granted for any employee having official responsibility, as that term is defined in Section 2.2-4368 of the Code of Virginia, who dealt in an official capacity with the Consultant concerning procurement during his employment or for a period of one year from cessation of employment by the <Local Government> unless the employee or former employee provides written notification to the <Local Government> and receives written permission prior to commencement of employment by the Consultant. Any violation of these provisions by the Consultant shall be a basis for immediate termination of this agreement for cause.

19. COVENANT AGAINST CONTINGENCY FEES: The Consultant warrants that it has not employed or retained any company or person to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this Agreement.

For breach or violation of this warranty, the <Local Government> shall have the right to void this Agreement without liability or, at its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, brokerage fee, gift, or contingent fee.

20. INSURANCE: The Consultant shall furnish the <Local Government> a certificate evidencing comprehensive commercial general liability insurance in an amount acceptable to the <Local Government> prior to beginning any work on the project, and agrees to maintain this amount throughout the life of this Agreement.

The Consultant shall provide the <Local Government> with a certificate evidencing professional liability insurance in an amount acceptable to the <Local Government> and agrees to maintain this amount through the life of this Agreement.

The Consultant shall provide the <Local Government> with a certificate evidencing

worker's compensation insurance as required by law by an insurer authorized to transact the business of worker's compensation insurance in this Commonwealth or in compliance with Section 65.2-801 of the Code of Virginia (1950), as amended, and agrees to maintain this amount through the life of this Agreement.

In the event of a non-renewal or cancellation of such required insurance coverage, thirty (30) days written notice must be given to the <Local Government> prior to such non-renewal or cancellation. Certificates evidencing insurance shall be submitted annually to the <Local Government>.

21. PROGRESS SCHEDULE AND REPORTS: The Consultant shall furnish the <Local Government> a schedule of progress which it proposes to follow throughout the term of this Agreement. No services shall commence until such schedule has been approved in writing by the <Local Government>. The schedule shall indicate starting and completion times of each significant task for each major element of this Agreement, and shall have the capability of indicating the proposed percentage of completion at any point for each element, if so required by the <Local Government>.

The Consultant shall submit a monthly progress report in a format acceptable to the <Local Government>.

22. PLANS AND REPORTS: Plans and reports shall be completed and delivered to the <Local Government> according to the progress schedule or as otherwise directed, in a format acceptable to the <Local Government>.

23. CORRECTION OF ERRORS: The Consultant shall check for accuracy any reports, and the design, drafting and details of final plans prior to submission. The Consultant will be required, without additional compensation, to correct any errors, including but not limited to omissions, discrepancies and ambiguities, in any services performed in fulfillment of the obligations of this Agreement, and shall also reimburse the <Local Government> for any costs incurred. Acceptance of the plans or reports by the <Local Government> shall not relieve the Consultant of the responsibility of subsequent correction of errors.

Costs incurred by the Consultant in correcting errors in the plans or reports and reimbursing the <Local Government> for costs incurred by the <Local Government> as a result of such error shall be maintained in a separate account. Such account shall be clearly coded and identified, and shall be subject to audit by the Department. Such costs shall not be billed to the <Local Government> as a direct charge or an overhead item.

24. LIABILITY, INDEMNIFICATION, STANDARD OF PERFORMANCE: The Consultant shall be responsible for all damage and expense to person or property

caused by its negligent activities including, without limitation, those which it chooses to deliver through its subcontractors, agents or employees, in connection with the services required under this Agreement. Further, it is expressly understood that the Consultant shall indemnify, defend and hold harmless the <Local Government>, its officers, agents and employees from and against any and all damages, claims, suits, judgments, expenses, actions and costs of every name and description caused by any negligent act or omission in the performance by the Consultant, including, without limitation, those which it chooses to deliver through its subcontractors, agents or employees, of the services under this Agreement.

The Consultant shall also be liable for all damages, costs and additional expense incurred by the Department, including but not limited to damages, costs and expenses resulting from claims brought against the <Local Government> by the construction contractor(s), caused by the failure of the Consultant to perform the services with the same degree and standard of care and skill normally expected of and provided by consultants in the performance of the same or similar services.

Acceptance of the services by the <Local Government> shall not waive any of the rights of the <Local Government> contained in this section nor release or absolve the Consultant from any liability, responsibility or duty contained herein.

25. TERMINATION: This Agreement may be terminated as follows:

- a. By mutual agreement of the parties, in writing and signed by the parties.
- b. By the <Local Government> without cause, in whole or in part, at any time, with fifteen (15) days advance notice in writing, by the end of which period the Consultant shall have discontinued all services and shall have delivered to the <Local Government> all reports, records, drawings, field notes, plans and other data completed or partially completed, which shall become and remain the sole property of the <Local Government>. The <Local Government> reserves the right to terminate this Agreement without the fifteen (15) days advance notice in the event the Consultant avails itself of the Federal or State Bankruptcy Laws or merges with or spins off from an entity. The <Local Government>'s decision is not subject to review.
- c. By the <Local Government> without advance written notice, due to the failure of the Consultant to perform the services or fulfill its obligation(s) under this Agreement, in which case the <Local Government> may take over the services and prosecute the same to completion by further agreement or otherwise, and the Consultant shall be liable to the <Local Government> for any excess cost occasioned to the Department thereby.
- d. By failure of the <Local Government> to allocate, sufficient funds to continue the services, in which event the Agreement will terminate upon depletion of the then currently appropriated or allocated funds.

26. ASSIGNMENT AND SUBCONTRACTING: This Agreement, being intended to

secure the personal services of the individuals constituting the firm which is a party to this Agreement and referred to collectively as “the Consultant,” shall not be assigned, subcontracted or transferred without consent of the <Local Government> in writing. This Agreement shall inure to the benefit of and shall be binding upon the personal representatives and legal successors of the respective parties hereto. Nothing contained in this Agreement is intended or shall be construed to inure to the benefit of any person or entity other than the parties hereto and their legal successors.

The Consultant shall not subcontract or assign all or any part of the services provided under this Agreement, except as expressly stated in this Agreement, without the prior written approval of the <Local Government>. Such consent to subcontract, assign or otherwise dispose of any portion of this Agreement shall not be construed to relieve the Consultant of any responsibility for the fulfillment of this Agreement. The Consultant is fully responsible for the satisfactory completion of all subcontracted services. Subcontracts shall include all provisions of this Agreement, except that retainage need not be withheld on subcontracts, and the Consultant shall be responsible for seeing that these provisions are complied with. No subcontracting by a subcontractor is allowed without prior written approval of the <Local Government>.

27. PAYMENT TO SUBCONTRACTORS: In accordance with Article 4 of the Virginia Public Procurement Act (Sections 2.2-4342 through 2.2-4356 of the Code of Virginia (1950), as amended), the Consultant shall make payment to all subcontractors within seven (7) days after receipt of payment from the <Local Government>, or shall notify the <Local Government> and subcontractor in writing of the intention to withhold all or a part of the amount due along with the reason for nonpayment.

In the event payment is not made as noted, the Consultant shall pay interest at the rate of one percent per month to the subcontractor, unless otherwise provided in this Agreement, on all amounts that remain unpaid after seven (7) days except for the amounts withheld according to this Agreement.

The <Local Government> does not require retainage to be withheld by the Consultant on any subcontracts. If the Consultant elects to withhold retainage on subcontracts, prompt payment of the retainage shall be made to the subcontractors within the later of 60 days after the final billing is received by the Consultant from the subcontractor or the satisfactory acceptance of the services by the Department. The <Local Government> will notify the Consultant and the subcontractor in writing when the services have been satisfactorily accepted. If the retainage is not promptly paid, the Consultant shall notify the Department and the subcontractor in writing as to the reasons for not making payment.

These same requirements shall be included in each subcontractor agreement and shall be applicable to each lower-tier subcontractor.

28. CONSULTANT RELATIONSHIPS TO CONTRACTORS: The Consultant shall serve only in a consulting and professional capacity and is not by this Agreement authorized to be, or represent itself to be the agent or servant of the <Local Government>. The function, duties and responsibilities of the Consultant with respect to any contractor employed by the <Local Government> in connection with a project shall be consistent with the preceding sentence, and in no case shall the Consultant assume any of the obligations of the <Local Government> to any contractor. The Consultant shall refer any questions from a contractor to the <Local Government>.

29. COMPLIANCE WITH LOBBYING RESTRICTIONS (This section only applies to agreements using federal funds.): By signing this Agreement, the Consultant certifies that:

- a. Since promulgation of the federal requirements implementing Section 319 of PL 101-121, no federal appropriated funds have been paid and none will be paid, by or on behalf of the Consultant, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement;
- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
- c. The Consultant shall require that the language of this certification be included in all subcontracts at all tiers, and that all subcontractors shall certify and disclose accordingly.

30. RECORDS: The Consultant and subcontractors shall retain all books, documents, papers, accounting records and other evidence supporting the costs incurred, for three (3) years after payment of the final estimate or final audit, whichever is later. Such evidence shall be made available at the Consultant's offices at all reasonable times and will be subject to audit and inspection by the <Local Government>, VDOT or any authorized representatives of the Federal Government.

Evidence of costs incurred by a subcontractor shall be made available at its office at all reasonable times during the contract period between the Consultant and the subcontractor and for three years after written acceptance by the Consultant, for audit

and inspection by the <Local Government>, VDOT or any authorized representatives of the Federal Government. It shall be the Consultant's responsibility to notify the <Local Government>, in writing, of the completion of that subcontractor's portion of the services so that the records of the subcontractor can be audited within the three-year retention period. Failure to do so may result in the Consultant's liability for any costs not supported by the proper documentation for the subcontractor's phase of the services. Final payment for the subcontractor's phase of the services will be made after total costs are determined by the final audit of the subcontractor.

31. INTELLECTUAL PROPERTY RIGHTS: All rights in intellectual property developed or created pursuant to this Agreement shall be the sole property of the <Local Government>. "Intellectual property" includes all inventions subject to the U.S. Patent System (including but not limited to new processes, materials, compounds and chemicals), and all creations subject to the U.S. Copyright Act of 1976 (including but not limited to printed material, software, drawings, blueprints, and compilations such as electronic databases).

All copyrightable material created pursuant to this Agreement shall be considered work made for hire and shall belong exclusively to the <Local Government>. Neither party intends any copyrightable material created pursuant to this Agreement, together with any other copyrightable material with which it may be combined or used, to be a "joint work" under the copyright laws. If the whole or any part of any such copyrightable material cannot be deemed work made for hire or is deemed a joint work, the Consultant agrees to assign, and does hereby irrevocably assign, its entire copyright interest therein to the <Local Government> and shall execute and deliver such further documents as the <Local Government> may reasonably request for the purpose of acknowledging or implementing such assignment.

The Consultant warrants that no individual, other than regular employees of the Consultant or the <Local Government> working within the scope of their employment, shall participate in the creation of any intellectual property pursuant to this Agreement unless such individual and his or her employer, if any, have signed an intellectual property agreement satisfactory to the <Local Government>.

The <Local Government> shall have all rights, title and interest in or to any invention reduced to practice pursuant to this Agreement. The Consultant shall not patent any invention conceived in the course of performing this Agreement.

The Consultant hereby agrees that, notwithstanding anything else in this Agreement, in the event of any breach of this Agreement by the <Local Government>, the remedies of the Consultant shall not include any right to rescind or otherwise revoke or invalidate the

provisions of this section. Similarly, no termination of this Agreement by the <Local Government> shall have the effect of rescinding the provisions of this section.

32. OWNERSHIP OF DOCUMENTS: All documents, in electronic and/or hard copy format, which for purposes of this Agreement is defined to include but not be limited to, reports, plans, subject data (“subject data” is defined as all information, whether or not copyrighted, that is compiled or delivered or specified to be compiled or delivered under this Agreement), drawings, studies, specifications, memoranda, estimates and computations secured by and for the Consultant in the prosecution of this Agreement, shall become and remain the property of the <Local Government> upon termination or completion of the work. The <Local Government> shall have the right to use such documents for any public purpose without compensation to the Consultant, other than as hereinafter provided. If the <Local Government> uses the documents for a purpose other than for which this Agreement has been executed, such use shall be at the risk of the <Local Government>.

Except for its own internal use, the Consultant shall not publish or reproduce documents, in whole or in part, in any manner or form, nor shall the Consultant authorize others to do so without the written consent of the <Local Government>.

The <Local Government> reserves the right to publish initially all documents. The Consultant shall not release or publish any documents without the prior written approval of the <Local Government>. Neither the Consultant, nor any subcontractor or any agents, employees or subcontractors thereof, shall publish, participate in the publication of, or make oral presentations regarding any documents, information or material relating to this project, either during or after the term of this Agreement, without specific prior written approval of the <Local Government>. Any releases to the news media must be approved by and released through the <Local Government>.

The terms of this section shall be expressly included in any third-party agreement entered into by the Consultant or by any subcontractor, agents, employees or subcontractors thereof.

33. PUBLICATION PROVISIONS: No documents produced as part of this Agreement, and in whole or part with public funds, shall be copyrighted by the Consultant. When the project uses federal funds, any final report shall contain the following:

- a. An acknowledgment, “Prepared in cooperation with the <Local Government>, U.S Department of Transportation, Federal Highway Administration and the Virginia Department of Transportation”
- b. A disclaimer, “The contents of this report reflect the view of the Consultant who is

- c. A statement, if published by either the <Local Government> or the Consultant, giving credit to all participating agencies.

In the event that VDOT does not subscribe to the conclusions of the report, the following statement shall be added: "The opinions, findings, and conclusions expressed in this publication are those of the authors and do not necessarily represent those of the Virginia Department of Transportation."

The terms of this section, shall be expressly included in any third-party agreement entered into by the Consultant or by any subcontractor, agents, employees or subcontractors thereof.

34. STAFFING BY CONSULTANT: The control and supervision of all phases of the services provided by the Consultant shall be under the direction of a project manager who has had not less than five (5) years experience in managing the type of services herein described and who shall be assigned to manage the services provided under this Agreement until all services have been completed or until the <Local Government> agrees in writing that the project manager may be replaced or removed.

Furthermore, other individuals identified as Key Personnel in the Expression of Interest (EOI) shall remain on the Consultant's Team for the duration of the contract. If extraordinary circumstances require a proposed change, it must be submitted in writing to the <Local Government>'s Project Manager, who, at his/her sole discretion, will determine whether to authorize a change. Unauthorized changes to the Consultant's Team at any time during the contract may result in termination of services.

If the services covered by this Agreement include the practice of architecture, professional engineering, land surveying or certified landscape architecture, the Consultant or subcontractor shall have in responsible charge at each place of business a full-time resident Virginia licensed architect, professional engineer, land surveyor or certified landscape architect exercising supervision and control of the services of each profession being practiced.

A competent staff, adequate in number and experience to perform the described services in the prescribed time, shall be assigned at all times. The name, title and experience record of each key staff member subsequently assigned shall be reported as such assignments are made.

If the services covered by this Agreement includes the application of guardrails and guardrail terminal treatments, a staff member that has satisfactorily completed training approved by the <Local Government> in the application of these devices, shall be assigned to perform the described services. Approved training course shall be completed prior to the initiation of the described services with the training being renewed every three (3) years. Approved training courses include, but are not limited to: Guardrail Installer Training (GRIT) for Designers offered by VDOT; AASHTO Roadside Design Guide conducted by the Federal Highway Administration; or Design, Construction and Maintenance of Highway Safety Appurtenances and Features conducted by the Federal Highway Administration.

35. CONFERENCES: The <Local Government> shall hold an initial conference at a place and time selected by the <Local Government>, for the purpose of reviewing the Consultant's schedules, procedures, methods and the clarification of any ambiguities that may then exist. A principal of the Consultant and the Consultant's project manager shall attend the conference.

Progress conferences will be held periodically. The Consultant will prepare and present written information and studies to the <Local Government> so it may evaluate the features and progress of the services being provided. Either party may request a conference be held at the office of the requesting party or at a place designated by the <Local Government>. Conferences may also be held to inspect the Consultant's services to date at the request of the <Local Government>.

36. LIAISON WITH CONSULTANT: The <Local Government> may assign and maintain one or more representatives on this Agreement at no cost to the Consultant. These representatives shall work in close cooperation with the Consultant to ensure a thorough understanding of all methods and procedures employed by the Consultant. The Consultant shall make such records, procedures and methods related to this Agreement available to these representatives as may be requested.

The <Local Government> reserves the right to make such reviews from time to time as it may deem necessary or desirable and to maintain proper liaison.

37. COORDINATION: The Consultant shall coordinate all plan development with the <Local Government> and VDOT to ensure compatibility with programmed and planned road improvement projects in the Agreement area.

38. TESTIMONY: In the event that the testimony of the Consultant is required in any

legal proceeding in connection with claims brought against or prosecuted by the <Local Government>, the Consultant agrees to appear as a witness on behalf of the <Local Government>. Payment for appearance will be based on the approved current hourly salary rate and daily per diem rate for each eight-hour day's preparation for, or attendance in, court and one-fourth of this sum for each two hours or fraction thereof.

39. NOTICE TO PROCEED: Work to be performed by the Consultant under this Agreement shall begin within five (5) days after receipt of official notice from the <Local Government> to proceed. Written notice to proceed will be given by the <Local Government> prior to any work being done on any element of this Agreement. The <Local Government> will not be responsible for payment for services performed in advance of such notice.

40. CONTINGENCY: On Agreements containing a contingency, the contingency shall not be used without written permission of the <Local Government>. The additional services provided under the contingency shall not begin until an agreement has been reached with the <Local Government> on the man-hours and costs required to perform the services. If services are provided under the contingency prior to an agreement being reached with the <Local Government> regarding man-hours and costs, only those man-hours and costs determined to be necessary and reasonable by the <Local Government> will be reimbursed.

41. DRUG-FREE WORKPLACE: During the performance of this contract, the Consultant agrees to:

- a. Provide a drug-free workplace for the consultant's employees
- b. Post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the consultant's workplace and specifying the actions that will be taken against employees for violations of such prohibition
- c. State in all solicitations or advertisements for employees placed by or on behalf of the consultant that the consultant maintains a drug-free workplace
- d. Include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purpose of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a consultant, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

42. eVA ELECTRONIC PROCUREMENT: By accepting and performing this contract, the consultant agrees that it is subject to an eVA registration and transaction fee established by the Department of General Services (DGS) which will be invoiced to your company by DGS following the submittal of the first Consultant Estimate Voucher for payment. For further information on eVA registration and transaction fees refer to the following website; <http://www.eva.state.va.us>.

43. CRITICAL INFRASTRUCTURE INFORMATION/SENSITIVE SECURITY INFORMATION (CII/SSI): Contract documents or project material containing CII/SSI in whole or in part are subject to the terms of this Section.

Consultants shall be responsible for safeguarding Critical Infrastructure/Sensitive Security Information (CII/SSI) (as defined in the VDOT CII/SSI Policy) in their custody or under their control. Individuals are responsible for safeguarding CII/SSI entrusted to them. The extent of protection afforded CII/SSI shall be sufficient to reasonably foreclose the possibility of its loss or compromise.

Consultants shall ensure that all employees using this information are aware of the prohibition against disclosing CII/SSI in any manner (written, verbal, graphic, electronic, etc.) that permits interception by unauthorized persons.

Consultants shall protect CII/SSI at all times, either by appropriate storage or having it under the personal observation and control of a person authorized to receive it. Each person who works with protected CII/SSI is personally responsible for taking proper precautions to ensure that unauthorized persons do not gain access to it.

The use and storage of CII/SSI shall conform to the following guidelines: During working hours, reasonable steps shall be taken to minimize the risks of access to CII/SSI by unauthorized personnel. After working hours, CII/SSI shall be secured in a secure container, such as a locked desk, file cabinet or facility where contract security is provided.

The reproduction of CII/SSI documents or material containing CII/SSI shall be kept to the minimum extent necessary consistent with the need to carry out official duties. The reproduced CII/SSI material shall be marked and protected in the same manner as the original material.

Material containing CII/SSI shall be disposed of by any method that prevents unauthorized retrieval. (e.g. shredding, burning, returning to original source, etc.) CII/SSI shall be transmitted only by US first class, express (US Postal, FedEx, UPS, etc.), certified or registered mail, or through secure electronic means.

The portions of the documents that are marked as CII/SSI are not subject to disclosure under Code of Virginia §2.2-3705.2, and may not be released except with written permission from the <Local Government> and/or VDOT. Unauthorized release or

reproduction of these documents may result in civil penalty or other legal action.

By copying, downloading, or receiving a copy of any documentation containing CII/SSI, or any part thereof, the consultant or any other recipient acknowledges and agrees to the terms of this Section and will advise any individual using these documents, or any part thereof, that they too shall be responsible for safeguarding the CII/SSI in their custody or under their control.

The Consultant shall include the terms of this Section, in any further dissemination of any contract documents or project materials containing CII/SSI in whole or in part, and in all subcontracts awarded under this contract.

ATTACHMENT B

SPECIAL TERMS AND CONDITIONS



ATTACHMENT B – SPECIAL TERMS AND CONDITIONS

******[The VDOT division drafting this Agreement should insert any project or division-specific Special Terms and Conditions here and delete this instructional sentence. All division sections shall be formatted the same.]**

ATTACHMENT C

PAYMENT



ATTACHMENT C - PAYMENT

******[The <Local Government> should select one of the three following Payment sections (Lump Sum, Cost Plus Net Fee, or Fixed Billable Rate), and delete the two non-applicable Payment sections and this instructional sentence.]**

LUMP SUM PAYMENT

A. FEE: For services provided in accordance with the provisions of this Agreement, the <Local Government> shall pay to the Consultant the Lump Sum Fee stated in the Letter of Agreement.

The fee shall include compensation for all services and costs specified in this Agreement, or as may be required for the completion of the services contained herein.

B. MONTHLY PARTIAL PAYMENTS: Monthly partial billings for services provided will be submitted, except when the net receivable amount is less than \$500.00. In such case, no partial payment will be made and the value of such work shall be carried over to the next monthly billing. Monthly partial payments will be made for the services outlined herein based on a percentage of the Lump Sum Fee equal to the percentage completion reported. Billings shall be submitted no more frequently than once every 30 calendar days.

C. TERMINATION WITHOUT CAUSE: In the event this Agreement is terminated without cause, payment of the Fee shall be made on the basis of the percentage of completion at the time of the effective date of termination, as determined by the Department.

COST PLUS NET FEE PAYMENT

A. NET FEE: For services performed in accordance with the provisions of this Agreement, the <Local Government> agrees to pay the Consultant its Actual Cost, as defined below, plus the Net Fee stated in the Letter of Agreement.

The Net Fee remains fixed regardless of differences between the estimated and actual costs to the Consultant except as otherwise stipulated in this Agreement, or as may be modified by a supplemental agreement.

B. ACTUAL COST: Actual costs shall include all direct salaries, payroll burden, indirect costs or overhead, computer costs, and non-salary direct costs, as defined herein. The actual costs shall be determined by final audit.

C. DIRECT SALARIES: Direct salaries are defined as cost of salaries of professionals,

draftsmen and other personnel, including partners or principals actually performing work or a service, for the time directly chargeable to the project. Cost of time of partners or principals, to the extent that they perform technical or advisory services directly applicable to the project, shall be included in the direct salary costs at the rates stipulated in the proposal, Attachment D. The time of partners or principals as stated above shall be documented by the use of time sheets as the cost is incurred.

A list of employee classifications and hourly pay rates are shown in Attachment D. The hourly rates shall be the current rates at the time of submitting the proposal and shall not reflect any anticipated raises or escalation. Anticipated raises or escalation shall be shown as a separate item. Employees, other than those already on an hourly rate, shall have their salaries converted to an hourly rate based upon the number of compensable hours in the Consultant's normal week.

The use of overtime must be authorized in advance, in writing, by the <Local Government>. Premium overtime payments, when authorized by the <Local Government>, shall be included in direct salary costs. Payroll burden and overhead cost shall be added to the straight time salaries for overtime payment, but shall not be added to premium payments.

D. PAYROLL BURDEN: Payroll burden is defined as sick leave, vacation and holiday pay of professionals, draftsmen, and other technical personnel, plus payroll excise and unemployment taxes, contributions for Social Security, unemployment compensation insurance, retirement plan, and life and medical insurance benefits. Costs of company contributions to life insurance, medical insurance, and retirement plans for employees shall be normal and reasonable. Payroll burden is expressed as a percentage of direct salaries.

E. PAYROLL COSTS: Payroll costs are defined as direct salaries plus the payroll burden.

F. IN-HOUSE COMPUTER COSTS: Computer/CADD costs for all technical computations or databases for the project, performed on the Consultant's in-house electronic computer, shall be charged as a separate item at an hourly rate established by a Federal Acquisition Regulations audit and representative of actual costs, not to exceed \$6.00 per hour, or shall be included in the Federal Acquisition Regulations audited overhead rates.

G. OVERHEAD COSTS: Overhead costs are defined as those general administrative and clerical costs at the Consultant's home office which are necessary to the proper performance of the services, but cannot be effectively and economically allocated to the project. Cost of time of partners or principals performing administrative duties shall be included in the Overhead Costs. Overhead costs are expressed as a percentage of direct salaries or other acceptable base.

H. PAYROLL BURDEN AND OVERHEAD RATE: The Consultant's most recent payroll burden and overhead rate, audited by an independent certified public accountant or cognizant government agency, established annually in accordance with the Federal Acquisition Regulations, will be applied for the purpose of computing monthly partial payments. Non-allowable costs are those identified in the Federal Acquisition Regulations.

The Consultant and its subconsultants are required to submit Federal Acquisition Regulations (FAR) audits on an annual basis within six months of the end of the Consultant's fiscal year. The <Local Government> will approve a provisional payroll overhead (payroll burden and overhead) billing rate for the fiscal year submitted. Subsequent estimate vouchers must adjust overhead to the provisional overhead billing rate approved for the fiscal year that has been reviewed, and for billing periods in the next fiscal year until an approved provisional overhead billing rate is established for that year. Increases in the provisional overhead billing rate or actual applied overhead based on audit are not a basis for an increase in the fixed fee or in the maximum compensation payable. The provisional overhead billing rate is subject to post audit prior to final payment. Overhead adjustments for work previously billed will not be allowed until time of final audit.

I. NON-SALARY DIRECT COSTS:

1. Non-salary direct costs shall include purchase and rental of all materials, supplies and equipment necessary for the performance of the services on this project and cost of outside professional consulting or contracting services, all at invoiced cost to the Consultant, plus the cost of communications and reproductions directly chargeable to the project, plus necessary travel and per diem expenses. The purchase cost of all materials, supplies and equipment, which are not for the exclusive use in providing the services included in this Agreement, are not allowed as non-salary direct costs and shall be included in the Consultant's overhead. These items include, but are not limited to, fax machines, copiers, computers, software, refrigerators, coffee makers, microwave ovens, cellular telephones, pagers, helmets, tape measures, fire extinguishers, and professional books and references.
2. The cost of motor vehicle rentals and the cost of common carriers shall be the actual cost incurred. The cost of motor vehicle leases shall be [the actual cost incurred, subject to audit] [at the rates shown in Attachment D]. Leases must be supported by bona fide documentation from the leasing company and will only be allowed from established companies in the business of leasing vehicles.
3. For use of personal or company owned vehicles, the reimbursable rate per mile stipulated in the cost proposal (Attachment D) shall be allowed to cover costs.
4. For personnel in travel status, reimbursement of actual expenses up to the maximum amount per day (as shown in Attachment D) will be allowed for meals. Reimbursement will not be allowed for meals unless an overnight stay is required. Actual expenses up to the maximum amount per day (as shown in Attachment D) will be allowed for lodging of personnel in travel status.

5. Total non-salary direct costs shall not exceed those shown in Attachment D, except by prior approval of the <Local Government>.
6. Costs of time applied and charged directly to the project for the services of special outside consultants, contractors or drafting services shall be included in non-salary direct costs at rates stipulated in the proposal or received by competitive bidding.
7. Invoiced cost to the Consultant of all technical computations for the project performed by outside commercial electronic computation services shall be included in non-salary direct costs.

J. ESTIMATED COSTS: A detailed itemized breakdown of allowable costs and computation of all costs and fees have been submitted by the Consultant with the fee proposal in the general form as furnished by the Department, and they are hereby incorporated as part of this Agreement in Attachment D.

K. TOTAL COMPENSATION: Except as may be changed according to the Agreement Modification provision of this Agreement, the maximum total compensation payable under this Agreement will not exceed the amount shown in the Letter of Agreement. Contingencies shown in the cost proposal may not be utilized except by written prior approval of the <Local Government>.

L. MONTHLY PARTIAL PAYMENTS: Monthly partial billings will be submitted as established in Attachment D. When the net receivable amount is less than \$500.00, no partial payment will be made and the value of such work shall be carried over to the next monthly billing. Monthly partial payments will be made for the services outlined herein based on the sum of the Consultant's statement of actual costs incurred, plus a percentage of the net fee equal to the percentage completion reported. Billings shall be submitted no more frequently than once every 30 calendar days.

Monthly partial payments for Agreements which contain Stage III bridge services will be made for the consulting work outlined below based on the sum of the Consultant's statement of actual costs incurred, plus a percentage of net fee as follows:

1. Field Services: straight line proportion each month
2. Consultation During Bidding: upon completion of bidding for each contract
3. Shop Drawings: percentage of man-hours spent vs. estimated man-hours in Attachment D
4. Consultation During Construction: percentage of man-hours spent vs. estimated man-hours in Attachment D
5. As Built Drawings: monthly percentage complete.

M. TERMINATION WITHOUT CAUSE: In the event this Agreement is terminated without cause, payment shall be made on the basis of the Actual Cost incurred up to the

effective date of termination, subject to audit, plus a percentage of the Net Fee equal to the percentage completion of the services contracted for under this Agreement at the time of effective date of termination.

******[This section should be used when services are being provided at fixed billable rates. This could either be for a single project or for multiple assignments to be made during the term of this contract. Select the proper wording and delete these instructions.]**

FIXED BILLABLE RATE PAYMENT (ACTUAL COST BASIS) - [MULTIPLE ASSIGNMENTS]

A. PAYMENTS: Payments shall be made for [this project/each assignment] upon receipt by the <Local Government> of proper billing, in accordance with the schedule shown in the proposal for [this project/each assignment]. Billing shall be based on the hours agreed upon for performing the services multiplied by the fixed billable hourly rate as stipulated in Attachment D plus non-salary direct costs. In the event the hourly rates in Attachment D are misrepresented by the Consultant, the <Local Government> reserves the right to adjust the compensation paid to the Consultant to reflect the difference.

B. IN-HOUSE COMPUTER COSTS: Computer/CADD costs for all technical computations for [this project/each assignment], performed on the Consultant's in-house electronic computer, shall be charged as a separate item at an hourly rate established by a Federal Acquisition Regulations audit and representative of actual costs, not to exceed \$6.00 per hour, or shall be included in the Federal Acquisition Regulations audited overhead rates.

C. NON-SALARY DIRECT COSTS:

1. Non-salary direct costs shall include purchase and rental of all materials, supplies and equipment necessary for the performance of the services on [this project/each assignment] and cost of outside professional consulting or contracting services, all at invoiced cost to the Consultant, plus the cost of communications and reproductions directly chargeable to the project, plus necessary travel and per diem expenses. The purchase cost of all materials, supplies and equipment, which are not for the exclusive use in providing the services included in this Agreement, are not allowed as non-salary direct costs and shall be included in the Consultant's overhead. These items include, but are not limited to, fax machines, copiers, computers, software, refrigerators, coffee makers, microwave ovens, cellular telephones, pagers, helmets, tape measures, fire extinguishers, and professional books and references.
2. The cost of motor vehicle rentals and the cost of common carriers shall be the actual cost incurred. The cost of motor vehicle leases shall be [the actual cost

incurred, subject to audit] [at the rates shown in Attachment D]. Leases must be supported by bona fide documentation from the leasing company and will only be allowed from established companies in the business of leasing vehicles.

3. For use of personal or company owned vehicles, the reimbursable rate per mile stipulated in the cost proposal (Attachment D) shall be allowed to cover costs.
4. For personnel in travel status, reimbursement of actual expenses up to the maximum amount per day (as shown in Attachment D) will be allowed for meals. Reimbursement will not be allowed for meals unless an overnight stay is required. Actual expenses up to the maximum amount per day (as shown in Attachment D) will be allowed for lodging of personnel in travel status.
5. Total non-salary direct costs shall not exceed those shown in [Attachment D/each assignment's proposal], except by prior approval of the <Local Government>.
6. Costs of time applied and charged directly to [the project/each assignment] for the services of special outside consultants, contractors or drafting services shall be included in non-salary direct costs at rates stipulated in the proposal or received by competitive bidding.
7. Invoiced cost to the Consultant of all technical computations for [the project/each assignment] performed by outside commercial electronic computation services shall be included in non-salary direct costs.

D. ESTIMATED COSTS: A detailed itemized breakdown of allowable costs and computation of all costs and fees has been submitted by the Consultant with the fee proposal in the general form as furnished by the <Local Government>, and is hereby incorporated as part of this Agreement in [Attachment D/as an attachment to the Agreement for each assignment].

E. CONTRACT TERM: Under this Agreement, assignments may be issued during the 12-month period following the date of execution of this Agreement or when the cumulative total of fees for project assignments reaches the maximum total compensation, whichever occurs first. This period shall be referred to as the "Contract Term".

F. TOTAL COMPENSATION: Except as may be changed according to the Agreement Modification provision of this Agreement, the maximum total compensation payable under this Agreement will not exceed the amount stated in the Letter of Agreement. If during the Contract Term, the cumulative total of all issued project assignments reaches the maximum total compensation limit, no further assignments may be issued during the Contract Term.

G. MONTHLY PARTIAL PAYMENTS: Monthly partial billings will be submitted as established in Attachment D. When the net receivable amount is less than \$500.00, no partial payment will be made and the value of such work shall be carried over to the next monthly billing. Monthly partial payments will be made for the services outlined

[herein/in each assignment's proposal] based on the sum of the Consultant's statement of actual costs incurred. Billings shall be submitted no more frequently than once every 30 calendar days.

H. TERMINATION WITHOUT CAUSE: In the event this Agreement is terminated without cause, payment shall be made on the basis of the Actual Cost incurred up to the effective date of termination, subject to audit.

I. AGREEMENT RENEWAL: The <Local Government>, at its sole discretion, may renew this Agreement for a maximum of two additional one-year Contract Terms, provided the option to renew was indicated in the Request for Proposal. If the <Local Government> exercises its option to renew, the next Contract Term shall begin 12-months from the date of execution of this Agreement or any subsequent renewals of the Contract Term or when the cumulative total of fees for project assignments issued in any Contract Term reaches the maximum total compensation, whichever occurs first. The sum of all projects in one Contract Term shall not exceed the amount specified in the original contract. Any unused or uncommitted amounts from a previous term are forfeited and shall not carry forward to the next Contract Term. Upon the <Local Government>'s decision to renew the Agreement, a renewal letter shall be sent to the Consultant authorizing the Consultant to extend the Agreement by one additional Contract Term

J. EXPIRATION OF AGREEMENT: This Agreement will expire, on the earlier of one year from the date of this Agreement or when the cumulative total of fees for project assignments issued reaches the maximum total compensation unless the option to renew the Agreement is exercised in writing by the <Local Government> as described in Item I above. If the <Local Government> elects not to renew this agreement for an additional Contract term, as permitted by the Agreement, no new letter of agreements may be made under this Agreement after this date. Assignments for which letter of agreements have been executed prior to this date will be completed and monthly partial payments processed.

[INCLUDE THE FOLLOWING WHEN THE MAXIMUM TOTAL COMPENSATION IS LESS THAN \$2,000,000: Supplemental Agreements may be executed after the final Contract Term period for changes in the scope of work of ongoing assignments. Supplemental agreements for the final Contract Term may not extend the maximum total compensation beyond \$2,000,000.]

******[This section should be used when multiple assignments are being made under separate lump sum letters of agreement based on the fixed billable rates given in Attachment D. Delete this text.]**

FIXED BILLABLE RATE PAYMENT (LUMP SUM BASIS) - MULTIPLE ASSIGNMENTS

A. FEE: For services provided in accordance with the provisions of this Agreement, the <Local Government> shall pay to the Consultant the Lump Sum Fees stated in the letter of agreements for each assignment. The Lump Sum Fee for each assignment shall be based on the hours agreed upon for performing the services multiplied by the fixed billable hourly rates as stipulated in Attachment D plus non-salary direct costs.

The fee shall include compensation for all services and costs specified for each assignment, or as may be required for the completion of the services contained therein.

B. CONTRACT TERM: Under this Agreement, assignments may be issued during the one-year period following the date of execution of this Agreement, or when the cumulative total of fees for project assignments reaches the maximum total compensation, whichever occurs first. This period shall be referred to as the "Contract Term".

C. TOTAL COMPENSATION: Except as may be changed according to the Agreement Modification provision of this Agreement, the maximum total compensation payable under this Agreement will not exceed the amount stated in the Letter of Agreement. If during the Contract Term, the cumulative total of all issued project assignments reaches the maximum total compensation limit, no further assignments may be issued during the Contract Term.

D. MONTHLY PARTIAL PAYMENTS: Monthly partial billings for services provided will be submitted, except when the net receivable amount is less than \$500.00. In such case, no partial payment will be made and the value of such work shall be carried over to the next monthly billing. Monthly partial payments will be made for the services outlined herein based on a percentage of the Lump Sum Fee equal to the percentage completion reported. Billings shall be submitted no more frequently than once every 30 calendar days.

E. TERMINATION WITHOUT CAUSE: In the event this Agreement is terminated without cause, payment of the Fee shall be made on the basis of the percentage of completion at the time of the effective date of termination, as determined by the <Local Government>.

F. AGREEMENT RENEWAL: The <Local Government>, at its sole discretion, may renew this Agreement for a maximum of two additional one-year Contract Terms, provided the option to renew was indicated in the Request for Proposal. If the <Local Government> exercises its option to renew, the next Contract Term shall begin 12-months from the date of execution of this Agreement or any subsequent renewals of the Contract Term or when the cumulative total of fees for project assignments issued in any Contract Term reaches the maximum total compensation, whichever occurs first.

The sum of all projects in one Contract Term shall not exceed the amount specified in the original contract. Any unused or uncommitted amounts from a previous term are forfeited and shall not carry forward to the next Contract Term. Upon the <Local Government>'s decision to renew the Agreement, a renewal letter shall be sent to the Consultant authorizing the Consultant to extend the Agreement by one additional Contract Term.

G. EXPIRATION OF AGREEMENT: This Agreement will expire on the earlier of one-year from the date of this Agreement or when the cumulative total of fees for project assignments issued reaches the maximum total compensation unless the option to renew the Agreement is exercised in writing by the Department as described in Item F above. If the <Local Government> elects not to renew this agreement for an additional Contract term, as permitted by the Agreement, no new letter of agreements may be made under this Agreement after this date. Assignments for which letter of agreements have been executed prior to this date will be completed and monthly partial payments processed.

[INCLUDE THE FOLLOWING WHEN THE MAXIMUM TOTAL COMPENSATION IS LESS THAN \$2,000,000: Supplemental Agreements may be executed after the final Contract Term period for changes in the scope of work of ongoing assignments. Supplemental agreements may not extend the maximum total compensation for the final Contract Term beyond \$2,000,000.]

APPENDIX C

VIRGINIA DEPARTMENT OF TRANSPORTATION (VDOT) EXTERNAL & CONSTRUCTION AUDIT DIVISION (ECAD) PRE-AWARD EVALUATION CHECKLIST

The prime consultant should submit a package that includes cost proposals for them and all of their Sub-consultants that provide a breakdown of all costs and documentation supporting the proposed cost as described below.

Direct Labor Costs

- A listing of the proposed average hourly rates per classifications including the employee names and hourly pay rates used to determine the average hourly rates per classification supported by **actual payroll registers** for each employee proposed.
- A calculation showing how the escalation was derived with the breakdown of escalation amount per year of contract performance. Escalation is limited to 1.5% in the first year of the contract and 3% for all subsequent years.
- Principals, partners, executives, etc. are considered administrative, whose costs should be included in the overheads. If a principal, etc. chooses to perform technical services, they can bill at the comparable rate to the technical activity or function being performed.

Indirect (Overhead) Cost

- Federal Acquisition Regulation (FAR) audit approval letter from ECAD, or an audit performed in accordance with the FAR by an independent CPA firm or cognizant government agency no older than 18 months.
- In the absence of the FAR audit we will allow up to 75% for the overhead rate to be used in the cost proposal and based on supporting documentation submitted by the consultant.
- The FAR audit requirement is waived for sub-consultants' whose cost proposal amount is less than \$25 thousand. We need documentation in support of the proposed overhead rate.

Net fee

- The net fee should be negotiated and within VDOT guidelines found in Chapter 4 of the [Professional Procurement Manual](#), with written documentation to justify any net fee rate over 10%.

Non-Salary (Other) Direct Cost

- Costs for employees on travel status are limited to the VDOT travel policy for lodging, per diem, and mileage rates.
- All in-house developed rates proposed should be supported by proper source documentation.
- All other direct cost proposed should be reasonable, based upon actual costs, and in accordance with the VDOT Policy.

Contingency

- The contingency should be negotiated and within VDOT guidelines, with written documentation to justify any contingency rate over 5%.

Pre-Award Evaluation Requirements

The LPA's prime consultant should submit their cost proposal, to include their subconsultant, a breakdown of all costs and supporting documentation supporting the proposed cost as described below:

Direct Labor Costs

- Proposal should contain supporting data such as:
 - **Description of the scope of the work**
 - **Proposed schedule**
 - **Man-hours**
 - required for each task, stage or element, by each category of personnel
 - **Average hourly rates**
 - for each category of personnel with payroll register or similar supporting documentation
 - **Estimated direct costs**
 - The allowable lodging and meal and incidental expense rates to be used should not exceed allowed in the VDOT Travel Policy.
 - Consultant travel reimbursement is limited to the rates stipulated in the VDOT Travel Policy.
 - The acquisition of any individual item or service costing more than \$5,000, but no more than \$50,000, shall be supported by at least four (4) written quotes from DMBE-certified small businesses , if available.
 - Consultants (geotechnical, aerial photography, testing labs, Etc.) which normally work on a unit price basis probably cannot provide support for their unit prices; however, they should provide a copy of their standard fee schedule and shall attest that the fees contained thereon are their normal fees for such services.
 - If a consultant proposes to purchase or lease computer hardware and/or software for use on a project, the proposal must be reviewed by the Information Technology Application Division (ITAD).
 - **Sub-Consultant Costs**
 - Prime consultant administrative mark-ups on costs for the managing of sub-consultants, in addition to the overhead, labor, and fixed fee are not allowed.
 - **Payroll Burden & Overhead Rates**
 - Audited in accordance with the FAR. Rates should be for a period not older than eighteen (18) months.
 - The consultant and all sub-consultants must comply with the FAR audit rate requirement within ten (10) work days of being notified of selection.
 - The overhead audit shall be performed by an independent CPA firm or cognizant government agency.

- The audit shall be subject to review and approval by the ECAD.
- FAR audits are not required for sub-consultants whose fees are estimated to be less than \$25,000.
- If the proposed services require the establishment of a field office or if the consultant employees will work out of a VDOT provided office (such as Construction Engineering Inspection Services), a separate audited field overhead rate must be submitted. If no audited field overhead rate is available, an overhead rate of 75% will be allowed.

Appendix D

Certification Regarding Debarment or Suspension by any Federal Department or Agency

CERTIFICATION REGARDING DEBARMENT
PRIMARY COVERED TRANSACTIONS
(To be completed by a Prime Consultant)

Project: _____

- 1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
 - b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; and have not been convicted of any violations of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1) b) of this certification; and
 - d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- 2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

The undersigned makes the foregoing statements to be filed with the proposal submitted on behalf of the offeror for contracts to be let by the Commonwealth Transportation Board.

Signature

Date

Title

Name of Firm

CERTIFICATION REGARDING DEBARMENT
LOWER TIER COVERED TRANSACTIONS
(To be completed by a Sub-consultant)

Project: _____

- 1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

- 2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

The undersigned makes the foregoing statements to be filed with the proposal submitted on behalf of the offeror for contracts to be let by the Commonwealth Transportation Board.

Signature

Date

Title

Name of Firm