

**FAIRFAX COUNTY**  
**DEPARTMENT OF TRANSPORTATION**  
**(FCDOT)**

**REQUEST FOR QUALIFICATIONS**  
**FOR DESIGN OF MULTI-MODAL**  
**TRANSPORTATION IMPROVEMENT**  
**PROJECTS**

**Date: October 9, 2019**



**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 W. Todd Minnix at 703-877-5749 TTY 711.**

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# REQUEST FOR QUALIFICATIONS (RFQ)

## 1. INTRODUCTION

The Fairfax County Department of Transportation (FCDOT) Virginia, submits this Request for Qualification (RFQ) to solicit Statements of Qualifications (SOQs) from 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 interested firms (Offerors) are requested to submit eight (8) copies (one marked “Original” with original signatures, and seven abbreviated paper copies) of a SOQ, to the Fairfax County Department of Transportation (FCDOT), 4050 Legato Road, Suite 400, Fairfax, Virginia 22033-2895, addressed to the Chief, Transportation Design Division (TDD), by no later than 4:00 PM local time Friday, November 08, 2019

Offerors SOQs will be evaluated and scored by an FCDOT Selection Advisory Committee (SAC) based upon the evaluation criteria established in this RFQ. SOQs must meet all requirements established by the RFQ. Requirements of this RFQ generally will use the words “shall”, “will”, or “must” (or equivalent terms) to identify a required item that must be submitted as part of the SOQ. Failure to meet an RFQ requirement may render a SOQ non-responsive while the extent to which it meets or exceeds evaluation criteria will be rated by the FCDOT evaluation team and be reflective of the team’s scoring (in their sole discretion) of the SOQ.

## 2. BACKGROUND INFORMATION

### 2.1. 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 four (4) additional one-year terms at the county’s option. The contracts will be established with a ceiling amount of \$6,000,000 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 number of previous task orders authorized/assigned;

- The dollar amount of previous task orders authorized/assigned;

## 2.2. Scope of Work

No projects have been identified, nor is there a guarantee that any will be. However, previous experience indicates projects may require a variety of services.

**Primary Design Services** - may include, but are not limited to the following:

- 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;
- 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;
- Traffic Engineering Services in support of design (weave analysis, intersection analysis, VISSIM, and Synchro modeling, data collection, etc.);
- VMS/ITS Design;
- Geotechnical investigations and analysis;
- Topographic Survey and plat preparation;

**Secondary Services** - which may be required include, but are not limited to the following:

- 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 RFQ's and RFP's for Design-Build projects;
- Technical Specifications and Special Provisions preparation and review.

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.

### **2.3. Evaluation of Qualifications**

A Selection Advisory Committee (SAC) will be appointed by FCDOT to evaluate and score the SOQs. 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 RFQ **shall be W. Todd Minnix, Chief, Transportation Design Division (TDD)**. All Inquiries and communications regarding this RFQ shall be in writing and directed as follows:

W. Todd Minnix, PE  
 Chief, Transportation Design Division  
 Fairfax County Dept. of Transportation  
 4050 Legato Road, Suite 400  
 Fairfax, VA 22033-2895  
 (703) 877-5749 (Phone) TTY 711  
[Wesley.Minnix@fairfaxcounty.gov](mailto:Wesley.Minnix@fairfaxcounty.gov) (Email)

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.

### **2.4. RFQ Information Meeting**

An RFQ 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 Wednesday, October 16, 2019. Attendance at the information meeting is not mandatory, but consultants are urged to attend. Each firm/team can bring a maximum of four (4) people.

### **2.5. Estimated 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 RFQ – October 9, 2019

2. Project Information Meeting – October 16, 2019 at 10:30AM (local time)
3. Deadline to submit questions – October 25, 2019 by 4 PM (local time)
4. FCDOT will respond to questions – November 1, 2019
5. SOQ Submission – November 8, 2019 at 4:00 PM (local time)
6. SAC’s Evaluation Deadline – December 6, 2019
7. Notification to Shortlisted Offerors – December 13, 2019
8. Anticipated Interview Dates – January 13, 2020 to January 17, 2020
9. Final Selection by SAC – January 24, 2020
10. Notification to Selected Offerors – January 28, 2020
11. RFP Information Meeting – February 3, 2020
12. RFPs Due Date – February 21, 2020 at 4:00 PM (local time)
13. Contract(s) Award – March 30, 2020
14. Notice to Proceed – April 1, 2020

### **3. STATEMENTS OF QUALIFICATIONS SUBMITTAL REQUIREMENTS**

#### **3.1. General**

The RFQ phase of this procurement process is intended to enable interested firms to demonstrate their qualifications to perform design services for multi-modal transportation improvement projects, and to enable FCDOT to evaluate those qualifications in arriving at a short-list. Interested firms are advised that the SOQ should include specific information that will demonstrate the qualifications and experience required by this RFQ as noted in Section 4. Failure of any Offeror to submit its SOQ in accordance with this RFQ requirements may result in rejection of its SOQ.

- All submissions, including hand-delivered packages, US Postal Service regular mail, US Postal Service express mail, or private delivery service (FEDEX, UPS, courier etc.) must be delivered to the Fairfax County Department of Transportation (FCDOT), 4050 Legato Road, Suite 400, Fairfax, Virginia 22033-2895, addressed to the Chief, Transportation Design Division (TDD), FCDOT, by the due date and time set forth in **Section 1**.
- Neither fax nor email submissions will be accepted. Offerors are responsible for effecting delivery by the deadline above, and late submissions will be rejected

without opening, consideration, or evaluation, and will be returned unopened to the sender. FCDOT accepts no responsibility for misdirected or lost proposals.

- SOQs shall be prepared on 8.5” x 11” white paper, typed on one (1) side only, and separated by numbered/labeled tabs with sections corresponding to the order set forth in Section 4.0 (Selection Criteria). The tabs shall not count against any page limits noted herein, provided no project specific information is included on them.
- All printing, except for the front cover of the SOQ should be Times New Roman, with a 12-point font (Times New Roman 10-point font may be used for filling out information on the Key Personnel Resume Form).
- The format and appearance of the Key Personnel Resume Forms should not be modified. The Key Personnel Resume Forms shall not exceed two (2) pages for each Key Personnel.
- Organization Chart may be prepared on 11” x 17” paper but must be folded to 8.5” x 11”.
- The length of all SOQs shall be as further noted below. Page number references should be included in the lower right-hand corner on each page of the SOQ. **FCDOT will remove and discard all pages in excess of the stipulated page limit(s) noted herein.**
- All SOQs shall be securely bound and contained in a single volume. **Three ring binders are not permissible.**
- Each Offeror shall deliver one (1) “**Original**” paper version of the Statements of Qualifications with full supporting documentation, which must bear original signatures and an identifier on its front cover, in the upper right-hand corner, as “Original”, one (1) CD containing a complete single PDF of the “original”, and seven (7) abbreviated versions of SOQ.
- The supporting documentation in the “**Original**” SOQ shall include:
  - The Letter of Submittal
  - The SOQ Checklist
  - List of Sub-Consultants
  - Completed SF 330 Parts I & II
  - Certification Regarding Debarment Primary
  - Certification Regarding Debarment Lower Tier
  - Firm Data Sheet
  - Ethics in Public Contracting Form
  - SCC & DPOR Registration
  - VDOT Form C-48, Subcontractor Supplier Solicitation and Utilization Form
  - VDOT Form C-49, DBE Good Faith Efforts Documentation



- VDOT Form C-111, Minimum DBE Requirements
- VDOT Form C-112, Certification of Binding Agreement with Disadvantaged Enterprise Firms
- Abbreviated versions of the SOQ shall include:
  - The Letter of Submittal
  - SF 330 Parts I & II
- Offerors shall complete the SOQ Checklist, and include it in their SOQs. The purpose of the SOQ Checklist is to aid the Offeror in ensuring all submittal requirements have been included in the Offeror's SOQ and to provide a page reference indicating the location of each submittal requirement in the SOQ.

### **3.2. Letter of Submittal**

SOQs shall include a letter of submittal on the primary firm's letter head and identify the full legal name and address of the firm. The firm is defined as the legal entity who will execute the contract with FCDOT. The letter of submittal shall identify the name, address and telephone number of the individual who will serve as the principal officer and/or point of contact and shall be signed by an authorized representative of the primary firm's organization. All signatures on the Letter of Submittal shall be original ink signature.

The letter of submittal shall be included with original signatures and no longer than two (2) pages in length, single spaced, 12-point font.

### **3.3. GSA Form 330 Parts I & II**

**3.3.1 Part I.A** - GSA Form SF 330 Parts I & II are required from the prime consultant.

**3.3.2 Part I.B** - GSA Form SF 330 Part II is required from all subconsultants

**3.3.3 Part I.C** - Include all firms that are part of the proposed team and indicate roles and responsibilities of each team member. Clearly indicate which firm is the prime.

**3.3.4 Part I.D** - Include an Organization Chart (may be prepared on 11" x 17" paper but must be folded to 8.5" x 11") of the proposed team. Only include key personnel for each type or specialty service to be provided under the contract.

**3.3.5 Part I.E** - Only include resumes for key personnel identified in the organizational chart in Part I.D. Include resumes of any sub-consultants that are designated as key personnel and indicate what services the subconsultants will be providing. Resumes for individuals who are not identified as key personnel should not be included in the SOQ.

**3.3.6 Part I.F** – Provide a maximum of ten (10) example projects which best illustrate the key personnel’s qualifications for this contract. Example projects shall be no more than two (2) pages in length, single sided, single spaced, 12-point font.

- Clearly indicate all firms or team members from Part I.C that were involved with each example project.
- Include client/owner contact information for past performance checks.

**3.3.7 Part I.G** – Indicate key personnel participation in the example projects. Do not indicate any individuals who are not identified as key personnel.

**3.3.8 Part I.H** – Provide additional information the team deems relevant to assist FCDOT in evaluating the proposed team’s qualifications and experience. This section shall be limited to no more than ten (10) pages, single sided, single spaced, 12-point font.

**3.3.9 Part II** - Indicate in item 5b if the firm is a VDOT certified Disadvantaged Business Enterprise (DBE) firm and/or Small Women and Minority (SWaM) firm and include VDOT DBE and/or SWaM certification number. Provide one copy of Part II for all firms included in the proposed team.

#### **3.4. Additional Data to be Included**

##### **3.4.1. Firm Data Sheet**

The prime consultant shall prepare and submit a Firm Data Sheet (Attachment 1) with “Original” copy of the SOQ.

##### **3.4.2. Debarment Form(s)**

The proposed team shall execute and return the attached Certification Regarding Debarment Form(s) Primary Covered Transactions (set forth as Attachment2) and Certification Regarding Debarment Form(s) Lower Tier Covered Transactions (set forth as Attachment3) for the prime and any sub-consultant, or any other person or entity on the teams’ organizational chart included in the SOQ. The Debarment form(s) shall be included in the “Original” copy only and, as noted in section 3.1, shall contain original signatures.

If the Offeror or any sub-consultant, or any other person or entity is unable to execute the certification, then prospective participant shall attach an explanation to its Certification Regarding Debarment Form. Failure to execute the certification will not necessarily result in denial of award but will be considered in determining the team’s responsibility. Providing false information may result in federal criminal prosecution or administrative sanctions.

#### **4. Selection Criteria**

**4.1.** 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.
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 noted in Section 2.2.
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.

**4.2.** The selection committee will rate and score each SOQ based upon the above criteria and will select a short-list of up to fifteen (15) firms/teams whose SOQs 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.

## **5. Administrative and Contract Terms and Conditions**

**5.1. Contract Term Renewals and Escalation Rate** - 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 2<sup>nd</sup> 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.

**5.2. Mandatory Contract Terms and Conditions** - 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.

**5.2.1 Authority to Bind the County** - The parties agree that only the 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 Purchasing Agent.

**5.2.2 Registration and Business License Requirements** - 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 SOQ submittal, under the law and relevant regulations, to offer and to provide any services proposed or related to this RFQ. 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 SOQ. All business entities, except for sole proprietorships, are required to register with the Virginia State Corporation Commission (A Business Registration Guide is available on the Internet at <http://www.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 (<http://www.dpor.virginia.gov/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 a SOQ to Fairfax County. Individual engineers shall meet the requirements of Chapter 4, Title 54.1 of the Code of Virginia.

Failure to comply with the law with regard to those legal requirements in Virginia (whether federal or state) 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 Proposal, in the sole and reasonable discretion of FCDOT, non-responsive and in that event your Proposal may be returned without any consideration or evaluation.

**5.2.3 Federal Immigration Reform and Control Act Compliance** - The Contractor 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. Fairfax County will not consider for award any cost proposals submitted by any consultants and will not consent to subcontracting any portions of the contract to any subconsultants in violation of the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits

employment of illegal aliens.

**5.2.4 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:

- 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;
- 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;
- Nonvisual access technology shall be integrated into networks used to share communications among employees, program participants, and the public; and
- 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 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.

**5.2.5 Prohibition on the Use of Certain Products and Services** - Fairfax County 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 U.S. Department of Homeland Security for use on federal systems.

**5.2.6 Limitation of Liability** - There is no limitation on the liability of a contractor for (i) the intentional or willful misconduct, fraud, or recklessness of a supplier or any employee of a supplier or (ii) claims for bodily injury, including death, and damage to real property or tangible personal property resulting from the negligence of a supplier or any employee of a supplier.

**5.2.7 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.

**5.2.8 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.

**5.2.9 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.

**5.2.10 Internal Control Systems** - All firms submitting a SOQ (prime consultants, joint ventures and subconsultants) must have internal control systems in place that meet federal requirements for accounting. These systems must comply with requirements of 48CFR31, "Federal Acquisition Regulations, Contract Cost Principles and Procedures," and 23CFR172, "Administration of Negotiated Contracts." All firms selected for a project (prime consultants, joint ventures and subconsultants) must submit their FAR audit data to Fairfax County within ten working days of being notified of their selection. Should any firm on the consultant team fail to submit the required audit data within the ten workdays, negotiations will be terminated by Fairfax County and the next most qualified team invited to submit a proposal.

**5.2.11 Living Wage** - Fairfax County is committed to paying a living wage to all qualified county employees and encourages consultants and sub-consultants involved in all county programs, services and activities to pay a living wage to their employees.

**5.2.12 Non-Discrimination Provisions for Federally Funded Projects** - Construction contractors and consultants agree to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e). Title VI of the Civil Rights Act of 1964 declares it to be the policy of the United States that discrimination on the grounds of race, color, or national origin shall not occur in connection with programs and activities receiving Federal financial assistance and authorizes and directs the appropriate Federal departments, agencies, and subrecipients to take action to carry out this policy. Title VII of the Civil Rights Act prohibits discrimination against any employee or applicant for employment on the basis of race, religion, color, sex or national origin for employers with 15 or more employees. The contractor/consultant further agrees to abide by Executive Order No. 11246 entitled "Equal Employment Opportunity," as amended by Executive Order No. 11375 and as supplemented in the Department of Labor Regulations (41 CFR Part 60), which prohibits discrimination on the basis of age and FHWA 1273 required contract provisions for federal-aid construction projects. 49 CFR Parts 21, 23, 26, and 27, and 23 CFR Parts 200, 230, and 633 are incorporated by reference in all contracts and subcontracts funded in whole or in part with federal funds. The contractor/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, as amended, the terms of which are incorporated herein by reference.

**5.2.13 Fairfax County Non-Discrimination Policy** – Fairfax County does not discriminate against an offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment. In accordance with VA Code Section 2.2-4343.1, FCDOT does not discriminate against faith-based organizations.

**5.2.14 Title VI of the Civil Rights Act** - Fairfax County assures compliance with Title VI of the Civil Rights Act of 1964, as amended. The consultant and all subconsultants selected for this project will be required to submit a Title VI Evaluation Report (EEO-D2) within ten working days of notification of selection when requested by FCDOT. This

requirement applies to all consulting firms when the contract amount equals or exceeds \$10,000.

**5.2.15 Mandatory Terms Applicable to Contracts (including Amendments) in Excess of \$100,000:**

- A. Authorization to Transact Business in the Commonwealth** - A contractor 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** - For any contract or amendment in excess of \$100,000, the County or its agent has reasonable access to and the right to examine any records of the contractor involving transactions related to the contract or compliance with any clauses thereunder, for a period of three (3) years after final payment. The contractor 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.
  
- C. Drug Free Workplace** - During the performance of this Agreement, the selected Consultant firms/teams agree to:
  - i. Provide a drug-free workplace for the Contractor’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 Contractor’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 Contractor that the Contractor maintains a drug-free workplace; and
  - iv. Include the provisions of the foregoing clauses in every subcontract or purchase order of over ten thousand dollars and no cents (\$10,000.00), so that the provisions will be binding upon each subcontractor or Contractor.

For the purposes of this section, “drug-free workplace” means a site for the performance of work done in connection with a specific contract awarded to a Contractor in accordance with this chapter, 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 Agreement.

**5.2.16 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 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.

1. No Indemnification by the County. The parties agree that under applicable law the County cannot indemnify or defend the Contractor or any third party.
2. 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.
3. 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.
4. 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.
5. 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.
6. Limitation of Liability. For contracts in excess of \$100,000, there is no limitation on the liability of a contractor for (i) the intentional or willful misconduct, fraud, or recklessness of a supplier or any employee of a supplier or (ii) claims for bodily injury, including death, and damage to real property or tangible personal property resulting from the negligence of a supplier or any employee of a Supplier
7. Unilateral Modification. Unilateral modification of the contract or ordering document by the contractor is prohibited.

**5.3. Protest of Award or Decision to Award –  
(Article 5, Section 4, Page 57, Fairfax 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 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.D, then the time within which the protest must be submitted shall expire ten 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 contractor 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 contractor 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.

#### **5.4. Contractual Disputes - (Article 5, Section 5, page 58, Fairfax 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 his 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. Contractual claims, whether for money or other relief, shall be submitted 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 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.

### **5.5. Legal Actions**

**(Article 5, Section 6, page 58, Fairfax County Purchasing Resolution)**

A. No bidder, offeror, potential bidder or offeror, or contractor shall institute any legal action until all statutory requirements have been met.

## **6. DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS**

It is the policy of the Fairfax County Department of Transportation (FCDOT) and Virginia Department of Transportation (VDOT) that Disadvantaged Business Enterprises (DBE) as defined in the Federal Regulations Codes 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of federally funded consultant contracts. A list of Virginia Department of Small Business and Supplier Diversity certified DBE firms is maintained on their web site (<http://www.sbsd.virginia.gov/>) under the **DBE Directory of Certified Vendors**. Consultants are encouraged to take all necessary and reasonable steps to ensure that DBE firms have the maximum opportunity to compete for and perform services on the contract, including participation in any subsequent supplemental contracts. If the consultant intends to subcontract a portion of the services on the project, the consultant is encouraged to seek out and consider DBE firms as potential subconsultants. The consultant is encouraged to contact DBE firms to solicit their interest, capability and qualifications. Any agreement between a consultant and a DBE firm whereby the DBE firm promises not to provide services to other consultants is prohibited

In accordance with the Governor's Executive Order No. 20, the Virginia Department of Transportation also requires utilization of Small, Women and Minority (SWaM) Businesses to participate in the performance of state funded consultant contracts. A list of Virginia Department of Small Business and Supplier Diversity (DSBSD) certified SWaM firms is maintained on the DSBSD web site (<http://www.sbsd.virginia.gov/>) under the **SWaM Vendor Directory** link. Consultants are encouraged to take all necessary and reasonable steps to ensure that SWaM firms have the maximum opportunity to compete for and perform services on the contract, including participation in any subsequent supplemental contracts. If the consultant intends to subcontract a portion of the services on the project, the consultant is encouraged to seek out and consider

SWaM firms as potential subconsultants. The consultant is encouraged to contact SWaM firms to solicit their interest, capability and qualifications. Any agreement between a consultant and a SWaM firm whereby the SWaM firm promises not to provide services to other consultants is prohibited.

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

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

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

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

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

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

## **7. MISCELLANEOUS**

### **7.1. Requirement to Keep Team Intact**

The proposed team included in the SOQ, 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.

### **7.2. 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's 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's determination in this matter may result in a SOQ being declared non-responsive.

### **7.3. 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 SOQ.

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.

### **7.4. Virginia Freedom of Information Act**

All SOQs 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 SOQ and state in writing why protection of that information is needed. The Offeror should make a written request to FCDOT's 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 SOQ Section, Tab, or Page numbers; attaching to this form a copy of the table of contents from your SOQ with the relevant trade secret or proprietary contents highlighted; or identifying herein a document stamp used within the SOQ to designate the relevant materials (e.g. "all portions of the SOQ 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 SOQ submitted pursuant to this request not properly identified as confidential.
- f) Failure to take such precautions prior to submission of a SOQ may subject confidential information to disclosure under the Virginia FOIA.

#### **7.5. 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 RFQ. 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 SOQs. The latest EPD may be downloaded at:

<http://www.fairfaxcounty.gov/fcdot/designadvert.htm>

## 8. ATTACHMENTS

The following attachments are specifically made a part of and incorporated by reference into this RFQ.

Attachment 1	Firm Data Sheet
Attachment 2	Certification Regarding Debarment Form Primary Covered Transactions
Attachment 3	Certification Regarding Debarment Form Lower Tier Covered Transactions
Attachment 4	VDOT Policy on DBE, SWaM, and Good Faith Effort
Attachment 5	Form C-63 - DBE and SWaM Payment Compliance Report
Attachment 6	Form C-48 PSC - Subconsultant Solicitation
Attachment 7	Appendix A USDOT 1050.2
Attachment 8	Appendix E USDOT 1050.2

**ATTACHMENT 1**

**FIRM DATA SHEET**

Funding: \_\_\_\_ (S=State F=Federal)

Project No.: \_\_\_\_\_

Division: \_\_\_\_\_

SOQ 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

N = DBE or SWaM Firm Not Certified by DMBE

NA = Firm Not Claiming DBE or SWaM Status

YS = SWaM Firm Certified by DMBE

Indicate whether small, woman-owned, or small business.

DMBE is the Virginia Department of Minority Business Enterprise



**ATTACHMENT 2**

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

Project: \_\_\_\_\_

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

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name of Firm

**ATTACHMENT 3**

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

Project: \_\_\_\_\_

- 1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
  
- 2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name of Firm

## ATTACHMENT 4

September 25, 2015

### VIRGINIA DEPARTMENT OF TRANSPORTATION SPECIAL PROVISION FOR CONSULTANT PROJECTS

#### Use of Disadvantaged Business Enterprises (DBEs) for On-call Consultant Projects

##### A. Disadvantaged Business Enterprise (DBE) Program Requirements

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 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 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 Qualification (RFQ) and/or Request for Proposal (RFP) for the entire value of the contract. 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, 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 FCDOT as set out within the requirements of this Special Provision.
7. Once awarded the contract, the Consultant shall designate and make known to the FCDOT 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.

9. In the event a bond surety assumes the completion of work, if for any reason FCDOT has terminated the Consultant, the surety shall be obligated to meet the same DBE contract terms and requirements as were required of the original Consultant in accordance with the requirements of this specification.

#### **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:** 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 shall be submitted electronically or may be faxed to the Department, but in no case shall the offeror's Form C-111 be received later than two business days after the negotiated contract value has been determined. A revised Form C-48 must be received within ten (10) business days after the negotiated contract 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, 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-112, Certification of Binding Agreement, with the C-111 two business days after the negotiated contract value has been determined. DBE offerors responding as prime contractors are not required to submit Form C-112 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, 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, C-49, C-111, and C-112 can be obtained from the VDOT website at:  
<http://vdotforms.vdot.virginia.gov/>

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

- 2. 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, 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 subconsultanting; 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. Consultants are not, however, required to accept higher quotes from DBE firms if the price difference can be shown by the Consultant to be excessive, unreasonable, or greater than would normally be expected by industry standards;

- (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 SBSB; available minority/women community or minority organizations; contractors' 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**

### **During Proposal Submission:**

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.

**During Negotiation:** If the Department changes the scope of services in such a fashion as to affect the ability of the firm to meet the DBE contract goal requirements, the Civil Rights Division will re-consider the goal and inform the Offeror of the revised goal.

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 a 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, 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 immediately notify the Department and provide all relevant facts. If a Consultant relieves a DBE subconsultant of the responsibility to perform work under their subcontract, the Consultant is encouraged to 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.

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.

**Project 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 enjoyment 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.

Department will monitor 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. 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 Consultant shall also furnish, and shall require each subconsultant to furnish, information relative to all DBE involvement on the project for each quarter during the life of the contract in which participation occurs and verification is available. The information shall be indicated on Form C-63, DBE and SWAM Payment Compliance Report. The Department reserves the right to request proof of payment via copies of cancelled checks with appropriate identifying notations. Failure to provide Form C-63 to the CRO within five (5) business days after the reporting period may result in delay of approval of the Consultant's scheduled payment. The names and certification numbers of DBE firms provided by the Consultant on the various forms indicated in this Special Provision shall be exactly as shown on SBSB's latest list of certified DBEs. Signatures on all forms indicated herein shall be those of authorized representatives of the Consultant. 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 necessary documentation in accordance with the procedures stipulated in this Special Provision to cover such work prior to the DBE firm beginning work. Form C-63 can be obtained from the VDOT website at:  
<http://vdotforms.vdot.virginia.gov/>

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 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 Semi-final Payment**

Consultant must submit Form C-63 to the CRO sixty (60) days prior to date of final completion, set forth on the Baseline Schedule (as updated from time to time in accordance with the contract). The form must include each DBE firm used on the contract and the work performed by each DBE firm. The form shall include the actual dollar amount paid to each DBE firm for the accepted creditable work. The form shall be certified under penalty of perjury, or other applicable legal requirements, to be accurate and complete. Department will use this certification and other information available to determine applicable DBE credit allowed to date by Department and the extent to which the DBE firms were fully paid for that work. The Consultant acknowledges by the act of filing the form that the information is supplied to obtain payment regarding the contract as a federal participation contract. A letter of certification, signed by both the Consultant and appropriate DBE firms, will accompany the form, indicating the amount that remains to be paid to the DBE firm(s).

#### **J. Documentation Required for Final Payment**

In anticipation of final payment, Consultant shall submit a final Form C-63 marked "Final" to the CRO, within thirty (30) days of the anticipated date of final completion, as set forth on

the Baseline Schedule (as updated from time to time in accordance with the contract). The form must include each DBE firm used on the contract and the work performed by each DBE firm. The form shall include the actual dollar amount paid to each DBE firm for the creditable work. Department will use this form and other information available to determine if Consultant and DBE firms have satisfied the DBE goal and the extent to which credit was allowed. 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.

#### **K. 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 subcontractors within seven (7) days after receipt of payment from the Department, or shall notify the Department and subcontractor 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 calendar days and not less than every 60 calendar days. Sub-consultant invoices must be submitted within 60 calendar 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.

#### **L. 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.

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.

1. 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.
2. 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.

3. Proposed Substitution of Another Certified DBE

Upon termination of a DBE firm, Consultant shall use reasonable 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 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.

#### **M. 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.

#### **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 § 2.2 -3700.

# ATTACHMENT 5

## Form C-63- DBE and SWaM Payment Compliance Report

Form C-63  
Rev. 7-06-07

**COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF TRANSPORTATION  
DBE AND SWAM PAYMENT COMPLIANCE REPORT**

Page(s) \_\_\_\_\_ Of \_\_\_\_\_  
(1a) Report No. \_\_\_\_\_  
(1b) Period Ending \_\_\_\_\_

(2a) Federally Funded   
 (2b) State Funded   
 (2c) Order No. \_\_\_\_\_ (2d) Date of Execution \_\_\_\_\_  
 (2e) Contractor/Subcontractor \_\_\_\_\_  
 (2f) Route No. \_\_\_\_\_ (2g) Project No. \_\_\_\_\_ (2h) Contract Id. No. \_\_\_\_\_  
 (2i) FHWA No \_\_\_\_\_ (2j) District \_\_\_\_\_

(3) DBE and SWAM Firm Name, Certification No.	(4) Tax I.D. No.	(5) DBE and SWAM Category	(6) Allowable Credit of Contract or Agreement	(7) Allowable Credit		(8) Disallowed Credit (VDOT Use Only)		(9) Type of Work (Indicate Item Numbers & Work Description)
				(7a) This Quarter	(7b) To Date	(8a) This Quarter	(8b) To Date	
		DBE/MBE						
		DBE/MBE						
		DBE/MBE						
		DBE/MBE						
		DBE/MBE						
		DBE/MBE						
Total Dollar Amount Paid by Quarter and To Date by DBE and SWAM Category			DMBE					
			DWBE					
			SBE					
			WBE					
			MBE					

**All "amounts paid" to certified DBE and SWAM firms are to be reported and submitted by VDOT's quarterly submittal schedule. See instructions.**

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 \_\_\_\_\_

**VIRGINIA DEPARTMENT OF TRANSPORTATION  
INSTRUCTIONS FOR  
DBE/SWAM PAYMENT COMPLIANCE REPORT – C63**

The Prime Contractor is required to submit a DBE Payment Compliance Report and requested to submit payments made to Small, Women-owned, and Minority-owned (SWAM) Business Enterprises for the designated quarterly reporting period. All amounts paid to **certified** DBE and SWAM businesses are subject to monitoring and enforcement mechanisms. It is the responsibility of the prime contractor to provide evidence of DBE and SWAM 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, enter Report No. 2.
- 1b. **Period Ending**  
Indicate the reporting period based on the Reporting Schedule listed in these instructions.
- 2a. **Federally Funded**  
Indicate if contract is federally funded.
- 2b. **State Funded**  
Indicate if contract is state funded.
- 2c. **Order No.**  
Enter the "Call Order" number assigned to your project by VDOT
- 2d. **Date of Execution**  
Enter the date the contract was executed by VDOT.
- 2e. **Contractor/Subcontractor**  
Enter your company's name.
- 2f. **Route No.**  
Enter the highway route number shown in your contract.
- 2g. **Project No.**  
Enter the project number assigned to your project by VDOT.
- 2h. **Contract Id. No.**  
Enter the contract identification number assigned to your project by VDOT.
- 2i. **FHWA No.**  
Enter the FHWA number assigned to your project.
- 2j. **District**  
Enter the District where the project under contract is located.
3. **DBE and SWAM Firm Name, Certification No.**  
Enter all DBE/SWAM subcontractors utilized and their certification number.

4. **Tax I.D. No.**  
Indicate the Federal Employer Identification No.
  
5. **DBE and SWAM Category (As certified by the Virginia Department of Minority Business Enterprise)**  
Designate type of DBE/SWAM business:  
DBE: DMBE – Disadvantaged Minority-owned Business  
      DWBE – Disadvantaged Woman-owned Business  
  
SWAM: SBE – Small Business  
       MBE – Minority-Owned Business  
       WBE – Woman-Owned Business
  
6. **Allowable Credit of Contract or Agreement**  
Dollar value of contract or agreement to be performed by the DBE and SWAM during the contract or agreement which is allowable for participation credit.
  
- 7a. **Allowable Credit This Quarter**  
Dollar amount that can be credited for work performed in reporting quarter.
  
- 7b. **Allowable Credit To Date**  
Dollar amount that can be credited for work performed since work commenced.
  
- 8a. **Disallowed Credit This Quarter**  
Dollar amount of payment paid to DBE and SWAM that is NOT allowable for participation credit in reporting quarter.
  
- 8b. **Disallowed Credit To Date**  
Dollar amount of payment that is NOT allowable for participation credit since work commenced.
  
9. **Type of Work (Indicate Item Numbers)**  
State work item(s) performed and give description.

Effective July 1, 2007, All Form C-63s for a particular reporting period shall be submitted in an electronic format to the respective person in responsible charge in each District by the following dates of each calendar year.

#### REPORTING SCHEDULE

Quarter	Reporting Period	Date Due To Responsible VDOT Residency
1st	July 1 – September 30	Five (5) working days after the reporting period
2nd	October 1 – December 31	Five (5) working days after the reporting period
3rd	January 1 – March 31	Five (5) working days after the reporting period
4th	April 1 – June 30	Five (5) working days after the reporting period

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

## INSTRUCTIONS FOR SAVING FORM C-63 DATA IN PDF FORMAT

Please be advised that the information that you have placed on the Form C-63 (PDF format) will not save to the file when you close the file. **To save your information while using the PDF format, you must use the correct procedures outlined below.**

\*\* The following steps will describe the correct procedure for saving the data that you have placed on the PDF version of the Form C-63:

- Step #1**      CLICK ON "File"
- Step #2**      CLICK ON "Save A Copy"
- Step #3**      CLICK ON "Save A Blank Copy"
- Step #4**      ENTER your "Firm Name" as the File Name
- Step #5**      ENTER the "Order Number" (see line 2c on Form C-63)
- Step #6**      ENTER Underscore ( \_ )
- Step #7**      ENTER "Report Number" (see line 1a on Form C-63)
- Step #8**      ENTER "Quarter Ending" (see line 1b on Form C-63)
- Step #9**      ENTER the "Year" (last two digits only)
- Step #10**     ENTER ".pdf" as the appropriate file ending

### EXAMPLE:

Firm Name:	Vdot Construction Co.
Order No.:	A01
Report No.:	5
Quarter Ending:	1st Quarter (Jul.1 – Sept. 30)
Year:	07

Using the information in the example, your file would be saved as:  
**vdotA01\_050107.pdf**



## ATTACHMENT 7

### USDOT 1050.2 APPENDIX A

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 8

### USDOT 1050.2 APPENDIX E

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 non-discrimination statutes and authorities; including but not limited to:

#### **Pertinent Non-Discrimination 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, (42U.S.C. §460I), (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.P.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).