

PART 2

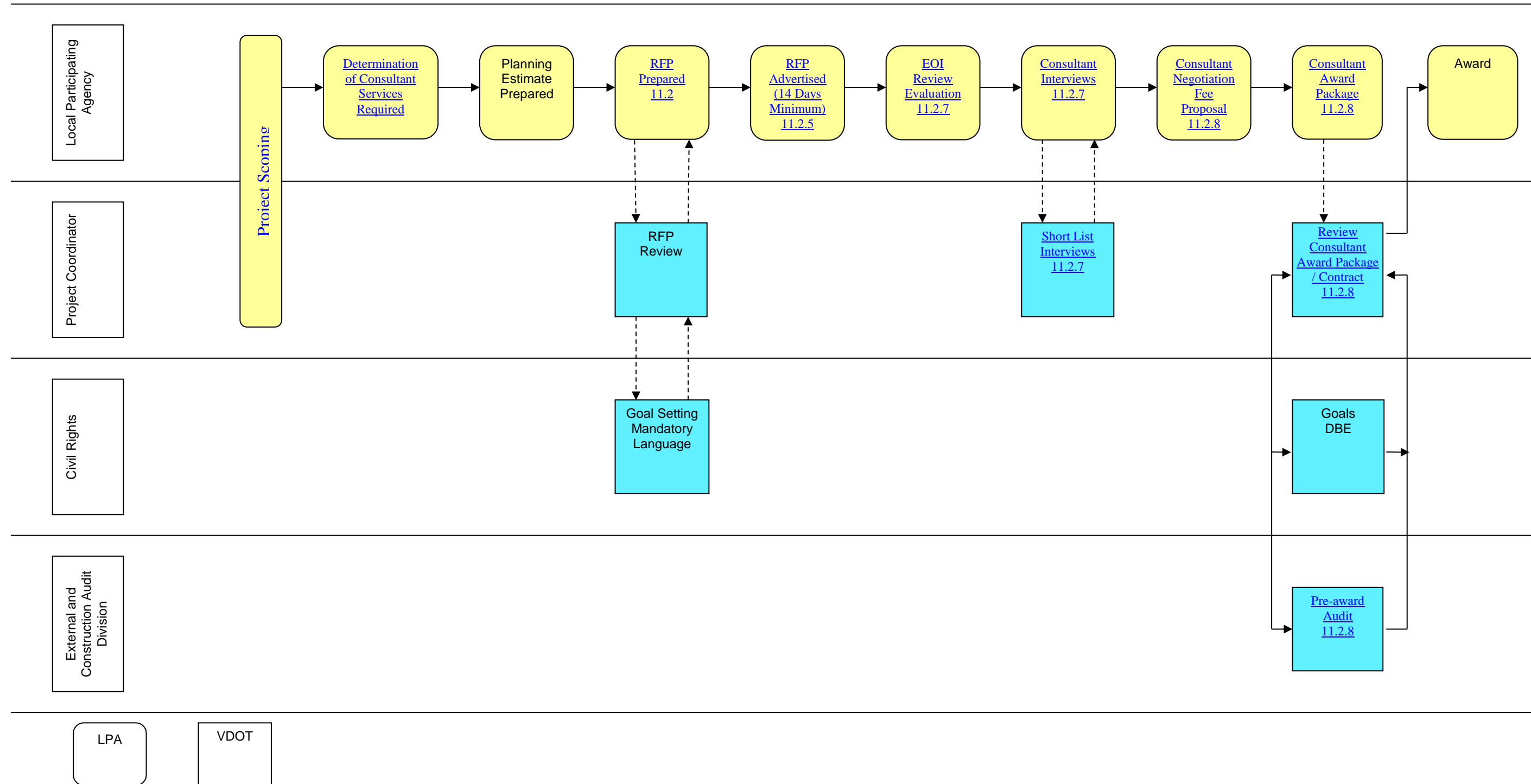
Project Management

Chapter 11

Consultant Procurement

Locally Administered
Projects (LAP) Manual

CHAPTER 11 - CONSULTANT PROCUREMENT



Chapter 11 - Consultant Procurement

This chapter includes the following topics:

11.1 OVERVIEW

[11.1.1 Introduction](#)

[11.1.2 Applicability](#)

11.2 PROFESSIONAL SERVICES PROCUREMENT PROCESS

[11.2.1 Development of RFP](#)

[11.2.2 Scope of Services](#)

[11.2.3 Consultant Qualifications](#)

[11.2.4 Contract Compensation Methods](#)

[11.2.5 Advertisement](#)

[11.2.6 Selection Committee](#)

[11.2.7 Consultant Evaluation and Selection](#)

[11.2.8 Consultant Negotiations and Pre-Award Auditing](#)

[11.2.9 Use of "On-Call" Consultants](#)

VDOT and VDOT Responsibilities

[11.3 Tasks/Submittals/Documentation/Responsibilities Table](#)

[11.4 References](#)

CHAPTER APPENDICES

[Chapter 11 – Checklist](#)

[Appendix A – Professional Procurement Checklist](#)

[Appendix B – RFP and MOA \(Consultant Contract\) mandatory provisions](#)

[Appendix C – ACO Pre-Award Evaluation Checklist](#)

[Appendix D – Certification of Debarment or Suspension by any Federal Department/Agency](#)

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 Services](#) (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, must 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). 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.

LPA's 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, the use of state procurement procedures may be 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 VDOT requires LPA's to follow the VPPA. Early coordination with the VDOT PC and Central Office LAD is necessary to utilize this process.

11.1.2 Applicability

- Federal-aid professional services contracts and those developed to qualify for federal-aid.
- For state-aid projects, LPA's must provide certification of state code compliance (see Chapter 5), 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	*	*

* LPA's 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 (MOA) with the consultant. LPAs may use their own RFP and MOA formats; however, to ensure all federal-aid provisions are met, the [RFP](#) and [MOA](#) (consultant contract) must contain the applicable federal requirements provisions highlighted in the [RFP](#) and [MOA](#) templates located in VDOT's [external forms server](#). The [Mandatory RFP](#) and [Mandatory MOA](#) Provisions are also available as stand-alone documents that LPA's may append to their own RFP and MOA formats. 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.**

In addition, USDOT 1050.2A Title VI Assurance – Appendix A (CH17, Appendix 17F) is required to be physically placed in each Request for Proposal (RFP) and prohibits discrimination on the grounds of race, color or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. These provisions inform the subcontractors of their obligations relative to nondiscrimination under the contract.



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 its [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 2009 [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 in a minority owned newspaper in those areas, when available.

The 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 included 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.



Prior to a consultant agreement having a value less than \$200,000 being executed, the LPA should conduct a pre-award evaluation of any “*professional services*” cost proposals, including any incorporated sub-consultant proposals, and retain the result of the review in its records. LPA's should review these proposals in accordance with the [Pre-Award Evaluation Requirements](#) included in Appendix C of this chapter.

VDOT's Assurance and Compliance Office (ACO) will conduct a pre-award evaluation for consultant “*professional services*” cost proposals having a value greater than \$200,000 prior to their execution. The consultant is required to submit a Federal Acquisition Regulations (FAR) audit meeting the requirements of Part 31 of Title 48 of the Code of Federal Regulations when a prime or combined prime and sub-consultant cost proposal has a value of \$200,000 or more. Pre-award evaluations are not required for off right-of-way Transportation Alternatives Projects.

Pre-award evaluation consists of a review of the offeror's financial capability, adequacy of accounting systems, appropriateness of overhead rates, labor additives and similar add-ons. The FAR Audit consists of a determination of costs eligible for reimbursement

on federally funded agreements conducted in accordance with Cost Accounting Standards issued by the Cost Accounting Standards Board.

Additional guidance can be found in [Appendix C](#) and the [VDOT Manual for Procurement and Management of Professional Services](#). Also, the [AASHTO Uniform Audit & Accounting Guide](#) is an excellent resource that outlines these requirements.



At the end of negotiations, the following must be provided to the Project Coordinator for review by VDOT Assurance and Compliance Office:

- 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 the 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

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. In addition, if the consultant contract is a fixed fee, the agreement must include the [fixed fee clause](#) as required by [FAR §36.609-1 \(c\)](#). VDOT uses a Memorandum of Agreement ([MOA](#)) as the standard contract which is available in VDOT's [external forms server](#).

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 what is 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 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 ACO.
 - FAR audits are not required for sub-consultants whose fees are estimated to be less than \$200,000, provided that the combined prime and sub-consultant cost proposal does not exceed \$200,000.
 - 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 percent will be allowed.

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.

“On Call” agreements that have a fixed fee amount of \$200,000 or more, or that do not specify a fee amount, shall receive a pre-award review in accordance with the procedures outlined in Section 11.2.8.

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 the District 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 10 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 Assurance and Compliance Office (ACO) Pre-award Evaluation Package: The entire package must be submitted by the PC to ACO 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 ACO evaluation and approval, provide written notification of approval to the LPA. The written approval and any written information provided by ACO should be uploaded into the project documents tab in iPM.*

11.3 KEY SUBMITTALS / REQUIREMENTS

Task/Submittal / File Documentation	Locality Responsibility	VDOT PC Responsibility	Submittal Timing or Recordkeeping Requirements
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 ACO for review	Immediately after negotiations are complete; ACO will provide approval / comments to the PC within 20 business days of submittal
Record of Selection Process, identified in	N/A	N/A	Keep on file for three

Appendix A of this Chapter			years after financial closeout of project
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11.4 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>
- FHWA, Administration of Engineering and Design Related Services Contracts - Questions and Answers: <http://www.fhwa.dot.gov/programadmin/172qa.cfm>

Chapter Appendices





- [Chapter 11 – Checklist](#)
- [Appendix A – Professional Procurement Checklist](#)
- [Appendix B – RFP and MOA mandatory provisions](#)
- [Appendix C – ACO Pre-Award Evaluation Checklist](#)
- [Appendix D – Certification of Debarment or Suspension by any Federal Department/Agency](#)

Chapter 11 – Consultant Procurement Checklist

These checklists can be found in their entirety in the [VDOT on line forms library](#)

CH 11 - Consultant Procurement

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.

SUBMIT	COMPL	F	S-V	S-L	T-A	UCI	Requirement	Reference LAP	Other
	<input type="checkbox"/>	X	1	1			Prepare and Submit RFP and include Federal Provisions (Mandatory Language in Appx B), scope of services and selection criteria	11.2.1	
	<input type="checkbox"/>	X	1	1			Submit selection factors for review if not using those found in Ch 3.1 of the VDOT Procurement Manual and include in RFP	11.2.1	
	<input type="checkbox"/>	X ²	X ²	X ²			Consultant Qualifications (determine necessary qualifications based on scope of services)	11.2.3	
	<input type="checkbox"/>	X	1	1			Consultant evaluation and selection - EOI's are individually reviewed and scored	11.2.7	
	<input type="checkbox"/>	X	1	1			Maintain written record in project files individual scores, rankings and rationale for EOI evaluation	11.2.7	
	<input type="checkbox"/>	X	1	1			Procurement process shall have conformed to Brooks Act requirements	11.2.8	
	<input type="checkbox"/>	X	1	1			Submit fee proposal and contract for pre-award audit (see Appx C of this chapter for checklist)	11.2.8	
	<input type="checkbox"/>	X	1	1			Use of "On Call" Consultants - Include scope of services and qualifications criteria in RFP - RFP submitted for review - Procurement process conforms to Brooks Act - Include Mandatory Provisions - Record of selection process available for review	11.2.9	

¹ LPA's must meet provisions of the Virginia Public Procurement Act

² Professional services firms must meet DPOR requirements

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

To retrieve a full MSWord version of VDOT's RFP and MOA Templates, click on the following:

[RFP](#)
[MOA](#)

Stand-alone versions of the Mandatory Federal-aid RFP and MOA Provisions are also available for insertion in the LPA's own documents. These may be retrieved by clicking on the following:

[Mandatory RFP Provisions](#)
[Mandatory MOA Provisions](#)

APPENDIX C

VIRGINIA DEPARTMENT OF TRANSPORTATION (VDOT) ASSURANCE AND COMPLIANCE OFFICE (ACO) 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 0.5 percent in the first year of the contract and 1 percent for all subsequent years. Additional information is available [here](#).
- 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 ACO, 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 percent 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 \$200,000. 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 percent.

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.
 - Leased vehicle rates for CEI are capped at \$0.34 per mile.
 - Cell phones for CEI personnel are capped at \$45 per month.
- 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 percent.

Pre-Award Evaluation Requirements

The LPA's prime consultant should submit their cost proposal, to include all subconsultants, 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 ACO.
- FAR audits are not required for sub-consultants whose fees are estimated to be less than \$200,000.
- 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 percent will be allowed.

Required Fixed Fee Clause

○ Additional Required Contract Clause

The contracting officer shall insert the following clause in fixed-price architect-engineer contracts **except** when—

(1) The head of the contracting activity or a designee determines in writing that cost limitations are secondary to performance considerations and additional project funding can be expected, if necessary;

(2) The design is for a standard structure and is not intended for a specific location; or

(3) There is little or no design effort involved.

(a) The Contractor shall accomplish the design services required under this contract so as to permit the award of a contract, using standard Federal Acquisition Regulation procedures for the construction of the facilities designed at a price that does not exceed the estimated construction contract price as set forth in paragraph (c) of this clause. When bids or proposals for the construction contract are received that exceed the estimated price, the contractor shall perform such redesign and other services as are necessary to permit contract award within the funding limitation. These additional services shall be performed at no increase in the price of this contract. However, the Contractor shall not be required to perform such additional services at no cost to the Government if the unfavorable bids or proposals are the result of conditions beyond its reasonable control.

(b) The Contractor will promptly advise the Contracting Officer if it finds that the project being designed will exceed or is likely to exceed the funding limitations and it is unable to design a usable facility within these limitations. Upon receipt of such information, the Contracting Officer will review the Contractor's revised estimate of construction cost. The Government may, if it determines that the estimated construction contract price set forth in this contract is so low that award of a construction contract not in excess of such estimate is improbable, authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction contract price set forth in paragraph (c) of this clause, or the Government may adjust such estimated construction contract price. When bids or proposals are not solicited or are unreasonably delayed, the Government shall prepare an estimate of constructing the design submitted and such estimate shall be used in lieu of bids or proposals to determine compliance with the funding limitation.

(c) The estimated construction contract price for the project described in this contract is \$_____.

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