

FAIRFAX COUNTY
DEPARTMENT OF TRANSPORTATION (FCDOT)



REQUEST FOR PROPOSAL (RFP)
FOR
BASIC ORDERING AGREEMENT (BOA)
CONTRACTS
FOR DESIGN OF MULTI-MODAL
TRANSPORTATION IMPROVEMENT PROJECTS

ADDENDUM #1
(RFP REVISIONS ARE MARKED IN RED)

Date: May 5, 2025



Fairfax County is committed to nondiscrimination on the basis of disability in all county programs, services and activities. Reasonable accommodations will be provided upon request. For information, call Mohamad El Kaissi at 703-877-5736 TTY 711.

<https://www.fairfaxcounty.gov/transportation/solicitations/pre-qualification>

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REQUEST FOR PROPOSAL (RFP)

EXECUTIVE SUMMARY

Fairfax County Department of Transportation (FCDOT) is seeking Offerors for consideration of providing engineering services for design of multi-modal transportation improvement projects. Please provide an Expression of Interest (EOI) in accordance with the attached solicitation for this Request for Proposal (RFP).

Funding:	Federal-Aid, and/or State-Aid, and/or Local Funds
Type of Contract:	Limited Services Term Contract
Number of Awards:	Multiple Award
Estimated Contract Value:	\$10,000,000 maximum per contract term \$2,500,000 maximum per project
Contract Duration/Term:	1-year term with three (3) optional 1-year renewable terms
DBE Goal:	10% (Required)
SWaM Goal:	0%
Procurement Contact:	Mohamad El Kaissi, Contract Manager Transportation Design Division Fairfax County Department of Transportation 4050 Legato Road, Suite 400, Fairfax, VA 22033-2895 Mohamad.ElKaissi@FairfaxCounty.Gov

Tentative Procurement Schedule:

• Advertise Request for Proposal (RFP)	April 10, 2025
• Optional Pre-Proposal Conference:	April 17, 2025
• Expression of Interest (EOI) Due:	May 15, 2025, at 4:00 PM
• Shortlist Posted on FCDOT Website:	June 6, 2025
• Interviews/Technical Presentations:	June 16, 2025 to June 26, 2025
• Final Consultant Selection:	July 2, 2025
• Selected Consultant Pre-Award Documents (Draft) Due:	July 23, 2025
• Completed Negotiations Agreement (Final) Due:	October 7, 2025
• Consultant Contract Signed/Awarded:	October 16, 2025

EOI Evaluation Criteria:

Evaluation Criteria for Scope of Services (Score Range 1 – 10)	Weight Factor
1. Technical Ability/Experience of Offeror's Key Personnel	25%
2. Technical Ability/Experience of Offeror's Project Manager	25%
3. Technical Ability/Experience of Offeror's Team	20%
4. Past Performance on Similar Term (On-Call)/Project Contracts	25%
5. Quality Control/Quality Assurance	5%

1. INTRODUCTION

The Fairfax County Department of Transportation (FCDOT) submits this Request for Proposal (RFP) to solicit for consultant firms/teams interested to serve as On-Call Consultants for the design of multi-modal transportation improvement projects at various locations throughout the county. All Offerors shall submit seven (7) EOI hard copies including one (1) marked “Original” and six (6) abbreviated copies to be received no later than 4:00 PM local time Thursday, May 15, 2025. An electronic copy of the “Original” EOI should be compiled as a single PDF and be provided on a USB flash drive along with the “Original” hard copy of the EOI. All text in the PDF shall be searchable with exception of illustrations and scanned registration documents. Responses received after date and time above will not be considered. An Offeror shall not submit more than one (1) EOI in response to this RFP, otherwise the Offeror shall be disqualified. All EOI deliveries shall be made to the procurement contact on the Executive Summary.

FCDOT reserves the right to accept or reject any or all RFPs received, to negotiate with any qualified Offeror or to modify or cancel in part or in its entirety this RFP, and does not commit to provide any payment for costs associated with the preparation of RFPs submitted in response to this request. The Offeror’s EOI must meet all requirements established in this RFP. Failure to meet an RFP requirement may render an EOI non-responsive as solely determined by FCDOT.

FCDOT reserves the right to alter the project delivery method at any time during the contract period. FCDOT will notify the consultant of such decision, revise the scope of services and respective man-hours. The change will be implemented utilizing an additional task order or supplemental agreement based on the contract type.

All procurement-related questions or information should be directed to Mohamad El Kaissi, Contract Manager, Transportation Design Division, FCDOT at mohamad.elkaissi@fairfaxcounty.gov or 703-877-5736. FCDOT disclaims the accuracy of information derived from any source other than the POC, and the use of any such information is at the sole risk of the Offeror.

2. BACKGROUND INFORMATION

FCDOT, in its sole discretion, reserves the right to modify the tentative procurement schedule as shown on the Executive Summary as it finds necessary. Offerors who submit a proposal in response to this RFP may be required to give a technical presentation of their proposal to the agency. This provides an opportunity for the Offeror to clarify or elaborate on the proposal. This is a fact-finding and explanation session only and does not include negotiation. Technical presentations are an option of FCDOT and may or may not be conducted. The date of the technical presentation is as shown on the Executive Summary.

A Selection Committee consisting of Fairfax County staff will evaluate and score each Offeror’s EOI against the evaluation criteria as shown on the Executive Summary. The short-listed and/or top ranked Offeror(s) will be notified in writing by FCDOT and scheduled for an interview at a later date. FCDOT reserves the right to consider as part of the evaluation of the Project Manager, Key Personnel, and Offeror’s Team, their availability and/or performance on past VDOT, FCDOT, and other projects through review of VDOT and FCDOT records such as reference checks with Project Managers, including other clients.

For Limited Services Term Contracts with multiple awards, Fairfax County will assign task orders using an established distribution process that satisfies requirements of Virginia §2.2-4303.1 - Part B, using guidance referenced in Chapter 5.3.4 of the VDOT Manual for Procurement and Management of Professional Services.

3. PROCUREMENT OVERVIEW

Fairfax County will award up to ten (10) on-call task order contracts for transportation design services. The contracts will be for a one-year period and may be renewable for three (3) additional one-year terms at the county's option. The contracts will be established with a ceiling amount of \$10,000,000 per year. Task orders will be assigned and negotiated for individual projects as the need arises. The maximum task order fee for a single project will not exceed \$2,500,000, including multiple task orders that may be executed under the same project, all costs for sub-consultants, and any and all amendments or change orders. As such, to allow for possible increases in scope of work as a project progresses, it will be a policy of FCDOT to limit the initial task order fee to no more than approximately \$2,000,000. Selection of consultant firms/teams for projects with an estimated initial fee in excess of \$2,000,000 will be done via a separate procurement. The County intends to distribute work and assignments to the selected consultant firm/teams considering the following factors:

- Specialized services required such as traffic signal design, structural design, survey services, traffic engineering services, geotechnical services, etc. which may be required for a particular project and the qualifications of the firm/team to perform these specialized services;
- Previous experience with similar projects;
- The dollar amount of previous task orders authorized/assigned;
- The number of previous task orders authorized/assigned;

4. EVALUATION OF QUALIFICATIONS

A Selection Advisory Committee (SAC) will be appointed by FCDOT to evaluate and score the EOIs. FCDOT may use any appropriate technical resource to provide assistance in evaluating submittals. FCDOT's sole Point of Contact (POC) for matters related to this RFP shall be Mohamad El Kaissi, Contract Manager, Transportation Design Division (TDD), FCDOT. All Inquiries and communications regarding this RFP shall be in writing and directed as follows:

Mohamad El Kaissi, PE
Contract Manager, Transportation Design Division
Fairfax County Department of Transportation
4050 Legato Road, Suite 400
Fairfax, VA 22033-2895
(703) 877-5749 (Phone) TTY 711
Mohamad.ElKaissi@FairfaxCounty.Gov

FCDOT disclaims the accuracy of information derived from any source other than the POC, and the use of any such information is at the sole risk of the consultant.

5. RFP INFORMATION MEETING & ESTIMATED PROCUREMENT SCHEDULE

RFP Information Meeting:

An RFP Information Meeting will be held at the FCDOT office located at 4050 Legato Road, Suite 400, Fairfax, Virginia, 22033 at 10:30 AM local time on Thursday April 17, 2025. Attendance at the information meeting is not mandatory, but consultants are urged to attend. Each firm/team can bring a maximum of two (2) people.

Estimated Procurement Schedule:

FCDOT currently anticipates conducting this procurement in accordance with the following list of milestones. This schedule is subject to revision and FCDOT reserves the right to modify this schedule as it finds necessary, in its sole discretion.

1. Advertise RFP	April 10, 2025
2. Pre-Proposal Information Meeting	April 17, 2025, at 10:30AM (local time)
3. Deadline to Submit Questions	April 24, 2025, by 4 PM (local time)
4. Response to Questions Posted	May 5, 2025
5. RFP Addendum #1 Posted	May 5, 2025
6. EOI Submission	May 15, 2025, at 4:00 PM (local time)
7. SAC's Evaluation Deadline	May 30, 2025
8. Notification to Shortlisted Offerors	June 6, 2025
9. Offerors Short-listed Posted	June 6, 2025
10. Anticipated Interview Dates	June 16, 2025 to June 26, 2025
11. Final Selection by SAC	July 2, 2025
12. Notification to Selected Offerors	July 7, 2025
13. Offerors Selected Posted	July 7, 2025
14. RFP Information Meeting	July 10, 2025
15. RFPs Due Date (Draft)	July 23, 2025
16. VDOT ACO Review Completion	September 23, 2025
17. RFP Due Date (Final)	October 7, 2025
18. Contract(s) Award	October 16, 2025
19. Notice to Proceed	October 16, 2025

6. SELECTION CRITERIA

6.1. Evaluation factors to be utilized by the selection committee in determining the firm(s)/team(s) deemed to be the most qualified to perform the required services include:

1. Criteria #1 – 25% (Weighted Factor), (Score Range 1-10)
Technical ability and experience of KEY Professional Personnel assigned in each service / specialty area with focus on “Primary” Services noted in Section 7.
2. Criteria #2 – 25% (Weighted Factor), (Score Range 1-10)
Technical ability and experience of the Prime Project Manager and his/her understanding of the County’s multi-modal Transportation Priority Plan (TPP), VDOT Locally Administered Projects (LAP) Manual, and the challenges of project implementation in highly urbanized areas
3. Criteria #3 – 20% (Weighted Factor), (Score Range 1-10)
Technical ability and experience of the Offeror’s Team. Provide sufficient information to enable FCDOT to understand and evaluate the experience of the Offeror’s firm/team on multi-modal transportation projects. FCDOT intends to select Offerors which best demonstrate previous experience working together as a team on projects of similar size and complexity which require a range of services particularly the Primary Services.
4. Criteria #4 – 25% (Weighted Factor), (Score Range 1-10)
Past performance on similar BOA Contracts, and/or other project specific contracts. FCDOT intends to select Offerors which best demonstrate previous experience in:
 - Successfully delivering projects on or ahead of time and on or under budget
 - Providing quality roadway, drainage and stormwater management, and structure design plans
 - Use of innovative design solutions
 - Minimizing impacts to the traveling public, affected businesses and communities, including commitments to avoid, minimize and mitigate congestion during construction
 - Previous success in minimizing right-of-way and utility impacts
5. Criteria #5 – 5% (Weighted Factor), (Score Range 1-10)
Quality Control/Quality Assurance - Experience, understanding of, and ability to meet Quality Assurance/Quality Control guidelines and requirements for a successful implementation of the County’s Transportation Priority Plan (TPP).

FCDOT reserves the right to consider as part of the evaluation of the Project Manager, Key Personnel, and Offeror’s Team, their availability and/or performance on past VDOT, FCDOT, and other projects through review of VDOT and FCDOT records such as reference checks with Project Managers, including other clients.

6.2. The selection committee will rate and score each EOI based upon the above criteria and will select a shortlist of up to fifteen (15) firms/teams whose EOI were deemed most qualified to perform the services required for the project. The short-listed firms/teams will be notified in writing and will be scheduled for an interview at a later date.

7. SCOPE OF WORK

There is no guarantee that any projects, contracts, or task orders will be identified for this RFP. The decision to include these services under a project, contract, and/or specific task order is solely based on FCDOT. This work is to be accomplished utilizing computerized design and drafting systems compatible with FCDOT automated design and drafting systems, (e.g. Open Roads Designer, AUTOCAD). The work shall be developed utilizing applicable standards and practices such as Fairfax County Specifications and Standard Details, VDOT and FHWA requirements and guidelines. Previous needs have required the following services:

Primary Services
All types of Roadway Improvements; including widening, realignment, and/or new alignment
Intersection Improvements including turn lane additions and modifications, Roundabout
Traffic Signal design (new signals and modifications to existing signals)
Intersection Pedestrian Access Improvements
On-road and off-road Bicycle Facility Improvements
Shared-Use-Path, Trail, and Sidewalk/Asphalt Walkway design
Bus Stop Safety and Accessibility Improvements including bus shelters
Storm Drainage Design including Outfalls and Stormwater Management, Erosion and Sediment control, and Water Quality/Water Quantity
Hydraulic and Hydrologic Analysis
Floodplain and Scour analysis
Structural design (particularly retaining wall and pedestrian bridge design)
Pavement Marking and Signage
Traffic Management Plans, Maintenance of Traffic, and Sequence of Construction
Quality Assurance/Quality Control (QA/QC)
Quantity Takeoff and associated project Cost Estimates/Engineer's Estimate at various stages of project development
Traffic Engineering Services in support of design (weave analysis, intersection analysis, VISSIM, and Synchro modeling, data collection, etc.)
Preliminary Engineering in support of NEPA document preparation
Environmental Documentation (EIR / LERP / NEPA) preparation, analysis, and review
Environmental Permitting including wetland and Waters of the US (WOUS) delineation
VMS/ITS Design
Geotechnical investigations and analysis
Topographic Survey and plat preparation

Secondary Services
Conceptual Plan development/feasibility analyses/constructability reviews, and Cost Estimates
Interchange Justification Report (IJR) or Interchange Modification Report (IMR) preparation
Utility Design including Sanitary Sewer and Water Mains
Roadway and/or Pedestrian Lighting Design
Landscape Design
Value Engineering (VE) Study support and/or facilitation
Prepare or assist in preparation of RFP's for Design-Build projects
Technical Specifications and Special Provisions preparation and review
Construction Engineering & Inspection

The County has, among others, separate on-call contracts for sub-surface utility designation and locating, geotechnical engineering, survey services, and environmental investigation and permitting. Task orders involving these types of services will typically be assigned to those contracts. However, if workload dictates and if a selected firm/team possesses one or more of these capabilities, it is possible that these services may be included in the scope of work for a particular task order. The decision to include these services under a particular task order is at the sole discretion of FCDOT.

8. EXPRESSION OF INTEREST (EOI) REQUIREMENTS

Organize the EOI in the following order and address the solicitation instructions, evaluation factors, and each element of the Scope of Work: (No additional pages may be included in the EOI).

“Original” EOI Submittal Components	
Table of Contents	The consultant shall provide a table of contents for the proposal limited to one (1) page
Transmittal Letter	The letter, addressed to the Procurement Officer, should identify the principal point of contact for the Offeror by name, title, mailing address, telephone, facsimile, and email address.
<p>Fully Completed GSA Standard Form 330 and Requested Submittals*</p> <p>GSA SF 330 Parts I & II are required from the prime consultant</p> <p>GSA SF 330 Part II is required from all subconsultants</p> <p>* (Follow GSA Standard Form 330 (gsa.gov) instructions unless indicated otherwise within this RFP)</p>	<p>Part I: Contract-Specific Qualifications (Prime Consultant Only)</p> <p>A. Contract Information</p> <p>B. Architect-Engineer Point of Contact</p> <p>C. Proposed Team. Include all firms of the proposed team; indicate roles and responsibilities of each team member; identify which firm is the Prime.</p> <p>D. Organizational Chart of Proposed Team. Show all firms, Key Personnel, assignments, responsibilities, staff names, working titles, and additional personnel classifications. One (1) page, 8.5” x 11”; (11” x 17” folded to 8.5”x 11” is acceptable).</p> <p>E. Resumes of Key Personnel Proposed for this Contract. Provide resume for each Key Personnel and the Project Manager listing project names, task assignment, role, and length of time on the project. Two (2) page limit per person; font at least 10 point.</p> <p>F. Team Example Projects. Include Firms, Team Members, and Client/Owner Information. Demonstrate team qualifications / experience listing relevant examples matching work described in the Scope of Services. Max limit of ten (10) example projects including graphics, two (2) pages per project, single sided/spaced, font at least 10 point.</p> <p>G. Key Personnel Participation in Example Projects. Indicate in the matrix/table the key personnel identified in Section E and participated in the ten (10) example projects listed in Section F.</p> <p>H. Additional Information. Provide additional information the team deems relevant to assist FCDOT in evaluating the proposed team’s qualifications and experience such as: key personnel in primary services, technical ability of project manager, technical ability of project team, past performance on similar BOA contracts, and quality control/quality assurance program. Discuss availability of proposed staff, ability to timely complete the work, team size relative to project size, and project resources (disciplines/roles including sub-consultants) for the RFP requested services. Do not include duplicate information, resumes, and examples provided in Sections A-G. 10-page limit including graphics, single sided/spaced; font at least 10 point.</p> <p>Part II: General Qualifications (Prime Consultant & Subconsultants)</p>

Non-Professional Services	Acknowledgement of Offeror's In-House Capacity to Provide Non-Professional Services. If Offeror's team does not have in-house capability to provide non-professional services, each with an estimated cost of \$5,000 or greater, subcontract such services using State procurement procedures once a contract is executed for this RFP. DBE or SWaM credit disallowed. Clearly indicate Non-Professional services provided in the EOI.
Affiliated and/or Subsidiary Companies	Provide names and detailed addresses of all affiliated and/or subsidiary companies for all team members, including sub-consultants. Indicate which companies are subsidiaries. If unsure whether another firm is or is not an affiliate, identify as affiliate and list the firm accordingly.
DBE/SWaM Verification Letter	Include when using a DBE/SWaM. The DBE/SWaM firm should provide their current verification letter from VDOT as it serves as confirmation of a business's status.
Conflict of Interest Acknowledgment Letter	Offerors to include a Conflict of Interest Acknowledgment Letter as a response to the RFP.
Attachments/Forms	
Firm Data Sheet	All firms shall complete this form. A Firm Data Sheet is required for consultant contracts.
Certification Regarding Debarment (Primary Covered Services)	All prime offerors/consultants shall complete this form. Debarment is a factor in determining Award. For any noted condition, indicate whom it applies, initiating agency, and dates of action. Providing false information may result in Federal criminal prosecution or administrative sanctions.
Certification Regarding Debarment (Secondary Covered Services)	All subconsultants shall complete this form. Debarment is a factor in determining Award. For any noted condition, indicate whom it applies, initiating agency, and dates of action. Providing false information may result in Federal criminal prosecution or administrative sanctions.
Certification Regarding Ethics in Public Contracting	All prime offerors certify that they have not given any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value to any public employee or official have official responsibility for a procurement transaction.
Registration and Business License Requirements	Convey the requested information for each regulant in a concise table or matrix. (Include full size copies of the SCC and DPOR supporting registration documents. (not counted towards page restriction)).
Form C-48 PSC Subconsultant Solicitation Form	This form must be completed by each prime offeror in detail. This form represents the consultants solicitation of subconsultants to be used for the contract to meet the DBE goal.

The six (6) abbreviated EOI hardcopy submittals can include only the following documents:

- Transmittal Letter
- Completed GSA SF330 Parts I & II

9. MANDATORY ADMINISTRATIVE AND CONTRACT TERMS

9.1. Escalation Rate

Based upon the procurement and contract schedule, the approved escalation rate for this contract is 0% for year one (1).

At each contract term renewal, escalation of the base salary rates for each labor classification used for computation of fixed billable rates will be allowed. However, escalation of the base salary rates for each classification shall not exceed 3% from the prior contract term / or year without prior written approval of FCDOT. If, for the renewal term, the actual certified average salary rates for one or more labor classifications is less than 3%, then the actual certified average salary rate shall be utilized for those classifications when computing the fixed billable rate for the new contract term. For labor classifications where the actual average certified labor rate has increased more than 3% from the prior term, then the allowable escalation of the base labor rate for those classifications shall be limited to no more than a 3% increase over the prior term rate for the same classifications. For example, for the first term of this contract, Firm A provides average certified base labor rates for the labor classifications of Sr. Civil Engineer and Traffic Engineer of \$60/hr. and \$58.76/hr., respectively. When renewing the contract for the 2nd year/term, Firm A submits average certified base labor rates of 61.50 per hour for the Sr. Civil Engineer classification (a 2.5% increase) and \$61.22 (a 4.19% increase) for the Traffic Engineer classification. In this case the proposed labor rate of \$61.50 per hour for the Sr. Civil Engineer will be accepted and used for calculating the fixed billable rate for a Sr. Civil Engineer. For the Traffic Engineer, the base rate will be limited to \$60.52 per hour (3% increase over the previous term rate of \$58.76) which will be used for calculating the fixed billable rate for the Traffic Engineer classification.

Payment for work performed beyond the last term of the contract will remain at the rates of the most recent term renewal.

9.2. Method of Payment

FCDOT has selected the following method of payment for this contract:

Lump Sum / Actual Costs (Fixed Billable Rate): 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.

9.3. Key personnel

Key personnel are defined as those to whom the contract will be assigned and who will be performing the actual management of the work and be responsible for inspection, administrative and design services. 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 FCDOT Project Manager for

approval, who, at their sole discretion, will determine whether to authorize a change. Unauthorized changes to the Consultant's Key Personnel at any time during the procurement process may result in elimination of the Consultant's Team from further consideration.

9.4. 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 Commonwealth of Virginia, the Department 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.

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:

- 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.

Section 49 CFR 21 is incorporated by reference in all contracts and subcontracts funded in whole or in part with federal funds.

9.5. Conflict of Interest

Each firm/team shall require its proposed members to identify potential conflicts of interest of a real or perceived competitive advantage relative to this procurement. Firms/teams are notified that prior or existing contractual obligations between a company and a federal or state agency relative to the contract may present a conflict of interest or a competitive advantage. If a potential conflict of interest or competitive advantage is identified, the firm/team shall submit in writing the pertinent information to FCDOT POC.

FCDOT, in its sole discretion, will make a determination relative to potential organizational conflicts of interest or a real or perceived competitive advantage, and its ability to mitigate such a conflict. An organization determined to have a conflict of interest or competitive advantage relative to this procurement that cannot be mitigated, shall not be allowed to participate as a team member for the project. Failure to abide by FCDOT determination in this matter may result in an EOI being declared non-responsive.

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 therefrom. The Consultant shall not engage the services of any person employed by the FCDOT on any services covered by this Agreement

without written permission of the FCDOT. 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 FCDOT unless the employee or former employee provides written notification to the FCDOT 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.

9.6. 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, and Executive Order 61 (2017). 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, sexual orientation, gender identity, political affiliation, veteran status, 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, including the names of all contracting agencies with which the contractor has contracts of over \$10,000.
- 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.
- d. If the Consultant employs more than five (5) employees, the Consultant shall (i) provide annual training on the Consultant's sexual harassment policy to all supervisors and employees providing services in the Commonwealth, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post the Consultant's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth that the Consultant owns or leases for business purposes and (b) the Consultant's employee handbook.

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

9.7. Debarment

All firms shall fully complete and include the following forms:

- Certification Regarding Debarment – Primary Covered Transactions (Prime Consultant)
- Certification Regarding Debarment – Lower Tier Covered Transactions (Sub Consultant)

9.8. eVA Business-to-Government Vendor Registration (Commonwealth of Virginia Requirement)

The eVA Internet electronic procurement solution, web site portal (<https://eva.virginia.gov/index.html>), 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 website link: <https://eva.virginia.gov/index.html>. All bidders or offerors must register in eVA; failure to register may result in the bid/proposal/expressions of interest being rejected.

9.9. Award Protest

Any offeror who desires to protest the award of a contract shall submit such protest in writing to the FCDOT POC, Mohamad El Kaissi, no later than ten (10) days after the announcement of the award. Public announcement of the award shall be posted on the FCDOT website.

9.10. Registration and Business License Requirements

Failure to comply with the law with regard to those requirements in Virginia (whether federal or state) at the time of the EOI submittal regarding your organizational structure, any required registration with governmental agencies and/or entities, and any required governmental licensure, whether business, individual, or professional in nature may render your EOI submittal(s), in the sole and reasonable discretion of the Department, non-responsive and in that event your EOI submittal(s) may be returned without any consideration or evaluation.

All business entities (prime and subconsultants) on the Offeror's proposed team must comply with the law with regard to their organizational structure, any required registration with governmental agencies and/or entities, and any required governmental licensure, whether business, commercial, individual, or professional in nature, and nothing herein is intended to contradict, nor to supersede, State and Federal laws and regulations regarding the same.

Each business entity (prime and subconsultants) on the Offeror's proposed team shall be eligible at the time of their EOI submittal, under the law and relevant regulations, to offer and to provide any services proposed or related to this RFP. Unless exempted by §§ 54.1-401, 54.1-402, or 54.1-402.1 of the Code of Virginia, any person, partnership, corporation, or other entity offering or practicing architecture, engineering, or land surveying shall be registered or licensed in accordance with the provision of Chapter 4, Title 54.1 of the Code of Virginia. All business entities on the Offeror's proposed team shall satisfy all commercial and professional registration requirements, including, but not limited to those requirements of the Virginia State Corporation Commission (SCC) and the Virginia Department of Professional and Occupational Regulations (DPOR). Full size copies of DPOR licenses and SCC registrations, or evidence indicating the same, should be included in the appendix of the RFP.

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 <https://scc.virginia.gov/>). 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 (<https://dpor.virginiainteractive.org/Boards/APELS>). 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 that 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 FCDOT. Individual engineers shall meet the requirements of Chapter 4, Title 54.1 of the Code of Virginia.

9.11. Hardware/Software/Firmware

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 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 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.

9.12. State of Virginia Nondiscrimination Provision

For state-funded projects, construction contractors and consultants must abide by Title 2.2, chapter 43 of the Code of Virginia (the Public Procurement Act) that declares it to be the policy of the Commonwealth of Virginia that discrimination on the grounds of race, color, or national origin shall not occur in connection with programs and activities receiving state financial assistance.

9.13. Public Inspection of Certain Records and Virginia Freedom of Information Act

All RFPs submitted to FCDOT become the property of FCDOT and are subject to the disclosure requirements of Section 2.2-4342 of the Virginia Public Procurement Act and the Virginia Freedom of Information Act (FOIA) (Section 2.2—3700 et seq. of the Code of Virginia). Offerors are advised to familiarize themselves with the provisions of each Act referenced herein to ensure that documents identified as confidential will not be subject to disclosure under FOIA.

If a responding Offeror has special concerns about information which it desires to make available to FCDOT but believes that it constitutes a trade secret, proprietary information, or other confidential information exempted from disclosure, such responding Offeror should specifically and conspicuously designate that information as such in its RFP and state in writing why protection of that information is needed. The Offeror should make a written request to FCDOT POC. In order to receive protection, Offeror must:

- a. Invoke the protection in writing prior to or upon submission of the data or other materials.
- b. Identify the data or other materials to be protected.
- c. Suggested forms of designation include: creating a Table/Form listing the RFP Section, Tab, or Page numbers; attaching to this form a copy of the table of contents from your RFP with the relevant trade secret or proprietary contents highlighted; or identifying herein a document stamp used within the RFP to designate the relevant materials (e.g. “all portions of the RFP marked “Proprietary” or “Trade Secret””). NOTE: The classification of an entire proposal document, line item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable.
- d. State the reason(s) why protection is necessary. NOTE: For each distinct section of data or other information identified in response to item (b) your explanation must do more than simply stating the materials are “proprietary,” or “trade secrets,” or “not publicly available.”
- e. Each of these requirements must be met with respect to the particular information for which protection is sought. It is incumbent upon each vendor to meet the prerequisites for protection of their trade secrets or proprietary information. Offerors are encouraged to consult with their legal counsel prior to designation of materials for protection. In no event shall the FCDOT be liable to an Offeror for the disclosure of all or a portion of a RFP submitted pursuant to this request not properly identified as confidential.
- f. Failure to take such precautions prior to submission of an RFP may subject confidential information to disclosure under the Virginia FOIA.

9.14. 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.

10. Mandatory Federal-Aid Provisions

10.1. Americans with Disabilities Act

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.

10.2. Title VI – Nondiscrimination in Federally Assisted Programs

The FCDOT in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that FCDOT will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises (DBEs) will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

A. Mandatory Attachments and Reporting. During the performance of this Agreement, the Consultant, for itself, its assignees and successors in interest (herein referred to as “the Consultant”), shall comply with the provisions of USDOT 1050.2A, Appendices A and E, which are attached, in addition to the following provisions:

- a. Consultants and subconsultants shall include Appendices A and E in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.
- b. Consultants and subconsultants shall submit an updated Title VI Evaluation Report annually and/or in accordance with the locality’s VDOT approved Title VI Implementation Plan for as long as the Consultant or subconsultant is performing in accordance with this Agreement.

B. Title VI Non-Discrimination Provision: The Consultant agrees to abide by the provisions of Title VI 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.

10.3. Title VII - Equal Employment Opportunity

The Consultant agrees to abide by the provisions of Title VII of the Civil Rights Act of 1964 (42 USC 2000e), 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 race, color, religion, sex, or national origin, pregnancy, age, and disability or any other basis prohibited by state law relating to discrimination in employment.

10.4. Federal Acquisition Regulation (FAR) Audit

- All Offerors submitting EOIs (prime consultants, joint ventures and sub-consultants) 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 Offerors selected for a project (prime consultants, joint ventures and sub-consultants) must submit their FAR approved rates along with a Contractor Cost Certification for indirect cost rates required by FHWA order 4470.1A dated October 27, 2010 to VDOT within ten (10) business days of being notified of their selection, whereby an official of an Offeror shall certify that the indirect cost rate submitted does not include any costs which are expressly unallowable and that the indirect cost rate was established only with allowable costs in accordance with the applicable cost principles contained in the Federal Acquisition Regulations (FAR) of 48CFR31. A sample Contractor Cost Certification is available on VDOT website for the Offeror’s use at the link below: [Contractor Cost Certification.pdf](#). Should any Offeror or firm on the proposed team fail to submit the required audit data and certification within the ten (10) business days, negotiations may be terminated by FCDOT and the next most qualified team invited to submit a proposal.
- Indirect cost rates shall be updated on an annual basis in accordance with the consultant’s annual accounting period and in compliance with the Federal cost principles. Consultants must submit documentation annually to VDOT for review and acceptance by Virginia Department of Transportation per the Indirect Cost Rate Submission and Review Process. VDOT Annual Indirect Cost rate submittal policy can be found at: <https://www.vdot.virginia.gov/doing-business/business-opportunities/consultants/indirect-cost-rate-audits/>
- Firms will be required to have VDOT approved field and home office indirect cost rates (approved within the last 18 months) for inclusion in the contract within ten (10) business days of being notified of their selection (Pre-Award Submittal due date). Firms that do not have a VDOT approved field and / or home office indirect cost rate at the time of the Pre-Award submittal due date, will be required to request a “Safe Harbor” provisional rate by the VDOT Assurance and Compliance Office (ACO) for inclusion in Contract.

10.5. Federal Immigration Reform and Control Act of 1986

IMMIGRATION REFORM AND CONTROL ACT OF 1986: The Offeror represents that it does not, and shall not during the performance of the contract, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986. Further to that, FCDOT 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 this Act.

10.6. Additional Mandatory Federal-Aid Provisions (as applicable)

- Attachment A - Firm Data Sheet
- Attachment B - Certification Regarding Debarment (Primary Transactions)
- Attachment C - Certification Regarding Debarment (Lower Tier Transactions)
- Attachment D - Special Provision for Use of DBEs on Consultant Contracts
- Attachment E - DBE & SWaM Payment Compliance Report Form C-63
- Attachment F - Subconsultant Solicitation Form C-48 PSC
- Attachment G - DBE Good Faith Efforts Documentation Form C-49 PSC
- Attachment H - DBE & SWAM Requirements Form C-111 PSC
- Attachment I - Certification of Binding Agreement with DBE Firms Form C-112A PSC
- Attachment J - DPOR Licenses and SCC Registrations Information Tables
- Attachment K- USDOT 1050.2A (Appendix A and Appendix E)
- Attachment L - Critical Infrastructure Information/Sensitive Security Information (CII/SSI)
- Attachment M - Certification Regarding Ethics in Public Contracting
- Attachment N - EOI Checklist

11. COUNTY CONTRACT TERMS AND CONDITIONS

11.1. Authority to Bind the County

The parties agree that only the County Purchasing Agent may bind the County to contract terms or conditions. Any term or condition invoked through an "I agree" click box or other comparable mechanism (i.e. "click wrap" or "brows wrap" agreement) does not bind the County or any County authorized end user to such terms or conditions, unless agreed to in writing by or on behalf of the County Purchasing Agent.

11.2. Mandatory Terms and Conditions Applicable to All Contracts

In addition to the specific submittal requirements set forth above, the following terms and conditions, as set forth below, must be included in all contracts for the purchase of goods, services, or both. These terms and conditions will apply with the same force and effect as if set forth in the contract or ordering document.

A. Non-Discrimination: During the performance of this contract, the offeror agrees as follows:

- 1) The offeror 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 offeror. The offeror agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- 2) The offeror, in all solicitations or advertisements for employees placed by or on behalf of the offeror, will state that such offeror is an equal opportunity employer.
- 3) 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 provision.

The offeror will include the provisions of paragraphs 1, 2, and 3 above in every subcontract of over \$10,000, so that the provisions will be binding upon each subconsultant or vendor.

B. Immigration Reform and Control Act Compliance: The offeror does not, and shall not, during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the Immigration Reform and Control Act of 1986.

C. Nonvisual Access: All information technology, which is purchased or upgraded by the County, must comply with the following access standards from the date of purchase or upgrade until the expiration of the Contract:

- 1) Effective, interactive control and use of the technology (including the operating

system), applications programs, and format of the data presented, shall be readily achievable by nonvisual means;

- 2) The technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom the blind or visually impaired individual interacts;
- 3) Nonvisual access technology shall be integrated into networks used to share communications among employees, program participants, and the public; and
- 4) The technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired. A covered entity may stipulate additional specifications in any procurement.

Compliance with the nonvisual access standards set out this Section is not required if the County Purchasing Agent determines that (i) the information technology is not available with nonvisual access because the essential elements of the information technology are visual and (ii) nonvisual equivalence is not available.

D. Prohibition on the Use of Certain Products, Services, Applications, and Website:

FCDOT may not use, whether directly or through work with or on behalf of another public body, any hardware, software, or services that have been prohibited by the Commonwealth of Virginia and/or the U.S. Federal Government, including the Department of Homeland Security, for use on federal systems.

E. Venue: Venue for any claim under a contract or arising out of an order is exclusively in the state courts of Fairfax County, Virginia or the United States District Court for the Eastern District of Virginia, Alexandria Division.

F. Choice of Law: Any contract or ordering document will be governed for all purposes by and construed in accordance with the laws of the Commonwealth of Virginia.

G. Order of Precedence: If a term or condition included in a contract or ordering document (including any addendum, schedule, appendix, exhibit, or attachment) conflicts with the contract terms contained in this Article, this Article will control.

H. Contractual Disputes: Contractual disputes must be resolved as set forth in Article 5 of the Fairfax County Purchasing Resolution (Section 11.6 of RFP).

I. Electronic Signatures: Offerors agree that contracts and other associated documents may be executed using electronic signatures and delivered by electronic means. When electronic signatures are used, Offerors agree that the signatures are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

11.3. Mandatory Terms Applicable to Contracts & Amendments in Excess of \$200,000

A. Authorization to Transact Business in the Commonwealth: An offeror organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so

required by Title 13.1 or Title 50 or as otherwise required by law.

- B. Audit by the County:** The County or its agent has reasonable access to and the right to examine any records of the offeror involving transactions related to the contract or compliance with any clauses thereunder, for a period of three (3) years after final payment. The offeror shall include these same provisions in all related subcontracts. For purposes of this clause, the term "records" includes documents, and papers regardless of whether they are in written form, electronic form, or any other form. The County Purchasing Agent may accept modifications to this requirement, in their discretion.
- C. Drug Free Workplace:** During the performance of a contract, the offeror agrees to (i) provide a drug-free workplace for the offeror's employees; (ii) 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 offeror's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the offeror that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract of over \$10,000, so that the provisions will be binding upon each subconsultant or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in conjunction with a specific contract awarded to a contractor in accordance with this Resolution, 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. The County Purchasing Agent may, in their discretion, accept a vendor's drug free workplace policy as satisfaction of this requirement, even if the vendor's drug free workplace policy differs from the requirements stated above.

11.4. Prohibited Terms and Conditions

The following terms and conditions are prohibited in any contract or ordering document executed by the County. If a contract governed by the County Purchasing Resolution, including any exhibits, attachments, or other documents incorporated by reference therein, includes a prohibited term or condition then that term or condition is stricken from the contract and of no effect.

- A. No Indemnification by the County:** Under applicable law the County cannot indemnify or defend the offeror or any third party.
- B. Contracts Subject to Appropriation by Board of Supervisors:** The County is not bound by any provision in a contract or ordering document that may or will cause the County, its agencies, or employees, to make or otherwise authorize an obligation in excess of the amount appropriated by the Fairfax County Board of Supervisors for such purpose. Such provisions include, for example, automatic renewal of the agreement, penalty payments by the County, indemnification by the County, and payment by the County of taxes or charges not specifically included in the prices of the goods or services.
- C. Binding Arbitration or Mediation:** The County does not agree to submit to any form

of binding alternative dispute resolution, including without limitation arbitration or mediation, unless specifically authorized by the Board of Supervisors.

- D. Limitation of Rights and Waiver of Remedies:** The County does not agree to limit its rights or waive its remedies at law or in equity, unless specifically authorized by the Board of Supervisors.
- E. Limitation of Liability:** There is no limitation on the liability of an offeror for claims for bodily injury, including death, and damage to real property or tangible personal property resulting from the negligence of an offeror or any employee of an offeror. For Information Technology contracts in excess of \$200,000 there is no limitation of liability of an offeror for the intentional or willful misconduct, fraud, or recklessness of a supplier or any employee of a supplier.
- F. Confidentiality:** The County will not be bound by any confidentiality provision that is inconsistent with the requirements of the Virginia Code, including the Virginia Freedom of Information Act.
- G. Unilateral Modification:** Unilateral modification of the contract or ordering document by the offeror is prohibited.

11.5. Protest of Award or Decision to Award (Article 5, County Purchasing Resolution)

- A.** Any bidder or offeror may protest the award or decision to award a contract by submitting a protest in writing to the County Purchasing Agent, or an official designated by the County of Fairfax, no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit such protest in the same manner no later than ten (10) days after posting or publication of the notice of such contract as provided in Article 2, Section 2. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction which are subject to inspection under Article 2, Section 5.C, then the time within which the protest must be submitted shall expire ten (10) days after those records are available for inspection by such bidder or offeror under Article 2, Section 5.D, or at such later time as provided herein. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The County Purchasing Agent shall issue a decision in writing within ten (10) days of the receipt of the protest stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten (10) days of receipt of the written decision by instituting legal action as provided in the Code of Virginia. Nothing in this section shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation for Bid or Request for Proposal.
- B.** If, prior to award, it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The County Purchasing Agent shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be declared void by the County. Where the award has been made and performance has begun, the County Purchasing Agent may declare the contract void upon a finding that this action is in the best interest of the

County. Where a contract is declared void, the performing offeror shall be compensated for the cost of performance at the rate specified in the contract up to the time of such declaration. In no event shall the performing offeror be entitled to lost profits.

- C. Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this article shall not be affected by the fact that a protest or appeal has been filed.
- D. An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

11.6. Contractual Disputes (Article 5, County Purchasing Resolution)

- A. Any dispute concerning a question of fact as a result of a contract with the County which is not disposed of by agreement shall be decided by the County Purchasing Agent, who shall reduce their decision to writing and mail or otherwise forward a copy to the contractor within ninety (90) days. The decision of the County Purchasing Agent shall be final and conclusive unless the contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. A contractor may not institute legal action, prior to receipt of the County Purchasing Agent's decision on the claim, unless the County Purchasing Agent fails to render such decision within the time specified.
- B. The Contractor's contractual claims, whether for money or other relief, must be submitted to the County Purchasing Agent in writing no later than sixty days after final payment; however, written notice of the contractor's intention to file such claim shall have been given to the County Purchasing Agent at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

11.7. Legal Action (Article 5, County Purchasing Resolution)

- A. In addition to the requirements of Section 5, any bidder, offeror, potential bidder or offeror, or contractor that seeks monetary relief or damages from the County must submit its claim to the Board of Supervisors in compliance with Virginia Code §§ 15.2-1243 through 1249. The requirement to submit a claim for monetary relief or damages to the Board of Supervisors does not alter, toll, extend, or otherwise vary the Contractor's obligation to appeal the Purchasing Agent's decision within six (6) months of the date of Purchasing Agent's final written decision by instituting legal action, as described in Section 5.
- B. No bidder, offeror, potential bidder or offeror, or contractor shall institute any legal action until all statutory requirements have been met.

12. MISCELLANEOUS

12.1. Requirement to Keep Team Intact

The proposed team included in the EOI, including but not limited to the organizational structure, sub-consultants and other individuals identified as key personnel, shall remain on the team for the duration of the procurement process and, if the team is awarded the contract, the duration of the contract. If extraordinary circumstances require a change, it must be submitted in writing to FCDOT's POC, who, in his/her sole discretion, will determine whether to authorize a change. Unauthorized changes to the team at any time during the procurement process may result in the elimination of the team from further consideration.

12.2. Ethics in Public Contracting Act

Offeror shall provide to FCDOT the Certification Regarding Ethics in Public Contracting signed by the Offeror's Point of Contact or Principal Officer. This Certification shall be included in the "Original" copy of the EOI.

FCDOT may, in its sole discretion, disqualify the Offeror from further consideration for the award of this contract if it is found after due notice and examination by Fairfax County that there is a violation of the Ethics in Public Contracting Act, Section 2.2-4367 of the Virginia Code, or any similar statute involving the Offeror in the procurement of the contract.

12.3. Engineering Proposal Document (EPD)

The contracts and all task orders awarded to any of the selected firms/teams shall be negotiated under the Terms & Conditions included in the FCDOT Engineering Proposal Document (EPD) unless otherwise noted in this RFP. Changes to the Terms & Conditions, including insurance requirements, will NOT be allowed without written consent of Fairfax County. All firms are required to review the EPD in detail, in conjunction with preparing their EOI. The latest EPD may be downloaded at:

<https://www.fairfaxcounty.gov/transportation/sites/transportation/files/Assets/Documents/PDF/FCDOT-EPD-January-2020.pdf>

ATTACHMENT A

FIRM DATA SHEET

Funding: S/F (S=State F=Federal)

RFP Name: RFP for Design of Multi-Modal Transportation Improvement Projects

Department & Division: FCDOT, Transportation Design 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 may 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 (Virginia Department of Minority Business Enterprise)

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

N = DBE or SWaM Firm Not Certified by DMBE

NA = Firm Not Claiming DBE or SWaM Status

ATTACHMENT B

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

RFP Name: RFP for Design of Multi-Modal Transportation Improvement Projects

- 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

Printed Name

Title

Name of Firm

ATTACHMENT C

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

RFP Name: RFP for Design of Multi-Modal Transportation Improvement Projects

- 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

Printed Name

Title

Name of Firm

ATTACHMENT D

VIRGINIA DEPARTMENT OF TRANSPORTATION Special Provision for Use of Disadvantaged Business Enterprises (DBEs) on Consultant Contracts

A. Disadvantaged Business Enterprise (DBE) Program Requirements

DBE certification entitles consultants to participate in VDOT's DBE programs. Certification does not guarantee the firm will receive work nor does it attest to the firm's abilities to perform any particular work when there is no DBE goal identified.

Code of Federal Regulations 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 also requires FCDOT to capture DBE 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.

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/SWaM 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. The BOWD Center can be contacted at (804) 662-9555 or via email to BOWDCenter@vdot.virginia.gov.

Any Consultant, subconsultant, DBE firm, and contract surety involved in the performance of work on a federal-aid contract shall comply with the terms and conditions of the United States Department of Transportation (USDOT) DBE Program as the terms appear in Part 26 of the Code of Federal Regulations (49 CFR as amended), the USDOT DBE Program regulations, and the Virginia Department of Transportation's (VDOT or the Department) DBE Program rules and regulations in accordance with this Special Provision.

For the purposes of this provision, Consultant is defined as any individual, partnership, corporation, or Joint Venture that formally submits a Statement of Qualification or Proposal for the work contemplated there under; Consultant is defined as any individual, partnership, or Joint Venture that contracts with the Department to perform the Work; and subconsultant is defined as any supplier, manufacturer, or subconsultant performing work or furnishing

material, supplies or services to the contract. The Consultant shall physically include this same contract provision in every supply or work/service subcontract that it makes or executes with a subconsultant having work for which it intends to claim credit.

In accordance with 49 CFR Part 26 and VDOT's DBE Program requirements as outlined in this Special Provision, the Consultant, for itself and for its subconsultants and suppliers, whether certified DBE firms or not, shall commit to complying fully with the auditing, record keeping, confidentiality, cooperation, and anti-intimidation or retaliation provisions contained in those federal DBE Program and State legal requirements. By submitting a Proposal on this contract, and by accepting and executing this contract, the Consultant agrees to assume these contractual obligations and to bind the Consultant's subconsultants contractually to the same at the Consultant's expense.

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 A of 49 CFR 26, Section 26.13 requires that each contract signed with a contractor (and that each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The Consultant and each subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award, administration, and performance of this contract. Failure by the Consultant to carry out these requirements is a material breach of this contract, which will result in the termination of this contract or other such remedy, as VDOT deems appropriate.

All administrative remedies noted in this provision are automatic unless the Consultant exercises the right of appeal within the required timeframe(s) specified herein. Appeal requirements, processes, and procedures shall be in accordance with guidelines stated in Section F of this provision and current at the time of the proceedings. Where applicable, the Department will notify the Consultant of any changes to the appeal requirements, processes, and procedures after receiving notification of the Consultant's desire to appeal.

All time frames referenced in this provision are expressed in business days unless otherwise indicated. Should the expiration of any deadline fall on a weekend or holiday, such deadline will automatically be extended to the next normal business day.

B. DBE Certification

The only DBE firms eligible to perform work on a federal-aid contract for DBE contract goal credit are firms certified as Disadvantaged Business Enterprises by the Virginia Department of Small Business and Supplier Diversity (SBSD) or the Metropolitan Washington Airports Authority (MWAA) in accordance with federal and VDOT guidelines. DBE firms must be certified in the specific work listed for DBE contract goal credit. A directory listing of certified DBE firms can be obtained from the Virginia Department of Small Business and Supplier Diversity's website:

<http://www.sbsd.virginia.gov>.

C. DBE Program-Related Certifications Made by Offerors/Consultants

By submitting a Proposal and by entering into any contract on the basis of that Proposal, the Offeror/Consultant certifies to each of the following DBE Program-related conditions and assurances:

1. That the Offeror/Consultant agrees to comply with the project construction and administration obligations of the USDOT DBE Program, 49 CFR Part 26 as amended, and the Standard Specifications setting forth the Department's DBE Program requirements.
2. Consultant shall comply fully with the DBE Program requirements in the execution and performance of the contract. Consultant acknowledges that failure to fulfill the DBE subcontracting commitments made may result in sanctions being invoked for noncompliance.
3. To ensure that DBE firms have been given full and fair opportunity to participate in the performance of the contract. The Consultant certifies that all reasonable steps were, and will be, taken to ensure that DBE firms had, and will have, an opportunity to compete for and perform work on the contract. The Consultant further certifies that the Consultant shall not discriminate on the basis of race, color, age, national origin, or sex in the performance of the contract or in the award of any subcontract. Any agreement between a Consultant and a DBE whereby the DBE promises not to provide quotations for performance of work to other Consultants are prohibited.
4. Consultant shall make good faith efforts to obtain DBE participation in the proposed contract at or above the goal. The Offeror shall submit a written statement as a part of its Statement of Qualifications and/or Proposal indicating the Offeror's commitment to achieve the minimum requirement related to DBE goal indicated in Request For Proposal (RFP) for the entire value of the contract and shall include the description of the services to be performed, percent participation, and referenced project numbers(s) and/or RFP#. The Offeror, by signing and submitting its Proposal, certifies the DBE participation information that will be submitted within the required time thereafter is true, correct, and complete, and that the information to be provided includes the names of all DBE firms that will participate in the contract, and the North American Industry Classification System (NAICS) code and description for each firm. For Project Specific Contracts, the Offeror shall provide the specific work that each listed DBE firm will perform, and the creditable dollar amounts of the participation of each listed DBE.
5. Offeror further certifies, by signing its Proposal, it has committed to use each DBE firm listed for the work specified to meet the contract goal for DBE participation. Award of the contract will be conditioned upon meeting these and other listed requirements of 49 CFR Part 26.53 and the contract documents. By signing the Proposal, the Offeror certifies that good faith efforts will be made on work that it proposes to sublet; and that it will seek out and consider DBE firms as potential subconsultants. The Consultant shall, as a continuing obligation, contact DBE firms to solicit their interest, capability, and prices in sufficient time to allow them to respond effectively, and shall retain on file proper documentation to substantiate its good faith efforts.

6. Once awarded the contract, the Consultant shall make good faith efforts to utilize DBE firms to perform work designated to be performed by DBE firms at or above the amount or percentage of the dollar value specified in the proposal documents. Further the Consultant understands it shall not unilaterally terminate, substitute for, or replace any DBE firm that was designated in the executed contract in whole or in part with another DBE, any non-DBE firm, or with the Consultant's own forces or those of an affiliate of the Consultant without the prior written consent of Department as set out within the requirements of this provision.
7. Once awarded the contract, the Consultant shall designate and make known to the Department a liaison officer who is assigned the responsibility of administering and promoting an active and inclusive DBE program as required by 49 CFR Part 26 for DBE firms. The designation and identity of this officer needs to be submitted only once by the Consultant during any 12-month period.
8. Once awarded the contract, the Consultant shall comply fully with all regulatory and contractual requirements of the USDOT DBE Program, and that each DBE firm participating in the contract shall fully perform the designated work with the DBE firm's own forces and equipment under the DBE firm's direct supervision, control, and management. Where a contract exists and where the Consultant, DBE firm, or any other firm retained by the Consultant has failed to comply with federal or Department DBE Program requirements, the Department has the authority and discretion to determine the extent to which the DBE contract regulations have not been met, and will assess against the Consultant any remedies available at law or provided in the contract.

D. DBE Program Compliance Procedures

The following procedures shall apply to the contract for DBE Program compliance purposes:

1. DBE Goal, Good Faith Efforts Specified for Project Specific Contracts

At the time of the submittal of the Expression of Interest, the Offeror will include form C-48 PSC. This form represents the Consultants solicitation of subconsultants to be used for the contract to meet the DBE goal.

If, at the time of submitting the Expression of Interest, the Offeror knowingly cannot meet or demonstrate good faith efforts in meeting the required DBE contract goal, form C-49 PSC shall be submitted.

Upon completion of negotiation, Form C-111 PSC shall be submitted electronically or may be faxed to the Department, but in no case shall the Offeror's Form C-111 PSC be received later than two (2) business days after the negotiated contract value has been determined. If Offeror should add or remove DBE firms during negotiations, a revised Form C-48 PSC must be received within ten (10) business days after the negotiated subcontract value has been determined.

If, at the time of submitting its offer, the Offeror knowingly cannot meet or exceed

the required DBE contract goal, it shall submit Form C-111 PSC exhibiting the DBE participation it commits to attain. The Offeror shall then submit Form C-49 PSC, DBE Good Faith Efforts Documentation, within two (2) business days after the negotiated contract value.

The top-ranked Offeror must submit its properly executed Form C-112A PSC, Certification of Binding Agreement, with the C-111 PSC two (2) business days after the negotiated contract value has been determined. DBE Offerors responding as prime consultants are not required to submit Form C-112A PSC unless they are utilizing other DBE firms as subconsultants.

If, after review of the selected Offeror, the Department determines the DBE requirements have not been met, the selected Offeror must submit Form C-49 PSC, DBE Good Faith Efforts Documentation, which must be received by the Department within two (2) business days after official notification of such failure to meet the aforementioned DBE requirements.

Forms C-48 PSC, C-49 PSC, C-111 PSC, and C-112A PSC can be obtained from the VDOT website at: <http://vdotforms.vdot.virginia.gov/>

2. DBE Goal, Good Faith Efforts Specified for Limited Services Term Contracts

At the time of the submittal of the Expression of Interest, the Offeror will include form C-48 PSC. This form represents the Consultants solicitation of subconsultants to be used for the contract to meet the DBE goal.

If, at the time of submitting the Expression of Interest, the Offeror knowingly cannot meet or demonstrate good faith efforts in meeting the required DBE contract goal, form C-49 PSC shall be submitted.

If the most highly qualified (top-ranked) firm / Offeror does not meet the goal or demonstrate a good faith effort, the Department may terminate negotiations and initiate negotiations with the number two-ranked firm.

3. **Good Faith Efforts Described:** Department will determine if Consultant demonstrated adequate good faith efforts, and if given all relevant circumstances, those efforts were made actively and aggressively to meet the DBE requirements. Efforts to obtain DBE participation are not good faith efforts if they could not reasonably be expected to produce a level of DBE firm participation sufficient to meet the DBE Program requirements and DBE Goal.

Good faith efforts may be determined through use of the following list of the types of actions the Consultant may make to obtain DBE participation. This is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts of similar intent may be relevant in appropriate cases:

- a) Soliciting through reasonable and available means, such as but not limited to, at pre-proposal meetings, advertising, and written notices to DBE firms

who have the capability to perform the work of the contract. Examples include: advertising in at least one daily/weekly/monthly newspaper of general circulation, as applicable; phone contact with a completely documented telephone log, including the date and time called, contact person, or voice mail status; and internet contacts with supporting documentation, including dates advertised. DBE firms shall have no less than five (5) business days to reasonably respond to the solicitation. Consultant shall determine with certainty if the DBE firms are interested by taking reasonable steps to follow up initial solicitations as evidenced by documenting such efforts as requested on Form C-49 PSC, DBE Good Faith Efforts Documentation.

- b) Selecting portions of the work to be performed by DBE firms in order to increase the likelihood that the DBE Goal will be achieved. This includes, where appropriate, breaking out work items into economically feasible units to facilitate DBE firm participation, even when the Consultant might otherwise prefer to completely perform all portions of this work in its entirety or use its own forces;
- c) Providing interested DBE firms with adequate information about the scope and requirements of the contract in a timely manner, which will assist the DBE firms in responding to a solicitation;
- d) Negotiating for participation in good faith with interested DBE firms;
 - (1) Evidence of such negotiation shall include the names, addresses, and telephone numbers of DBE firms that were considered; dates DBE firms were contacted; a description of the information provided regarding the scope and requirements of the contract for the work selected for sub-consulting; and, if insufficient DBE participation seems likely, evidence as to why additional agreements could not be reached for DBE firms to perform the work;
 - (2) Consultant should, using good business judgment, consider a number of factors in negotiating with subconsultants, and should take a DBE firm's price, 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 DBE firms is not sufficient reason for a Consultant's failure to meet the DBE goal as long as such costs are reasonable and comparable to costs customarily appropriate to the type of work under consideration. Also, the ability or desire of a Consultant to perform the work with its own organization does not relieve the Consultant of the responsibility to make diligent good faith efforts.
- e) A Consultant cannot reject a DBE firm as being unqualified without sound reasons based on a thorough investigation of the DBE firm's capabilities. The DBE firm's standing within its industry, membership in specific groups, organizations, associations, and political or social affiliations, are not

legitimate causes for the rejection or non-solicitation of bids in the Consultant's efforts to meet the contract goal for DBE participation;

- f) Making efforts to assist interested DBE firms in obtaining or related assistance or services subject to the restrictions contained in this Special Provision;
- g) Effectively using the services of appropriate personnel from VDOT and from SBSD; available minority/women community or minority organizations; consultants' groups; local, state, and Federal minority/ women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and utilization of qualified DBEs.

E. Documentation and Administrative Reconsideration of Good Faith Efforts

After EOI Submission but Prior to Contract Award:

In the Expression of Interest, the Offeror is expected to identify those firms whose participation in the contract will achieve the DBE contract goal requirements.

Prior to award, if a DBE, through no fault of the Consultant, is unable or unwilling to fulfill his agreement with the Consultant, the Consultant shall immediately notify the Department and provide all relevant facts.

In order to award a contract to an Offeror that has failed to meet DBE contract goal requirements, the Department will determine if the Offeror's efforts were adequate good faith efforts, and if given all relevant circumstances, those efforts were made actively and aggressively to meet the DBE requirements. Efforts to obtain DBE participation are not good faith efforts if they could not reasonably be expected to produce a level of DBE participation sufficient to meet the DBE Program and contract goal requirements.

As described in the **Contract Goal, Good Faith Efforts Specified** section of this Special Provision, if the Offeror knowingly cannot meet or exceed the required DBE contract goal, the Offeror must submit Form C-49 PSC, DBE Good Faith Efforts Documentation. The Offeror shall attach additional pages to the certification, if necessary, in order to fully detail specific good faith efforts made to obtain the DBE firm's participation in the proposed work.

If it is determined that the aforementioned documentation is insufficient or the failure to meet required participation is due to other reasons, the Consultant may request an appearance before the Department's Administrative Reconsideration Panel to establish that all feasible means were used to meet such participation requirements. The Administrative Reconsideration Panel will be made up of Department Division Administrators or their designees, none of whom took part in the initial determination that the Consultant failed to make the DBE goal or make adequate good faith efforts to do so. After reconsideration, Department shall notify the Consultant in writing of its decision and explain the basis for finding that the Consultant did or did not meet the DBE goal or make adequate good faith

efforts to do so. The decision of the Administrative Reconsideration Panel shall be administratively final.

During the Contract: If a DBE, through no fault of the Consultant, is unable or unwilling to fulfill his agreement with the Consultant, the Consultant shall document the requests for services including all relevant facts. If a Consultant relieves a DBE subconsultant of the responsibility to perform work under their subcontract, the Consultant shall take the appropriate steps to obtain another DBE firm to perform the remaining subcontracted work for the amount that would have been paid to the original DBE firm. In such instances, Consultant is expected to seek DBE participation towards meeting the goal during the performance of the contract. The Consultant shall be responsible for submitting a request to the Contract Administrator for a contract Supplemental Agreement to include any new DBE subconsultants. After approval of the Supplemental Agreement the Consultant must submit necessary documentation in accordance with contract terms.

Before the Consultant transmits to the Department its request to terminate and/or substitute a DBE subconsultant, the prime consultant must give notice in writing to the DBE subconsultant, with a copy to the Department, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime consultant must give the DBE firm five days to respond to the prime consultant's notice. The DBE firm may respond to the Department and the prime consultant the reasons, if any, why it objects to the proposed termination of its subcontract and why the Department should not approve the prime consultant's action.

If at any point during the execution and performance of the contract it becomes evident that the remaining dollar value of allowable DBE goal credit for performing the subcontracted work is insufficient to obtain the DBE contract goal, and the Consultant has not taken the preceding actions, the Consultant and any aforementioned affiliates may be subject to disallowance of DBE credit until such time as sufficient progress toward achievement of the DBE goal is achieved or evidenced.

Term Renewal (Limited Term Services Contracts): At contract renewal, the Consultant must submit Form C-49 Good Faith Effort Documentation to the Department along with the renewal acceptance letter. The form shall include details on total work assigned to the DBE subconsultants including details on work assigned versus amount of work paid to date, along with other good faith efforts as described on the form.

The Department will determine if the Offeror's efforts were adequate good faith efforts, and if given all relevant circumstances, those efforts were made actively and aggressively to meet the DBE requirements. Efforts to obtain DBE participation are not good faith efforts if they could not reasonably be expected to produce a level of DBE participation sufficient to meet the DBE Program and contract goal requirements.

Prior to the Department's acceptance of adequate good faith effort, the Offeror shall provide in writing, the proposed DBE utilization plan for the upcoming term. The plan must include demonstration of comprehensive good faith effort actions necessary to attain the DBE goal.

Failure to adequately demonstrate current good faith effort documentation and/or a proposed good faith effort plan to achieve the goal, may result in the Department declining to renew the contract.

Contract Completion: If, at final completion, the Consultant fails to meet the DBE goal, and fails to adequately document that it made good faith efforts to achieve sufficient DBE goal, then Consultant and any prime contractual affiliates, as in the case of a joint venture, may be subject to sanctions being invoked for noncompliance.

Prior to such sanctions being invoked, the Consultant may submit documentation to the Department's designee to substantiate that failure was due solely to the elimination of the scope of work subcontracted to DBEs, or to circumstances beyond the Consultant's control and that all feasible means had been used to achieve the DBE goal. The Department's designee, upon verification of such documentation shall determine whether Consultant has met the requirements of the contract.

If it is determined that the aforementioned documentation is insufficient or the failure to meet required participation is due to other reasons, the Consultant may request an appearance before the Department's Administrative Reconsideration Panel to establish that all feasible means were used to meet such participation requirements. The Administrative Reconsideration Panel will be made up of Department Division Administrators or their designees, none of who took part in the initial determination that the Consultant failed to make the DBE goal or make adequate good faith efforts to do so. After reconsideration, Department shall notify the Consultant in writing of its decision and explain the basis for finding that the Consultant did or did not meet the DBE goal or make adequate good faith efforts to do so.

The decision of the Administrative Reconsideration Panel shall be administratively final. If the decision is made to invoke sanctions for failure to perform any or all of the responsibilities contained herein, the Department may declare the Consultant to be non-responsive with respect to renewal and future contracts to include enjoinder from responding or participating on Department procurement opportunities for a period of 180 days.

F. DBE Participation for Contract Goal Credit

DBE participation on the contract will count toward meeting the DBE contract goal in accordance with the following criteria:

1. The applicable percentage of the total dollar value of the contract or subcontract awarded to the DBE firm will be counted toward meeting the DBE goal in accordance with the DBE Program-Related Certifications Made by Offerors/Consultant's section of this Special Provision for the value of the work, goods, or services that are actually performed or provided by the DBE firm itself.
2. When a DBE performs work as a participant in a joint venture with a non-DBE firm, the Consultant may count toward the DBE goal only that portion of the total dollar value of the subcontract equal to the distinctly defined portion of the work that the DBE firm has performed with the DBE firm's own forces or in accordance with the

provisions of this Section. The Department shall be contacted in advance regarding any joint venture involving both a DBE firm and a non-DBE firm to coordinate Department review and approval of the joint venture's organizational structure and proposed operation where the Consultant seeks to claim the goal credit.

3. When a DBE firm subcontracts part of the work to another firm, the value of that subcontracted work may be counted toward the DBE contract goal only if the DBE firm's subconsultant is a DBE firm. Work that a DBE firm subcontracts to a non-DBE firm, or to a firm that may be eligible to be a DBE firm, but has not yet been certified as a DBE firm, will not count toward the DBE. The cost of supplies and equipment a DBE subconsultant purchases or leases from the Consultant or prime contractual affiliates, as in the case of a joint venture, will not count toward the DBE goal.
4. The Consultant may count expenditures to a DBE subconsultant toward the DBE goal only if the DBE performs a Commercially Useful Function (CUF) on that subcontract, as such term is defined in subparagraph G below.

G. Performing a Commercially Useful Function (CUF)

No credit toward the DBE goal will be allowed for payments or reimbursement of expenditures to a DBE firm if that DBE firm does not perform a CUF on that contract. A DBE firm performs a CUF when the DBE is solely responsible for execution of a distinct element of the work and the DBE firm actually performs, manages, and supervises such work with the DBE firm's own forces or in accordance with the provisions of the **DBE Participation for Contract Goal Credit** section of this Special Provision. To perform a CUF the DBE firm alone must perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force. The amount the DBE firm is to be paid under the subcontract shall be commensurate with the work the DBE actually performs and the DBE goal credit claimed for the DBE firm's performance.

Monitoring CUF Performance: It shall be the Consultant's responsibility to confirm that all DBE firms selected for subcontract work on the contract, for which he seeks to claim credit toward the DBE goal, perform a CUF. Further, the Consultant is responsible for and shall confirm that each DBE firm fully performs the DBE firm's designated tasks in accordance with the provisions of the **DBE Participation for Contract Goal Credit** section of this Special Provision. For the purposes of this Special Provision the DBE firm's equipment **will** mean either equipment directly owned by the DBE as evidenced by title, bill of sale or other such documentation, or leased by the DBE firm, and over which the DBE has control as evidenced by the leasing agreement from a firm not owned in whole or part by the Consultant or an affiliate of the Consultant.

The Department will monitor the Consultant's DBE involvement during the performance of the contract. However, Department is under no obligation to warn the Consultant that a DBE firm's participation will not count toward the goal.

DBE Firms Must Perform a Useful and Necessary Role in Contract Completion: A DBE firm does not perform a CUF if the DBE firm's role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to

obtain the appearance of DBE firm participation.

DBE Firms Must Perform The Contract Work With Their Own Workforces: If a DBE firm does not perform and exercise responsibility for at least thirty (30) percent of the total cost of the DBE firm's contract with the DBE firm's own work force, or the DBE firm 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 involve, Department will presume that the DBE firm is not performing a CUF and such participation will not be counted toward the DBE goal.

Department Makes Final Determination On Whether a CUF Is Performed:

Department has the final authority to determine, in its sole discretion, whether a DBE firm has performed a CUF on the contract. To determine whether a DBE is performing or has performed a CUF, Department will evaluate the amount of work subcontracted by that DBE firm or performed by other firms and the extent of the involvement of other firms' forces and equipment. Any DBE work performed by the Consultant or by employees or equipment of the Consultant **shall** be subject to disallowance under the DBE Program, unless the independent validity and need for such an arrangement and work is demonstrated. When a DBE firm is presumed not to be performing a commercially useful function the DBE may present evidence to rebut the Department's finding. Department has the final authority to determine, in its sole discretion, whether a DBE firm has performed a CUF on the contract.

H. Verification of DBE Participation and Imposed Damages

Within fourteen (14) days after subcontract execution between Consultant and DBE subconsultants, the Consultant shall submit to the Department's Civil Rights Office (CRO), a copy of the fully executed subcontract agreement for each DBE firm used to claim credit in accordance with the requirements stated on Form C-111 PSC. The subcontract shall be executed by both parties stating the work to be performed, the details or specifics concerning such work, and the price which will be paid to the DBE subconsultant.

The Department will track DBE participation based on invoices submitted to the agency for payment. The level of detail on the invoices must detail consultant and subconsultant values. The Department reserves the right to request proof of payment via copies of cancelled checks with appropriate identifying notations.

If DBE firms are used which have not been previously documented with the Consultant's minimum DBE requirements documentation and for which the Consultant now desires to claim credit toward the contract goal, the Consultant shall be responsible for submitting a request to the Contract Administrator for a contract Supplemental Agreement. After approval of the Supplemental Agreement the Consultant must submit necessary documentation in accordance with contract terms. The Department will track DBE participation at the invoice level.

Prior to beginning any major component of the work to be performed by a DBE firm not previously submitted, Consultant shall furnish a revised Form C-111 PSC showing the name(s) and certification number(s) of any such DBEs for which Consultant seeks DBE goal credit. Consultant shall obtain the prior approval of the Department for any assistance it may provide to the DBE firm beyond its existing resources in executing its commitment

to perform the work in accordance with the requirements listed in the **Good Faith Efforts Described** section of this Special Provision. If Consultant is aware of any assistance beyond a DBE firm's existing resources that Consultant, or another subconsultant, may be contemplating or may deem necessary and that have not been previously approved, Consultant shall submit a new or revised narrative statement for Department's approval prior to assistance being rendered.

If the Consultant fails to correctly complete and any of the required documentation requested by this Special Provision within the specified time frames, the Department will withhold payment until such time as the required submissions are received by Department. Where such failures to provide required submittals or documentation are repeated, Department will move to enjoin the Consultant and any prime contractual affiliates, as in the case of a joint venture, from responding or participating Department projects until such submissions are received.

I. Documentation Required for Final Payment

In anticipation of final payment, Consultant shall submit a final invoice marked "Final" to the Contract Administrator within thirty (30) days of the anticipated date of final completion. Consultant acknowledges by the act of signing and filing the form that the information is supplied to obtain payment regarding the contract as a federal participation contract.

J. Prompt Payment Requirements

In accordance with Article 4 of the Virginia Public Procurement Act (Sections 2.2-4347 through 2.2-4356 of the Code of Virginia (1950), as amended), the Consultant shall make payment to all subconsultants within seven (7) days after receipt of payment from the Department, or shall notify the Department and subconsultant in writing of the intention to withhold all or a part of the amount due along with the reason for nonpayment. Invoices shall be submitted no more frequently than once every 30 days and not less than every 60 days. Sub-consultant invoices must be submitted within 60 days of receipt by the Consultant.

For purposes of this Special Provision, a subconsultant's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished, documented, and accepted as required by the contract documents by Department. If Department has made partial acceptance of a portion of the contract, then Department will consider the work of any subconsultant covered by that partial acceptance to be satisfactorily completed.

Upon Department's payment of the subconsultant's portion of the work as shown on the application for payment and the receipt of payment by Consultant for such work, the Consultant shall make compensation in full to the subconsultant for that portion of the work satisfactorily completed and accepted by the Department. For the purposes of this Special Provision, payment of the subconsultant's portion of the work shall mean the Consultant has issued payment in full, to the subconsultant for that portion of the subconsultant's work that Department paid to Consultant pursuant to the applicable application for payment.

By accepting and executing this contract, the Consultant agrees to assume these obligations,

and to bind the Consultant's subconsultants contractually to these obligations.

Nothing contained herein shall preclude Consultant from withholding payment to the subconsultant in accordance with the terms of the subcontract in order to protect the Consultant from loss or cost of damage due to a breach of the subcontract by the subconsultant.

K. Miscellaneous DBE Program Requirements

Loss of DBE Eligibility: When a DBE firm has been removed from eligibility as a certified DBE firm, the following actions will be taken:

1. When a Consultant has made a commitment to use a DBE firm that is not currently certified, thereby making the Consultant ineligible to receive DBE goal credit for work performed, the ineligible DBE firm's work does not count toward the DBE goal. Consultant shall meet the DBE goal with a DBE firm that is eligible to receive DBE credit for work performed, or must demonstrate to the CRO that it has made good faith efforts to do so.
2. When a Consultant has executed a subcontract with a DBE firm prior to official notification of the DBE firm's loss of eligibility, Consultant may continue to use the firm on the contract and shall continue to receive DBE credit toward DBE goal for the subconsultant's work.
3. When Department has executed a prime contract with a DBE firm that is certified at the time of contract execution but that is later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after VDOT issued the notice of its ineligibility shall be counted toward the contract goal.

Termination of DBE: If a DBE subconsultant is terminated, or fails, refuses, or is unable to complete the work on the contract for any reason, Consultant must promptly request approval to substitute or replace that DBE firm in accordance with this section of this Special Provision.

The Consultant shall notify DCRO in writing before terminating and/or replacing the DBE firm that is being used or represented to fulfill DBE-related contract obligations during the term of the contract. Written consent from the DCRO for terminating the performance of any DBE firm shall be granted only when the Consultant can demonstrate that the DBE firm is unable, unwilling, or ineligible to perform its obligations for which the Consultant sought credit toward the DBE goal. Such written consent by the Department to terminate any DBE shall concurrently constitute written consent to substitute or replace the terminated DBE with another DBE. Consent to terminate a DBE firm shall not be based on the Consultant's ability to negotiate a more advantageous contract with another subconsultant whether that subconsultant is, or is not, a DBE firm.

- I. All Consultant requests to terminate, substitute, or replace a DBE firm shall be in writing, and shall include the following information:
 - a) The date the Consultant determined the DBE to be unwilling, unable, or ineligible to perform.

- b) The projected date that the Consultant shall require a substitution or replacement DBE to commence work if consent is granted to the request.
- c) A brief statement of facts describing and citing specific actions or inaction by the DBE firm giving rise to Consultant's assertion that the DBE firm is unwilling, unable, or ineligible to perform;
- d) A brief statement of the DBE firm's capacity and ability to perform the work as determined by the Consultant;
- e) A brief statement of facts regarding actions taken by the Consultant, that Consultant believes constitute good faith efforts toward enabling the DBE firm to perform;
- f) The current percentage of work completed by the DBE firm;
- g) The total dollar amount currently paid for work performed by the DBE firm;
- h) The total dollar amount remaining to be paid to the DBE firm for work completed, but for which the DBE firm has not received payment, and with which the Consultant has no dispute;
- i) The total dollar amount remaining to be paid to the DBE firm for work completed, but for which the DBE firm has not received payment, and over which the Consultant and/or the DBE firm have a dispute.

II. Consultant's Written Notice to DBE of Pending Request to Terminate and Substitute with another DBE.

Consultant shall send a copy of the "request to terminate and substitute" letter to the affected DBE firm and make best efforts to ensure its receipt by the DBE firm, in conjunction with submitting the request to the DCRO. The DBE firm may submit a response letter to the DCRO and Department within two (2) business days of receiving the notice to terminate from the Consultant. If the DBE firm submits a response letter, then Consultant shall, as part of its subcontract, obligate the DBE firm to explain its position concerning performance on the committed work. The Department will consider both the Consultant's request and the DBE firm's response and explanation before approving the Consultant's termination and substitution request.

If, after making its best efforts to deliver a copy of the "request to terminate and substitute" letter, the Consultant is unsuccessful in notifying the affected DBE firm, the Department will verify that the DBE firm is unable or unwilling to continue performing its subcontract let with respect to the contract. Department will timely approve the Consultant's request for a substitution.

III. Proposed Substitution of Another Certified DBE

Upon termination of a DBE firm, Consultant shall use reasonably good faith efforts to replace the terminated DBE firm. The termination of such DBE firm shall not relieve Consultant of its obligations under this Special Provision, and the unpaid portion of the terminated DBE firm's subcontract will not be counted toward the DBE goal.

When a DBE substitution is necessary, the Consultant shall submit an amended Form C-111 PSC to the DCRO for approval with the name of another DBE firm, the proposed work to be performed by that DBE firm, and the dollar amount of the work to replace the unfulfilled portion of the work of the original DBE firm.

Should Consultant be unable to commit the remaining required dollar value to the substitute DBE firm, the Consultant shall provide written evidence of good faith efforts made to obtain the substitute value requirement. Department will review the quality, thoroughness, and intensity of those efforts. Efforts that are viewed by Department as merely superficial or pro-forma will not be considered good faith efforts to meet the DBE goal. Consultant must document the steps taken that demonstrated its good faith efforts to obtain participation as set forth in the **Good Faith Efforts Described** section of this Special Provision.

L. Suspect Evidence of Criminal Behavior

Failure of Consultant or any subconsultant to comply with the Standard Specifications, this Special Provision, or any other contract document wherein there appears to be evidence of criminal conduct shall be referred to the Attorney General for the Commonwealth of Virginia and/or the FHWA Inspector General for criminal investigation and, if warranted prosecution.

M. Suspected DBE Fraud

In appropriate cases, Department will bring to the attention of the United States Department of Transportation any appearance of false, fraudulent, or dishonest conduct in connection with the DBE program, so that USDOT can take the steps, e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or "Program Fraud and Civil Penalties" rules provided in 49 CFR Part 31.

N. Availability of Records

Requests for information concerning any aspect of the DBE Program, the Department complies with provisions of the Federal and Virginia Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a) and Code of Virginia Section 2.2 -3700.

Form C-63
Rev. 7-25-17

(Vendor defined as: Subcontractor, Consultant, Supplier, Manufacturer, Hauler)

(1a)	Report No.	
(1b)	Report Period	20 <input type="text"/> Oct. - Dec <input type="checkbox"/> Jan - Mar <input type="checkbox"/> Apr - Jun <input type="checkbox"/> Jul - Sept <input type="checkbox"/>
(2a)	Federally Funded <input type="checkbox"/>	Federally Funded Local Govt. <input type="checkbox"/>
(2b)	Contractor/Subcontractor	
(2c)	Contract ID No.	
(2d)	Date of Execution	
(2e)	District	

[illegible]

I/WE certify under penalty of law that the information provided herein is accurate, current, and complete to the best of my/our Knowledge.

Signature and Title of Company Official	Date
Print Name and Phone Number of Individual Completing Report	

ATTACHMENT E

Form C-63
Rev. 7-25-17

VIRGINIA DEPARTMENT OF TRANSPORTATION INSTRUCTIONS FOR VENDOR PAYMENT COMPLIANCE REPORT C-63

The Prime Contractor is required to submit a Vendor Payment Compliance Report and document all payments made to all vendors during the designated quarterly reporting period. All amounts paid to vendors are subject to monitoring and enforcement mechanisms. It is the responsibility of the prime contractor to provide evidence of vendor payments in response to monitoring and enforcement compliance reviews.

The instructions below correspond to each item on the report. Please follow the instructions.

- 1a. **Report No.**
Indicate the number of the report you are sending in sequence. For example: If this is the second report you are submitting for the contract, enter Report No. 2.
- 1b. **Report Period**
Indicate the reporting period based on the Reporting Schedule listed in these instructions.
- 2a. **Funding Source**
Indicate the primary funding source: Federally Funded, Federally Funded Local Government .
- 2b. **Contractor/Subcontractor**
Enter your company's name
- 2c. **Contract I.D. No.**
Enter the contract identification number assigned to your project.
- 2d. **Date of Execution**
Enter the date the contract was executed.
- 2e. **District**
Enter the VDOT District where the project under contract is located.
3. **Vendor Name**
Enter all subcontractors utilized.
4. **Tax I.D. No.**
Indicate the Federal Employer Identification No.
5. **Certification Type**
Specify the certification type of each Vendor:
DBE – Disadvantaged Business Enterprise
SWaM – Small, Woman, and Minority-Owned Business Enterprise
Non-DBE/SWaM – Subcontractor is not certified as a DBE or SWaM business in Virginia
6. **Payments to Vendors**
Dollar amount paid to Vendors during contract.

ATTACHMENT E

Form C-63
Rev. 7-25-17

- 6b. **Payments to Vendors to Date**
Total dollar amount paid to Vendors since contract execution.

Effective (date), All Form C-63s for each reporting period shall be submitted in an electronic format to the District Civil Rights Office in each District by the following dates of each calendar year.

REPORTING SCHEDULE

Reporting Period	Date Due To Responsible VDOT Charge
July 1 – September 30	Five (5) business days after the reporting period
October 1 – December 31	Five (5) business days after the reporting period
January 1 – March 31	Five (5) business days after the reporting period
April 1 – June 30	Five (5) business days after the reporting period

If the submittal date falls on a weekend/holiday, the forms shall be submitted to the District Civil Rights Office on the following business day.

ATTACHMENT F

Form C-48 PSC
Rev. 04-5-23

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION
SUBCONSULTANT SOLICITATION FORM

RFP NO.: _____

OFFEROR / CONSULTANT NAME: _____

The Offerors certifies this form accurately represents its solicitation of the firms listed below for inclusion in the Expression of Interest (EOI) and performance of work on any resulting contract. The Offerors also certifies he/she has had direct contact with the named firms regarding participation on this project.

OFFEROR TITLE _____ **SIGNATURE** _____

VENDOR NUMBER	NAME OF SUBCONSULTANT	TELEPHONE NUMBER	DBE ID OR SWaM ID or NA *	NAICS (if DBE) and NIGP Codes (if SWAM) * Or NA

*If certified as both DBE and SWaM, list information for each program.

NOTE: ATTACH ADDITIONAL PAGES, IF NECESSARY. OFFEROR MUST SIGN EACH ADDITIONAL SHEET TO CERTIFY ITS CONTENT AND COMPLETION OF FORM.

ATTACHMENT G

Form C-49 PSC
Updated 6/15/2023

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION
DBE & SWAM REQUIREMENTS FOR PROFESSIONAL SERVICES CONTRACTS
GOOD FAITH EFFORT DOCUMENTATION

Form Instructions: If, at the time of submitting the Expression of Interest, the Offeror knowingly cannot meet or demonstrate good faith efforts in meeting the required DBE and/or SWaM contract goal(s), form C-49 PSC shall be submitted.

After contract award, for Limited Services Term contracts, consultants must submit this form at renewal to document DBE / SWaM utilization to date. If goals are being met for current term, submission of page 1 is sufficient. If goals are not being met at the time of renewal, the full form must be submitted.

After contract award, for Project Specific Contracts, consultant must submit this form if or when supplement agreements are requested. For Program Support Services (PSS) contracts, this form shall be submitted with each Annual Work plan (AWP). If goals on PSS Contract are being met, submission of page 1 is sufficient. If goals are not being met at the time of AWP review & approval, the full form must be submitted.

CONTRACT ID:		Contract Date(s):	
Firm Name:		Renewal Term: If applicable.	
Type of Contract:		UPC # (if Project Specific Contract)	
DBE Goal (As per contract)		SWaM Goal (As per contract)	
DBE Expenses to Date:		SWaM Expenses to Date:	
Submission Date:		Purpose of Submittal*:	

*(Inability to Meet Goal at EOJ Submission; Term Renewal; Annual Work Plan; or Supplement Agreement)

If the DBE and/or SWaM goals established for this contract have not been met at the time of renewal or VDOT requests the submittal thereof, the bidder is required to submit good faith efforts as outlined in the contract.

Explanation / Details To Support Demonstration Of Good Faith Effort: (See Page 6 for Add'l Space)	

The consultant acknowledges and certifies that this form accurately represents the action taken to secure participation by DBE / SWaM subconsultants.

Firm Name	Signature
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Title	Date
-------	------

ATTACHMENT G

Form C-49 PSC
Updated 6/15/2023

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION
DBE & SWAM REQUIREMENTS FOR PROFESSIONAL SERVICES CONTRACTS
GOOD FAITH EFFORT DOCUMENTATION

CONTRACT ID _____ DATE SUBMITTED _____

PENDING WORK FOR DBE / SWAM VENDORS

If consultant has ordered work as part of a project based on contract schedule, executed task orders, or assignment in an Annual Work Plan that includes work to be conducted by DBE / SWaM subconsultants but prosecution of work has not yet occurred, please provide details:

The consultant acknowledges and certifies that this form accurately represents the action taken to secure participation by DBE / SWaM subconsultants.

Firm Name _____ Signature _____

Title _____ Date _____

Task Order / Assignment Details (ID #s, Description of Work to be Performed)	Amount of Work Assigned VS Amount of Work Paid to Date	Approx Date of Work to Occur

NOTE: ATTACH ADDITIONAL PAGES IF NECESSARY, INCLUDING ANY DOCUMENTATION

ATTACHMENT G

Form C-49 PSC
Updated 6/15/2023

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION
DBE & SWAM REQUIREMENTS FOR PROFESSIONAL SERVICES CONTRACTS
GOOD FAITH EFFORT DOCUMENTATION

CONTRACT ID NO. _____ DATE SUBMITTED _____

WORK SOLICITED / REQUESTED BUT DECLINED BY DBE / SWAM SUBCONSULTANT

Provide information on certified DBE / SWaM subconsultants and the dates on which work was solicited / request was made to participate on this proposal / contract. Include the items of work offered and the dates and methods used for following up initial solicitations to determine whether or not DBEs/SWaM subconsultants were interested.

The consultant acknowledges and certifies that this form accurately represents the action taken to secure participation by DBE / SWaM subconsultants.

Firm Name _____ Signature _____

Title _____ Date _____

NAMES and ID#s of DBEs and/or SWaM FIRMS SOLICITED	DATE OF INITIAL SOLICITATION	NAICS (if DBE) and NIGP Codes (if SWAM)	FOLLOW-UP METHODS AND DATES

NOTE: ATTACH ADDITIONAL PAGES IF NECESSARY, INCLUDING ANY DOCUMENTATION

ATTACHMENT G

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION
DBE & SWAM REQUIREMENTS FOR PROFESSIONAL SERVICES CONTRACTS
GOOD FAITH EFFORT DOCUMENTATION

Form C-49 PSC
Updated 6/15/2023

CONTRACT ID NO. _____ DATE SUBMITTED _____

TELEPHONE LOG FOR DBE/SWAM SOLICITATION / REQUEST TO PARTICIPATE

If the DBE / SWaM goal(s) established has not or cannot be met or VDOT requests the submittal thereof, the bidder is required to submit good faith efforts as outlined in this document. Provide names, addresses, and telephone numbers for the firms listed.

The consultant acknowledges and certifies that this form accurately represents the action taken to secure participation by DBE / SWaM subconsultants.

Firm Name _____ Signature _____

Title _____ Date _____

DBE / SWaM FIRMS CALLED	TELEPHONE NUMBER	DATE CALLED	TIME CALLED	CONTACT PERSON OR VOICE MAIL STATUS

NOTE: ATTACH ADDITIONAL PAGES IF NECESSARY, INCLUDING ANY DOCUMENTATION

ATTACHMENT G

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION
DBE & SWAM REQUIREMENTS FOR PROFESSIONAL SERVICES CONTRACTS
GOOD FAITH EFFORT DOCUMENTATION

Form C-49 PSC
Updated 6/15/2023

CONTRACT ID NO. _____ DATE SUBMITTED _____

ADVERTISEMENTS OR PROOFS OF PUBLICATION

If the DBE / SWaM goal(s) established for this contract has not been met or VDOT requests the submittal thereof, the consultant is required to submit good faith efforts as outlined in this document.

Names and dates of each publication / website in which a request for DBE / SWaM subconsultants participation for the project was placed by the consultant. Attach copies of published advertisements or proofs of publication.

The consultant acknowledges and certifies that this form accurately represents the action taken to secure participation by DBE / SWaM subconsultants.

Firm Name _____ Signature _____

Title _____ Date _____

PUBLICATIONS	DATES OF ADVERTISEMENT

NOTE: ATTACH ADDITIONAL PAGES IF NECESSARY, INCLUDING ANY DOCUMENTATION

ATTACHMENT G

Form C-49 PSC
Updated 6/15/2023

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION
DBE & SWAM REQUIREMENTS FOR PROFESSIONAL SERVICES CONTRACTS
GOOD FAITH EFFORT DOCUMENTATION

CONTRACT ID NO.	DATE SUBMITTED
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ADDITIONAL DATA TO SUPPORT DEMONSTRATION OF GOOD FAITH EFFORT

If the DBE / SWaM goal(s) established for this contract has not been met or VDOT requests the submittal thereof, the consultant is required to submit good faith efforts as outlined in this document.

The consultant acknowledges and certifies that this form accurately represents the action taken to secure participation by DBE / SWaM subconsultants.

Firm Name _____ Signature _____

Title	Date
-------	------

ADDITIONAL JUSTIFICATION TO SUPPORT DEMONSTRATION OF GOOD FAITH EFFORT
Including Details on Future DBE / SWaM Utilization Plan

NOTE: ATTACH ADDITIONAL PAGES IF NECESSARY, INCLUDING ANY DOCUMENTATION

ATTACHMENT H

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION
DBE & SWAM REQUIREMENTS FOR PROFESSIONAL SERVICES CONTRACTS
PROJECT SPECIFIC CONTRACTS

C-111 PSC
June 15, 2023

RFP / CONTRACT ID _____ DATE SUBMITTED _____

PROJECT NO _____ FHWA NO _____

INSTRUCTIONS: This form shall be used by the Consultant to submit the names of DBE /SWaM firms to be used on the contract. The Consultant shall indicate the scope of work that each will perform and the allowable credit.

DBE REQUIREMENT _____% DBE PERCENT ATTAINED BY OFFEROR _____%

Name(s) of DBE(s) To Be Used	Certification #	Scope of Work / NAICS Codes	\$ Amount of Allowable Credit
TOTAL \$			
Total Contract Value \$ _____			x Required DBE % = \$ _____

SWaM REQUIREMENT _____% SWaM PERCENT ATTAINED BY OFFEROR _____%

Name(s) of SWaM (s) To Be Used	Certification #	Scope of Work / NIGP Codes	\$ Amount of Allowable Credit
TOTAL \$			
Total Contract Value \$ _____			x Required DBE % = \$ _____

I/We certify that the DBE(s) listed will be used on this contract as stated hereon and assure that during the life of the contract I/We will meet or exceed the participation established hereon.

_____ Offeror	BY	_____ Signature
_____ Title	BY	_____ Date

ATTACHMENT I

Form C-112A PSC
Updated 6-5-23
Page 1 of 2

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION
CERTIFICATION OF BINDING AGREEMENT WITH
DISADVANTAGED BUSINESS ENTERPRISE FIRMS**

RFP NO _____ **CONTRACT ID** _____

CONSULTANT NAME _____ **PROJECT ID** _____

This form is to be submitted in accordance with the Department's Special Provision for DBE Requirements for professional services contracts for consultants.

It is hereby certified by the below signed Contractors that there exists a written quote, acceptable to the parties involved preliminary to a binding subcontract agreement stating the details concerning the work to be performed and the price which will be paid for the aforementioned work. This document is not intended to, nor should it be construed to, contain the entire text of the agreement between the contracting parties. This document does not take the place of, nor may it be substituted for, an official subcontracting agreement in those situations that may require such an agreement. A copy of the fully executed *subcontract agreement* shall be submitted to the Engineer within fourteen (14) business days after contract execution.

It is further certified that the aforementioned mutually acceptable quote and fully executed subcontract agreement represent the entire agreement between the parties involved and that no conversations, verbal agreements, or other forms of non-written representations shall serve to add to, delete, or modify the terms as stated.

The prime Contractor further represents that the aforementioned mutually acceptable quote and fully executed subcontract agreement shall remain on file for a period of not less than one year following completion of the prime's contract with the Department or for such longer period as provisions of governing Federal or State law or regulations may require. For purposes of this form, the term Prime Contractor shall refer to any Contractor utilizing a DBE subcontractor, regardless of tier, in which they are claiming DBE credit toward the contract goal.

Contractors further jointly and severally represent that said binding agreement is for the performance of a "commercially useful function" as that term is employed in 49 C.F.R. Part 26.55 (c), (d).

**TO BE SIGNED BY THE SUBCONTRACTOR TO THE PRIME CONSULTANT, AND ANY LOWER TIER
SUBCONSULTANTS HAVING A CONTRACT WITH THE BELOW NAMED DBE FIRM**

Prime Contractor _____

By: _____
Signature Title

Date: _____

First Tier
Subconsultant, if
Applicable

By: _____
Signature Title

Date: _____

ATTACHMENT I

Form C-112A PSC
Updated 6-5-23
Page 2 of 2

Second Tier
Subconsultant if
Applicable

By: _____
Signature Title

Date: _____

Third Tier
Subconsultant if
Applicable

By: _____
Signature Title

Date: _____

DBE Consultant

By: _____
Signature Title

Date: _____

ATTACHMENT J

DPOR LICENSES AND SCC REGISTRATION INFORMATION TABLES

Offerors shall complete the table and include the required state registration and licensure information. By completing this table, Offerors certify that their team complies with the requirements set forth in Section 9.10 and that all businesses and individuals listed are active and in good standing.

SCC & DPOR INFORMATION FOR BUSINESSES							
Business Name	SCC Information			DPOR Information			
	SCC Number	SCC Type of Corporation	SCC Status	DPOR Registered Address	DPOR Registration Type	DPOR Registration Number	DPOR Expiration Date

1. The Commonwealth of Virginia SCC registration detailing the name, registration number, corporation type, business entity status.
2. For this RFP, the Commonwealth of Virginia DPOR registration information for each office practicing or offering to practice any professional services in Virginia: Provide the business name, address, registration type, registration number, expiration date.

ATTACHMENT J

DPOR LICENSES AND SCC REGISTRATION INFORMATION TABLES

Offerors shall complete the table and include the required state registration and licensure information. By completing this table, Offerors certify that their team complies with the requirements set forth in Section 9.10 and that all businesses and individuals listed are active and in good standing.

DPOR INFORMATION FOR INDIVIDUALS						
Business Name	Individual's Name	Office Location Where Professional Services will be Provided (City/State)	Individual's DPOR Address	DPOR Registration Type	DPOR Registration Number	DPOR Expiration Date

3. For this RFP, the Commonwealth of Virginia DPOR license information for each of your Key Personnel practicing or offering to practice professional services in Virginia: Provide the name, the address, type, the registration number, and the expiration date. Provide the office location where each of the Key Personnel is offering to practice professional services.

4. For this RFP, the Commonwealth of Virginia DPOR license information for those services not regulated by the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers, and Landscape Architects (e.g. real estate appraisal): the business name, the address, the registration type, the registration number, and the expiration date.

ATTACHMENT K

APPENDIX A USDOT 1050.2A

During the performance of this contract, the consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- (1) **Compliance with Regulations:** The contractor shall comply with the Regulation relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- (4) **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Virginia Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the Virginia Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Virginia Department of Transportation shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:
 - a. withholding of payments to the contractor under the contract until the contractor complies, and/or
 - b. cancellation, termination or suspension of the contract, in whole or in part.
- (6) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontract. or procurement as the Virginia Department of Transportation may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Virginia Department of Transportation to enter into such litigation to protect the interests of the Virginia Department of Transportation, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

ATTACHMENT K

APPENDIX E USDOT 1050.2A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

Pertinent Nondiscrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, And resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

ATTACHMENT L

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 and comply with the requirements of CII/SSI Guide. This guide can be located at:

- https://www.vdot.virginia.gov/media/vdotvirginiagov/doing-business/technical-guidance-and-support/structure-and-bridge/CII_SSI Guide V6.0 Interim Revision FINAL.PDF
- <https://www.vdot.virginia.gov/media/vdotvirginiagov/doing-business/technical-guidance-and-support/technical-guidance-documents/structure-and-bridge/migrated-acc/iim/SBIIM71.pdf>

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 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. All costs associated with performing these CII/SSI requirements are the responsibility of the prime consultant.

In the event of loss, suspected loss or compromise of any VDOT CII/SSI material, the Consultants having possession of the said CII/SSI material will immediately upon having knowledge of the loss, suspected loss or compromise of any VDOT CII/SSI material, notify the VDOT project manager. If the loss is a result of a theft or suspected theft, of either the actual CII/SSI material or any device containing or storing CII/SSI material, the Contractor/Consultant will immediately file a report with a law enforcement agency having jurisdiction and forward a copy of the report to the VDOT project manager.

Consultants shall include the terms of this Section and comply with the CII/SSI Guide, 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.

Specifically,

1. If the required services will involve the handling of CII/SSI material, the Consultant(s) will be required to sign non-disclosure agreements. Additionally, individuals with the Consultant(s) that handle CII/SSI material will be required to sign non-disclosure agreements.
2. 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 will be required to pass a fingerprint-based Criminal History Record Check (CHRC). An individual employee's failure to successfully pass the fingerprint-based CHRC will not negate the selection, and Consultants will be allowed to replace those individuals. However, if key personnel fail the fingerprint-based CHRC, the selection may be cancelled and negotiations begun with the next ranked Offeror.
3. VDOT reserves the right to conduct fingerprint-based CHRC on all employees of the prime consultant, on any employees of sub-consultants, 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 CHRC are the responsibility of the prime consultant.
4. A VDOT issued photo-identification badge is required for each employee of the prime consultant or any sub-consultant who will need access to VDOT CI facilities, or who will be performing bridge/tunnel inspections. Based upon the results of the fingerprint-based CHRC, VDOT reserves the right to deny issuance of a VDOT security clearance or a VDOT issued photo-identification badge.
5. VDOT's *CII/SSI Policy Guide for Employees, Vendors, Contractors, or other Persons Accessing VDOT's CII/SSI* includes additional requirements. This guide can be accessed at: https://www.vdot.virginia.gov/media/vdotvirginiagov/doing-business/technical-guidance-and-support/structure-and-bridge/CII_SSI Guide V6.0 Interim Revision FINAL.PDF.

ATTACHMENT **M**

Certification Regarding Ethics in Public Contracting

In submitting this bid or proposal, and signing below, Bidder/Offeror certifies the following in connection with a bid, proposal, or contract:

Check one:

☐

1. I have not given any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value to any public employee or official have official responsibility for a procurement transaction.

☐

2. I have given a payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value to a public employee or official have official responsibility for a procurement transaction, but I received consideration in substantially equal or greater value in exchange.

If 2 is selected, please complete the following:

Recipient: _____

Date of Gift: _____

Description of the gift and its value: _____

Description of the consideration received in exchange and its value: _____

Printed Name of Bidder/Offeror Representative: _____

Signature/Date: _____ / _____

Company Name: _____

Company Address: _____

City/State/Zip: _____

ATTACHMENT N

Expression of Interest (EOI) Checklist

Expression of Interest Component	Page Limit		RFP Section	RFP Page
Table of Contents	Yes	1 Page	8	11
Transmittal Letter	Yes	2 Pages	8	11
GSA SF 330 Part I - Contract-Specific Qualifications	No	-	8	11
Section A: Contract Information	No	-	8	11
Section B: Architect-Engineer Point of Contact	No	-	8	11
Section C: Proposed Team	No	-	8	11
Section D: Organizational Chart of Proposed Team	Yes	1 Page	8	11
Section E: Resumes of Key Personnel Proposed for this Contract	Yes	2 Pages / Resume	8	11
Section F: Team Example Projects	Yes	2 Pages / Project	8	11
Section G: Key Personnel Participation in Example Projects	No	-	8	11
Section H: Additional Information	Yes	10 Pages	8	11
GSA SF 330 II - General Qualifications	No	-	8	11
Non-Professional Services	No	-	8	12
Affiliated and/or Subsidiary Companies	No	-	8	12
DBE/SWAM Verification Letter	No	-	8	12
Conflict of Interest Acknowledgment Letter	No	-	8	12
Attachments / Forms	No	-	8	12
Firm Data Sheet	No	-	8	12
Certification Regarding Debarment (Primary Covered Services)	No	-	8	12
Certification Regarding Debarment (Secondary Covered Services)	No	-	8	12
Certification Regarding Ethics in Public Contracting	No	-	8	12
DPOR Licenses & SCC Registrations Information Tables	No	-	8	12