

2009 MANUAL
FOR THE
PROCUREMENT & MANAGEMENT
OF
PROFESSIONAL SERVICES

September 2009

Revision– July 1, 2016



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PREFACE



PREFACE

Purpose

This Manual has been prepared to promote uniformity in the method of procuring professional services by the Virginia Department of Transportation ("VDOT") as set forth by Title 2.2, Chapter 43, also known as *the Virginia Public Procurement Act* ("VPPA"), (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+2.2-4300>) and 23 CFR 172 – Procurement, Management and Administration of Engineering and Design Related Services Contracts (Appendix B)

<http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=3ac6dbed95ab03fccf14a2fb1bc63be8&rgn=div5&view=text&node=23:1.0.1.2.3&idno=23>

This Manual is intended to serve as VDOT's policy for the procurement, and management of professional services related to contracts for environmental, location, design and inspection work regarding highways and bridges by the Commonwealth Commissioner of Highways. It shall be used in conjunction with the Code of Virginia and applicable Federal/VDOT/Divisional regulations.

The Director of Consultant Procurement, as Chairperson of the Consultant Coordinating Committee (CCC), in conjunction with the committee, is responsible for establishing and submitting policy and procedures for the administration of professional services for approval by the VDOT administration. The CCC assists in the support and implementation of this responsibility, and consists of representatives from various VDOT disciplines.

Professional Responsibility - Consultants are responsible for conceiving and designing all types of engineering works and services and for providing the assurance that they are properly and economically constructed. The health, safety, and comfort of the public depend to a considerable extent upon how well the Consultant fulfills this obligation and thereby contributes to the enhancement of human welfare. The Consultant has, therefore, obligations as trustee to the public interest as well as to the private interests of VDOT. Successful fulfillment of these responsibilities requires complete candor, understanding, and communication on the part of the Consultant and VDOT so that mutual trust and respect can be established.

The Consultant is often responsible for planning that may commit VDOT to the expenditure of large sums of money. The benefits of the work to be constructed from this planning and its suitability for the project's intended function must often be accepted at face value by VDOT which may be unfamiliar with the technical aspects of such works. By their very nature, then, consultant services must be performed in a competent and efficient manner, on a highly ethical plane, and in an atmosphere of mutual trust between VDOT and the Consultant.

Consulting Engineering Services - "Consulting Engineering," as the term is used in the United States - and this Manual - includes not only consultation, advice, and expert

testimony, but also the furnishing of extensive and diversified services by engineering firms especially organized and maintained for that purpose. Such firms draw upon the combined talents of designers, technical analysts, specification writers, technicians, inspectors, surveyors, and other experienced engineers; they also utilize the expertise of practitioners and specialists in other fields.

48 CFR 2.101 defines architect-engineer as:

1. Professional services of an architectural or engineering nature, as defined by State law, if applicable, that are required to be performed or approved by a person licensed, registered, or certified to provide those services.
2. Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property: and
3. Those other professional services of an architectural or engineering nature, or incidental services, that members of the architecture and engineer professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operations and maintenance manuals, and other related services.

Professional Services may include:

- Bridge safety inspections
- Building architecture
- Construction engineering
- Construction engineering inspection
- Electrical engineering
- Environmental services
- Geotechnical services
- Hydrologic and hydraulic studies
- Landscape architecture
- Materials testing
- Mechanical engineering
- Preparation of operating and maintenance manuals for systems designed as a professional service
- Project design
- Project management of professional services
- Right of way engineering
- Roadway design
- Roadway lighting design
- Technical Specification writing
- Structural design
- Surveying
- Traffic investigations and studies

- Traffic signs and signals design/inspection
- Transportation planning
- Utility inspections
- Value engineering

VPPA (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+2.2-4301>) states "Professional Services" means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy, or professional engineering. Virginia law states that "Professional Engineer" means a person who is qualified to practice engineering by reason of his special knowledge and use of mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and experience, and whose competence has been attested by the Board through licensure as a professional engineer. The "practice of engineering" means any service wherein the principles and methods of engineering are applied to, but are not necessarily limited to, the following areas: consultation, investigation, evaluation, planning and design of public or private utilities, structures, machines, equipment, processes, transportation systems and work systems, including responsible administration of construction contracts. The "practice of engineering" does not include the service or maintenance of electrical or mechanical systems.

Distribution of the Manual

Copies of the Manual may be obtained from the Alternative Project Delivery (APD) Division or downloaded from VDOT's external website at <http://www.virginiadot.org/business/gpmmps.asp>. As revisions, deletions and additions become necessary; they will be incorporated into the Manual.

Roles and Responsibilities

- VDOT Project Manager – assigned to deliver the project or task assignment and manage associated consultant activities.
- Selection Committee Members – responsible for the selection of the consultant team using the process outlined in this manual and under the guidance of the Procurement Officer.
- Selection Committee Chairperson – a member of the Selection Committee with the added responsibilities of leading and coordinating committee activities to include preparation of consultant interview questions, selection decision narratives, etc.
- Procurement Officer – a representative of the Alternative Project Delivery (APD) Division with responsibility to administer the consultant procurement process as outlined in this manual.
- Lead Division Administrator – the Central Office Division Administrator (or their designee) responsible for approval to advertise the RFP, review and affirmation of the short list, and approval of the narrative statements and final selection.

- Deputy Chief Engineer – delegated by the Commissioner of Highways to execute professional service agreements.

CHAPTER 1

DETERMINATION
OF
NEED
FOR
OUTSIDE
SERVICES



CHAPTER 1 - DETERMINATION OF NEED FOR OUTSIDE SERVICES

1.1 Determination of Need

VDOT requires outside services to augment its professional staff and to carry out VDOT's goals and mission effectively.

Professional services are generally retained when: (1) a given project needs to be expedited, but the staff is assigned to other important projects and cannot be released without jeopardizing those projects; (2) the division's work program may be substantially larger than normal or anticipated for future years and it would serve no useful purpose to increase the size of the staff for a short period of time; or (3) the unusual character of a project requires specialized knowledge, expertise or experience beyond the everyday scope of VDOT staff.

Consulting, professional and individual services may also be used to obtain:

- An opinion, advice or skill which is needed only temporarily and which is not available within the agency or from another state agency.
- Outside expertise to provide a broader perspective or objective opinion on critical or sensitive issues.
- Benefit of developments in industry, university, or foundation research.
- The opinions of experts whose national or international prestige can contribute to the success of important projects.
- A deliverable that is an individually tailored application of a product already developed by an outside firm and is available more economically and expeditiously than a comparable product developed in-house.
- Performance of one-time tasks or activities of limited duration that do not warrant augmentation of permanent staff.
- Performance of one-time tasks or activities of limited duration that requires the augmentation of permanent staff in order to comply with deadlines imposed by third parties.

Each Division Administrator is responsible for determining when outside services are needed to accomplish their work objectives or to assist the districts. This is determined by analyzing the available manpower compared with projected work that has to be accomplished and the Six Year Improvement Program ("SYIP"), and/or the specialized nature of the work.

All procurement of professional services will be performed by the APD Division in the Central Office. Procurement of professional services by the districts is not authorized. Once the procurement has been completed, the Lead Division Administrator may transfer the contract over to district personnel to administer. District personnel administering professional service contracts must be knowledgeable of the requirements in this Manual and the VPPA. The division that the outside services are being procured for ("Lead Division") will provide oversight responsibilities for the contracts.

1.2 Determine Scope of Services

The Lead Division Administrator determines that outside services are needed. The VDOT Project Manager who is assigned to the project has the following responsibilities:

- Notify other divisions in writing that have a need to have services included in the contract.
- Request involved divisions or districts to assign a coordinator to assist in determining the scope of services needed, and to provide an estimate of man-hours and cost for consultants to perform the requested services.
- Conduct a scoping meeting to determine which work tasks should be included in the procurement. A recommendation should be developed at this meeting to determine who will serve on the Selection Committee. (Note: may not be warranted if sufficient information is provided to the other divisions for them to fully determine the scope of their involvement in the project). A scoping meeting is not warranted for Limited Services Term Contracts.
- Develop a comprehensive scope of services prior to the project advertisement. This is to ensure that all of the required services are included in the Request for Proposal (“RFP”) and to help prevent future supplemental agreements being needed.

If the Scope of Services for all phases or stages of the work cannot be clearly defined until some of the initial work is completed, then a multi-phase professional services contract may be used.

After the development of the comprehensive scope, the Lead Division will be determined. If the Lead Division cannot be determined at the scoping meeting, the Division Administrator, who initiated the procurement, shall make the decision.

Early consultation and notification shall be made with Federal Highway Administration (“FHWA”) of the procurement when any of the following instances apply:

- Project is defined as a “Project of Division Interest”; procurement must be coordinated with the Area Engineer in accordance with the projects’ Stewardship and Oversight Plan.
- Project with an estimated total cost of \$500,000,000 or more. Those projects are designated by FHWA as “Projects of Corporate Interest” and need to be coordinated with the Major Projects Engineer in accordance with the projects’ Stewardship and Oversight Plan.
- When the consultants are to act in a management role for VDOT on federally funded projects.

1.3 Estimated Cost of Services

The VDOT Project Manager shall request each involved division to prepare and submit a planning estimate (*) of cost for the project or assignment. The planning estimate is required from the involved division regardless of how the division chooses to

accomplish their work. The estimated cost and man-hours for in-house reviews, instruction and coordination meetings, etc., should also be provided to the Procurement Officer. The VDOT Project Manager should determine the total Preliminary Engineering, Right of Way, and Construction cost based on the information received from each division involved.

* Planning estimates of the preliminary engineering, right of way and construction cost may be developed without the full knowledge of the final project/assignment scope, but are based on the best information available, including evaluation of cost for similar work previously performed.

The VDOT Project Manager will then notify the funding division of the amount of the estimate. A comparison shall be made with the figures in the SYIP. If an adjustment in the budget cost needs to be made, approval from the appropriate funding division must be obtained in writing and retained in the project file before proceeding. The VDOT Project Manager will verify availability of funding. If additional funds are not approved, the determination of the project must be reviewed with the Lead Division's Chief. (Some divisions administer special funds, such as federal State Planning and Research funds, which do not require this procedure to be followed). A planning estimate is not required for Limited Services Term Contracts; however, a determination of the limiting fee should be based on the projected workload.

For project specific contracts, notify the funding division in writing and request written verification (Form IID-4C) that funding is available.

1.4 Approvals

1.4.1 Approval of Selection Committee & Selection Criteria

The VDOT Project Manager will submit the CP-1 form to the Alternative Project Delivery Division. The assigned Procurement Officer will coordinate with the VDOT Project Manager and the Lead Division Administrator requesting approval of the following:

- Selection Committee, which shall consist of the following:
 - All members of the Selection Committee shall be VDOT employees. The Chairperson should have served on a Selection Committee previously and possess expertise in the field of services being procured. If the contract is for services requiring licenses by the Department of Professional and Occupational Regulations (DPOR), then the Chairperson should hold an appropriate license. Other voting members should be qualified and experienced senior level personnel in the similar types of services. All members of the Selection Committee shall have received consultant selection committee training prior to performing their duties in the procurement process and have certified this fact by signing the Certification of Non-Conflict of Interest and Training form.
 - The Selection Committee shall consist of three members unless additional members are required based upon the scope of the RFP. Furthermore, the

- committee shall have an odd number of members to eliminate possible tie votes.
- One member shall be from the Central Office Lead Division; however, no more than two members of the Selection Committee will be from the Central Office Lead Division or the same district section.
 - Additional members from the respective discipline depending on the scope of the work and the number of divisions involved.
 - Persons who are qualified to evaluate the service being provided and are thoroughly familiar with the objectives of the project.
 - Proposed selection criteria.
 - Evaluation categories and weighted factors may, with the approval of the Lead Division Administrator, be adjusted to reflect the important specifics involved in the proposed procurement.
 - The proposed procurement schedule.
 - The project charge.
 - Permission to proceed with the procurement.

The Lead Division Administrator will approve the above items and name a Chairperson for the Selection Committee (“Chairperson”) by way of the CP-1 form

CHAPTER 2

RFP and
ADVERTISING
PROCEDURES



CHAPTER 2 – RFP and ADVERTISING PROCEDURES

2.1 RFP Development

The written RFP is issued to describe in general terms that which is being procured. The RFP must specify and list specific requirements for certain necessary information to be addressed by the firms that will be used in evaluating the proposals. Some of this information includes location of where the work will be performed (if applicable and necessary), key personnel that will be assigned to the project, experience in performing similar work, special qualifications, organizational structure, Disadvantaged Business Enterprises/Small, Women and Minority Owned Businesses (“DBE/SWaM”) percent of work (if applicable), firm data (name, address, DBE/SWaM status, age and annual gross receipts), ability to meet the time schedule, current workload with VDOT, and other requirements of the RFP.

It also points out VDOT requirements regarding professional registration, CII/SSI, Criminal History Background Checks (“CHBC”), debarment, the employment of illegal aliens, the method of payment for the contract (See Section 5.3), and submittal requirements.

The Lead Division shall coordinate with the Procurement Officer to prepare a Request for Proposals using the template RFP.

The RFP should include the following:

- A brief narrative statement concerning the project’s location shall be listed.
- Scope of services required.
- Estimated project cost (use contract value for Limited Services Term Contracts).
- Type of contract proposed (Limited Services Term or Project Specific Contracts).
 - Select Type of Compensation (see Section 5.3).
- If multiple awards are desired, then the RFP shall state that multiple contracts may be awarded along with the anticipated number of awards for the scope of services being advertised. The multiple awards contracts are best suited for the statewide Limited Services Term Contracts and cannot be used on project specific contracts. In order to establish consistency in awarding multiple contracts and task order assignments to selected firms in a fair and equitable manner, as set forth in Section 4.8 shall be used.
- When completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases, multi-phase professional services contracts satisfactory and advantageous to VDOT for environmental, location, design and inspection work regarding highways and bridges may be negotiated and awarded based on a fair and reasonable price for the first phase only. If a multi-phase professional services contract is used, it shall clearly be stated in the RFP.
- Evaluation criteria.
- Consultant Selection Score Sheets (located in the template RFP).
 - Only one Selection Score Sheet is to be included in the RFP.

- Select pertinent DBE/SWaM requirements (listed in Appendix C).
- Specify present workload limits to match the size of project (i.e. a small project may warrant lowering or raising the present workload limits to enable small consultants an opportunity for competing).
- When multiple divisions are involved in procurement, the experience categories may be separated into different items by division and each assigned a weight according to its relative importance.
- Estimated start and completion dates.
- A project location map.
- Project scoping reports.
- Appropriate statements shall be made concerning any specialized qualifications and limitations on eligibility for consideration.
- If there is sufficient justification for the firm's location to be a major factor in the selection process, it must be clearly stated in the RFP (see Section 3.1.7).
- Qualifications or performance data required from consultant firms shall be described.
- The name of the responsible Procurement Officer shall be shown complete with the full address, telephone and fax number.

The RFP will not request that consultants furnish estimates of man-hours or cost for services.

A copy of the draft RFP for project specific contracts shall be sent to the Civil Rights Division ("CRD") and all other divisions involved for review and approval. Once the CRD and all other divisions have reviewed and approved the draft RFP and changes have been made accordingly, a quality assurance check must be performed by the Lead Division before advertisement to ensure the final scope is clear and represents the needs of the division(s). The final scope shall be approved by the Lead Division Administrator.

2.2 Advertisements and Notifications

VDOT shall make a public announcement in a uniform and consistent manner on each occasion when professional services are required on a proposed project. Multiple consultant selections from a single advertisement shall not be made except for Limited Services Term Contracts. For these contracts, one advertisement may be used with separate EOI required for each Limited Services Term Contract.

After the appropriate approvals to use outside professional services have been obtained, the Procurement Officer should draft the advertisement for publication in newspapers/websites.

2.2.1 Contents of Advertisements

Advertisements should be concise and consist of a general description of the type of work, project location, information on how to obtain a copy of the solicitation, whether or not a pre-proposal conference will be held, and a statement on how to submit

responses and when they are due. They should exclude detailed job requirements and proposal preparation requirements that are included in the RFP.

Advertisement should, at the minimum, contain the following information:

- Name and address of the Agency.
- Title, brief description and location of the project.
- Estimated total project construction cost (if applicable).
- Brief scope of services required.
- Brief description of any special requirements or unique features.
- Any requirements for non-disclosure agreements or CHBCs. Coordinate with the Operations and Security Division (“OSD”). See Sections 5.8 and 7.9.).
- Completion date.
- Instructions on how the RFP may be obtained.
- Due date and time for submitting an EOI.
- If a pre-proposal conference, site visit, or project showing will be conducted, list the date and time.
- The RFP for this project may be accessed through VDOT's Internet site: <http://viriniadot.gov/business/default.asp>.
- Telephone access to the hearing or speech impaired will be provided by the Telecommunications Relay Service (TRS). TRS enables specially trained communication assistants to act as confidential “bridges” between hearing users of standard telephones and text telephone (TTY) users with hearing or speech impairments. Communication Assistants of the TRS are specially trained to translate and relay your conversation. This allows people with hearing or speech impairments to communicate with any VDOT employee. TRS is reached in Virginia by dialing 711 and nationwide by dialing 1-888-835-5322.
- VDOT assures compliance with Title VI requirements of nondiscrimination in all activities pursuant to this advertisement.

2.2.2 Publications

Except in unusual circumstances, the public notice of the RFP shall be published not less than 14 calendar days from the date of issuance of the RFP. To the extent practicable the publications referenced below need to be coordinated so as to be published on the same day.

The advertisement, along with the RFP, should be published as follows:

- VDOT Web Site

The RFP will be posted on VDOT web site. This should be done prior to the newspaper or Electronic Virginia (“eVA”) advertisement being published. The RFP should be prepared in electronic format using Microsoft Word. Location maps are to be scanned and included in the RFP.

- Newspaper Notification

The RFP will be published in newspapers as follows:

- A newspaper of general circulation in the area in which the contract is to be performed.
- A minority owned newspaper in those areas, when available.
- Special projects may be advertised in the Washington Post, and sometimes trade publications, depending on the scope of services.

Written evidence of the newspaper advertisement shall be included in the procurement file.

- eVA Procurement

All professional services procurement will be advertised on eVA. The eVA is an electronic procurement site provided by the Virginia Department of General Services (“DGS”), Division of Purchases and Supplies (“DPS”), (<http://eva.virginia.gov>) to notify the general public of the Commonwealth of Virginia's intent to purchase supplies or services. The eVA Internet site allows the RFP to be submitted electronically. Emergency and sole source procurements are exempt from advertisement in the eVA; however, such procurements over \$50,000 require award notices to be posted on eVA. Written evidence of the eVA advertisement shall be included in the procurement file.

The eVA site is one of the consultants' primary means of finding out what work VDOT is advertising. Unless waived, VDOT is prohibited from procuring services from consultants not registered on eVA. Therefore, all consultant firms desiring to perform work for VDOT should be encouraged to subscribe to eVA. VDOT and the consultant will be charged an eVA registration and transaction fee in accordance with the eVA fee schedule published by DGS at (<http://eva.virginia.gov>).

2.2.3 RFP Inquiries

Consultants interested in providing the requested services may download the RFP from eVA or VDOT's web site, or request, by telephone, in writing, or in person, an RFP from the contact person listed in the advertisement.

Consultants choosing to respond to the advertisement may contact the Procurement Officer as named in the RFP, to receive additional information. If any other VDOT staff is contacted, they shall refer the consultant to the procurement manager. The Procurement Officer shall only discuss or give information of a general nature so that no consultant will have a competitive advantage over another.

Project specific and other relevant data will not be made available prior to the short list. Prior to the technical presentation, if any relevant data for the project that is necessary

for the preparation of the consultant's presentation becomes available, an opportunity for the consultants to view this information should be made available. Plans and data regarding the project should be placed at one location for the consultant to independently review without input from VDOT personnel. Information should not be provided to one consultant that is not available to all. Usually, such visitations will supplant a formal project showing. However, VDOT must ensure that each consultant is treated in a uniformly fair manner with equal access to information and agency personnel.

In order to be short listed, a consultant only needs to have a general idea of the type of expertise required for the project. Once short listed, the consultants will be provided with additional project data in order to prepare for their presentations/interviews.

2.3 Project Showing

A project showing may be necessary for unusually complex projects. If held, the project showing should only occur after the short list notification. The purpose of the project showing is to help individuals and firms understand the requirements fully and to supply more detail where needed. If a project showing is to be held, it should be indicated in the public notices and in the RFP and it should be indicated whether attendance is mandatory or optional. The project showing should be no sooner than ten (10) calendar days after the public notices are published in order to provide time for the consultants to become aware of the showing and to plan to attend. Representatives from all involved divisions should attend the meeting. An attendance sheet of persons attending the meeting will be kept in the project file. If Critical Infrastructure Information/Sensitive Security Information ("CII/SSI") will be available at the project showing or visiting of Critical Infrastructure ("CI") sites will be required, all attendees will be required to sign non-disclosure agreements (see Sections 5.8 and 7.9).

2.4 Receipt of EOIs

Public openings of the EOIs are not required. The EOIs sent by consultants in response to an RFP are to be received by APD Division, as indicated in the RFP. The Procurement Officer will record a date stamp of the EOIs and keep as a part of the procurement record. No acknowledgment of receipt of the EOI will be sent to the consultant unless requested by the firm. The cutoff time for receipt of EOIs is 2:00 p.m., prevailing local time, on the designated date. APD will reject late submittals from consultants with a letter stating the date and time the submittal was received and that it cannot be considered.

After the closing date, the Procurement Officer will check in all EOI's.

Prior to distributing the EOIs to the Selection Committee members, the Procurement Officer shall perform a responsiveness check of each EOI to verify that all required information per the RFP is provided including registration and licensing requirements of governmental agencies for businesses, individuals and professionals such as the State

Corporation Commission (SCC), Department of Professional, and Occupational Regulation's (DPOR), and any other agencies.

If all required information has not been submitted, the Procurement Officer shall further review its applicability as related to RFP requirements. If the EOI is declared nonresponsive, the Procurement Officer shall notify the consultant in writing.

CHAPTER 3

SELECTION
PROCEDURE



CHAPTER 3 - SELECTION PROCEDURE

VDOT uses "competitive negotiation" to select consultants. Competitive negotiation is a selection method defined in the VPPA §2.2-4300. VDOT also adheres to the Brooks Act (Public Law 92-582), also known as Qualifications Based Selection. The Brooks Act establishes a qualifications-based selection process, in which contracts for architects/engineers are negotiated on the basis of demonstrated competence and qualification for the type of professional services required at a fair and reasonable price; price quotations are not a consideration in the selection process.

3.1 Selection Factors

Many factors must be considered by the Selection Committee in determining the most appropriate and qualified consultant for a particular project. Among these are:

3.1.1 Administrative Requirements

.1 The firm must be of a high ethical and professional standing and employees in responsible charge in the firm must be registered professional engineers in their state of residence and also registered professional engineers in the Commonwealth of Virginia. The reputation and character of a consultant can best be determined by inquiries with previous clients and other references.

.2 The consultants businesses must also be registered to do business in Virginia. A listing of professional engineers and professional firms in Virginia may be accessed on the Department of Professional and Occupational Regulation's Internet website at <http://www.dpor.virginia.gov/LicenseLookup/> .The State Corporation Commission maintains an Internet website (<https://sccefi le.scc.virginia.gov/>)on which you may verify a firm's corporate registration.

.3 Prior to submitting an Expression of Interest (EOI) in response to a Request for Proposals (RFP), each consultant shall conduct an internal review of its current affiliations, regarding firm and/or personnel involvement relative to the anticipated procurement, and shall require its team members to identify such potential conflicts of interest (COI) or a real or perceived competitive advantage.

If a potential COI or competitive advantage is identified, the consultant shall submit in writing the pertinent information to the Procurement Officer so that a determination can be made to the extent of the conflict or competitive advantage. VDOT, in its sole discretion, will make a determination relative to potential COI (including a real or perceived competitive advantage), and its ability to mitigate such a conflict. If VDOT determines that the potential COI cannot be mitigated, the firm determined to have the COI shall not be allowed to participate as a team member for the proposed procurement.

Failure to abide by VDOT's determination in this matter may result in a proposal being declared nonresponsive.

3.1.2 *Team Experience*

All relevant experience must be considered, not just prior VDOT experience. Prior VDOT experience is not a criterion for getting work with VDOT.

- .1 Experience of the consultant in performing specific services related to the procurement.
- .2 Specialized experience, and design, and technical competence of the firm, joint venture, or association, regarding the types of services required.
- .3 Experiences of the project manager and key staff engineers proposed for the project.
- .4 The education, training and experience of the consultant's professional and technical staff with respect to the magnitude and the requirements of the project.
- .5 The consultant's firm is adequately staffed and qualified to perform the work under consideration.
- .6 The extent of in-house capabilities of the consultant to perform specialized services required by the project.

- .1 Each consultant shall be capable of performing all necessary tasks of his assignment with his own organization and associated consultants.

- .2 Should the consultant require the use of outside specialized services, such services should be indicated in the EOI.

The consultant may utilize, with prior written consent by VDOT, other firms to perform supplemental specialized services such as aerial and ground surveys, obtaining geologic borings, making exhibits and other work or services.

3.1.3 *Understanding of Scope*

- .1 Consultant's understanding of the project requirements.
- .2 Knowledge and productivity in the technical area(s) relevant to the particular engagement. These skills should be derived both from formal education and training and from successful experience in applying the required technical skills on prior similar projects for similar clients.
- .3 Evidence that the individuals have already produced solutions and results that are practical, realistic and useful to clients as they apply or relate to the specific needs of VDOT.

.4 The consultant's approach to the planning, organizing and managing a project effort, including communication procedures, approach to problem solving, data gathering methods, evaluation techniques and similar factors.

.5 Sensitivity to community involvement.

.6 Familiarity of the consultant with applicable federal, state and local regulations, criteria, standards and procedures with respect to planning, design and approval of the project.

3.1.4 Quality of workmanship and performance of the consultant

This may be determined by a review of sample plans and documents, previous work, inquiries with previous clients, and review of VDOT's Consultant Performance Reports.

.1 Past performance on contracts with respect to such factors as control of costs, coordination and quality of work, and ability to meet schedules. How will cost and quality control be implemented and how will different disciplines/firms be coordinated on our project?

.2 Past performance on prior work with the Department. (See Appendix D).

3.1.5 Workload

.1 The workload of the consultant with all clients which may influence project schedules.

.2 Present Workload with VDOT. The volume of ongoing work previously awarded to the firm by VDOT, with the object of effectuating an equitable distribution of contracts among qualified firms and of assuring that the interest of the public in having available a substantial number of qualified firms is protected.

3.1.6 Planned DBE/SWaM Involvement

Level of planned DBE/SWaM utilization, if applicable. (See Appendix C).

3.1.7 Organization Capabilities

.1 Management Ability - Clear responsibility should be vested in one individual, the project manager, for each project that the team handles. The Department must be assured that this person's attention and participation will actually be devoted to the project. This assurance should be documented in the EOI.

.2 Team organization and previous experience working as a team.

.3 Location of where work will be performed. (If relevant to the type of services being provided). If there is sufficient justification for location to be a major factor in

the selection process, it must be clearly stated in the RFP that location is a major consideration. The fact that a firm is not located in state or in the project area is not a legitimate reason for not selecting them. There must be a legitimate reason to use this selection criterion, not just personal preference.

.4 Facilities and equipment owned by the consultant, including computer capability, reproduction and communication equipment, laboratory and testing equipment, or other specialized equipment applicable to the project under consideration.

.5 Financial standing of the consultant. This may be determined by requesting a certified financial statement. (FAR Audit)

3.1.8 Ability to Meet Time Schedule

Whether the consultant can complete the work within VDOT's established schedule.

3.2 Present Workload Computation

The present workload for a consultant should be computed by including all work the consultant has with VDOT in each of the following disciplines: Professional Engineering, Landscape Architecture, Land Surveying, Architecture, Accounting, Actuarial Services, Law, and any other discipline allowed by law.

Services being provided under term survey and utility designating/locating contracts, inspection contracts, and operation and maintenance contracts will not be counted against preliminary engineering dollar amounts when a firm is submitting on preliminary engineering work.

Only those disciplines listed above and applicable to the scope of services included in the procurement shall be scored. For example, if procuring an engineering service, only count outstanding engineering workload for that firm. The disciplines have been broken into the following categories: A. term survey and utility designating/locating contracts, B. preliminary engineering contracts, C. construction engineering and inspection contracts, D. operation and maintenance contracts, and E. bridge safety inspection contracts.

Unless there are obvious errors or omissions, the present workload with the Department and contracts currently being negotiated will be accepted as submitted by the consultant in the EOI and are to be entered in ink on the score sheet by each committee member. Pending work, for which the consultant has been selected but no proposal has been submitted, is the greater of the consultant's estimate for performing the services or the Department's planning estimate.

The RFP closing date will be the date of record for the outstanding dollar balance. For short list recheck, the date will be the day of the final short list evaluation approval.

All of the prime's outstanding dollar balances for current and pending contracts (excluding their sub's contract dollar amounts) should be reported under the prime consultant's workload.

All of the proposed subconsultant's outstanding dollar balances for current and pending contracts should be reported under the subconsultant's workload.

For Limited Services Term Contracts, include the total amount of all task orders executed or under negotiation for the current year of the contract.

The outstanding dollar balances of all primes and subs that have been certified as a DBE/SWaM by the Department of Small Business and Supplier Diversity (DSBSD) or the Metropolitan Washington Airports Authority ("MWAA") up to \$4,000,000 will not be counted. Balances above \$4,000,000 will be counted. When DBE/SWaM firms graduate from the program, their workload incurred while a DBE/SWaM will be exempted for the next three years. Any workload obtained after graduating from the program will be counted.

Any firm claiming that some of its current workload has been exempted must submit a letter from the appropriate Chief or the Lead Division Administrator authorizing the exemption. The exemption letters will be retained in the project file. If a firm has changed its name and is still working on VDOT projects acquired under the previous firm name, this workload will be counted as workload for the new firm. If firms merge and create a new firm, all workload acquired under the previous firm names will be counted as workload for the new firm.

See the Present Workload with VDOT's worksheet in the RFP and the Sample of Determination of Present Workload below.

SAMPLE OF DETERMINATION OF PRESENT WORKLOAD

Prime consultant has one present Category B professional contract with VDOT.

Amount of contract/Total value of all task orders:		\$1,400,000
Less subconsultant's amount of this contract:		<u>-180,000</u>
	Subtotal	\$1,220,000
Less prime's approved payment as of RFP closing date:		<u>-500,000</u>
	Subtotal	\$720,000
Approved pending supplement:		<u>+25,000</u>
	Prime's Total	\$745,000

Also, the prime consultant has a Category A district survey contract with an upper limit of \$500,000. This is not included in the total because the contract is for services in a different category.

The DBE subconsultant has a Category B professional contract for \$500,000. Since the firm is a certified DBE, none of this workload is counted.

Another subconsultant with the prime, which is not a DBE or SWaM, has a Category B professional contract and has been selected with a different prime on another project.

Outstanding balance including all supplements:	\$87,000
Under contract negotiation with another prime:	<u>+30,000</u>
Sub's Total	\$117,000
Prime's Total	<u>+745,000</u>
Team's Grand Total	\$862,000

3.3 Distribution of EOIs

After the project has been advertised, Selection Committee members shall not individually discuss the project in detail with consultants.

The Procurement Officer will perform the following:

- Compile the EOI's and score sheets in the procurement team site for each Selection Committee member.
- Ensure the EOIs are consecutively numbered, and the score sheets have the corresponding number.
- Retain the date and timed stamped records.
- Prior to the EOI's being made available, each member of the Selection Committee must complete the Consultant Selection Committee Training. The required training materials are available on the VDOT University and are titled "Consultant Procurement Overview Training" and "Just in Time Consultant Procurement Training".
- Prior to the EOI's being made available to the Selection Committee, each member must complete the Conflict of Interest Form for Selection Committee Members Only, located on the APD Division web site on Inside VDOT.
- Insure that the Selection Committee members have reviewed the names of all consultants and subconsultants. After they have reviewed the names, they are required to submit the Certification of Non-Conflict of Interest and Training form and to the Procurement Officer. If there is any conflict of interest, the committee member will be removed and another member appointed. The Procurement Officer will assure that this is done and the action recorded for the procurement file.
- Provide an explanation of the RFP scope of services that the consultants have been asked to respond to. Explain any special consultant requirements.

3.4 Attendees at Selection Committee Meetings

All Selection Committee members shall be VDOT employees. All persons attending Selection Committee meetings are to be reminded that the meetings are confidential and they are not allowed to discuss anything that happens at the meetings with anyone. Violators may be banned from future Selection Committee meetings. All persons

planning to attend the technical presentations must attend all presentations to avoid any allegations of unequal treatment by the offerors.

The following are roles and restrictions for attendees not on the Selection Committee:

- Procurement Officer

The Procurement Officer will provide oversight in a non-voting capacity on the Selection Committee and during interviews/technical presentations.

- Civil Rights Representative

The role of the Civil Rights representative is a non-voting observer of the procurement process and is responsible for performing a compliance review of the procurement. The CRD shall be notified and invited to the short list meeting and interviews/technical presentations. Any concerns of the CRD representative shall be brought to the attention of the Chief Engineer before panel selections are finalized.

- City/County Representative

It is acceptable for a representative in the employment of a city or county to attend the interviews as a non-voting participant for projects in their jurisdiction.

- General Public

There is no requirement that the general public be admitted to Selection Committee meetings and it should not be allowed.

- Supervisors

Supervisors not on the Selection Committee may attend Selection Committee meetings for the purpose of evaluating their personnel in the consultant procurement area. However, they may not provide any comments or input into the selection process or scoring and may not be present after the interviews for the final deliberations and ranking of the consultants.

- Technical Experts

Non-voting technical experts from VDOT may attend the Selection Committee meetings to offer their comments regarding a firm's qualifications in a special field of expertise.

When projects involve many disciplines, there may be non-voting members that assist the committee in evaluating the consultant's capabilities in a particular specialty area.

- VDOT Oversight

A representative of the lead division may attend selection committee meetings for the purpose of providing the status of recent awards of work in accordance with the process outlined in Section 3.9. This individual may not provide any comments or input into the selection process or scoring.

An additional representative of the APD Division may attend the selection committee meetings for the purpose of Quality Assurance. This individual may not provide any comments or input into the scoring.

During Technical Presentations, only the Selection Committee members may ask questions directly to the consultants. Questions from non-voting observers and technical experts must be submitted in writing for the Selection Committee to ask. However, these questions must be asked at all of the consultant interviews, not just one.

After the Technical Presentations, technical experts may be allowed to offer comments or technical expertise regarding the qualifications of the consultants. Technical experts must attend every interview or they may not make comments regarding any of the firms. Only the Selection Committee members, the CRD, representative, representatives of the Lead Division, and representatives of the APD Division may be present during the final deliberations and ranking of the consultants.

3.5 Short List Meeting

Prior to the short list meeting, the Selection Committee shall notify the Procurement Officer regarding the discovery of consultant personnel proposed in the EOI that are VDOT employees at the time of EOI submittal. The Procurement Officer shall verify and validate the information and declare the EOI non-responsive if information is found to be correct.

The Selection Committee shall notify the Procurement Officer regarding the discovery of more than one proposal for the same work submitted from an individual, partnership, corporation, or joint venture under the same or different name, which are considered affiliates. The term affiliate as used herein shall conform to the definition in the VDOT Road and Bridge Specifications. Therefore, all EOI received from these entities shall be disqualified and returned.

Firms submitting an Expression of Interest as a Prime consultant shall not serve as a subconsultant on any other team submitting a proposal in response to the RFP.

A Short List Meeting with the Selection Committee Members, Civil Rights representative, and Procurement Officer shall be held to combine the individual scores and determine the weighted score for each EOI.

The following will take place during the Short List Meeting:

- The Procurement Officer is required to bring the electronic spreadsheet to the meeting. The meeting should not commence without the electronic spreadsheet.
- Selection Committee members will meet together to compile short list scores. In cases where this is not feasible, such as a district representative having legitimate business reasons that prevent him/her from being able to attend a meeting, the score sheets and certification of that individual may be submitted to the Procurement Officer prior to the start of the meeting. The Procurement Officer will present the absent member's scores at the meeting. The absent member must be available to be contacted by telephone by the Selection Committee during the committee's meeting. This is necessary in case: questions arise regarding the absent members scores, a review of the Consultant Performance Reports reveals low scores, or the consultant's workload is not verified.
- Each EOI shall be independently evaluated, the score sheet completed in ink, and dated by each Selection Committee member prior to the meeting. If a change must be made to a score, the original score will be lined through in ink and the new score entered and initialed in ink. The committee member should provide comments in writing as to why the change was necessary for procurement records.
- A recheck on present workload computation should be made effective the day the meeting. The Selection Committee, using the Cardinal Financial Management System ("Cardinal") (Chapter 6) and any other resources within VDOT, will verify the dollar amount of present workload with the Department for the apparent short listed consultants and subconsultants. Only the short listed teams will have their outstanding workload verified. To facilitate this process, the task of workload verification may be performed by support staff with the results and documentation given to the Chairperson for use by all members in scoring.
- VDOT's web site should be checked to see if any of the firms has recently been selected for another project. If the present workload has not been reported correctly, the ranking of the EOI's may change. This could result in a team being dropped from the short list and replaced by another. (The committee may elect to verify workload after the review of the Consultant Performance Reports).
- The Selection Committee Members will rank EOI's in accordance with their numerical weighted score. A determination will be made if further data is needed to make the final ranking of consultants.
- The short list will not be finalized until the Procurement Officer has all original ink certifications and score sheets.
- The scores will be combined, by the Procurement Officer on an electronic spreadsheet during this meeting.
- The Procurement Officer will ensure that any changes in scoring are explained, initialed, and dated in ink by the Committee member(s) whose score is changed.
- The Selection Committee Members will determine how many teams are to participate in the interview/technical presentation phase, which is dictated for state and federal funded projects as follows:

- On State funded projects, the Code of Virginia requires two (2) or more teams.
 - On Federally funded projects, Federal Regulations, Public Law 92-572, requires three (3) or more teams.
- If the top scores are relatively close, then more teams may be invited to make presentations.
 - After this meeting, the Procurement Officer will provide a printed copy of the combined score sheet for each EOI for verification by the Chairperson.
 - The Chairperson will submit the verified combined score sheet(s) to the Procurement Officer for certification and a copy will be placed in the procurement file. The Procurement Officer will ensure that a Certification of Consultant Evaluation is approved by each Selection Committee member after proposals are reviewed and scored.
 - The Procurement Officer will certify that all scoring was done properly. The Certification statement will verify that individual scores have been properly transferred to the combined score sheet and that the scores indicated are those of the scorer and not based on outside influence.
 - A copy of the individual and combined score sheets, workload documentation, and Certification Statements on all teams will be retained in the project file by the Procurement Officer.
 - The Certification Regarding Debarment forms of the apparent short listed consultants and subconsultants should be reviewed by using the federal debarment list on the following Internet site: <https://www.sam.gov/portal/SAM/#1>
A copy of this list may be printed prior to the meeting. If a consultant or subconsultant has been debarred, the team should be removed from the short list and the reason noted in ink on their scoresheet.
 - The Selection Committee will then access the Consultant Performance Library and review the reports (see Appendix D) for all prime consultants and subconsultants that are on the apparent short list. Past performance scores for the last three years will be considered. Any scores over three years old which have not been removed from the data base will not be considered. If a firm is new to VDOT or has no performance reports on file, the committee will check some of the references shown in the EOI and document their finding as part of the file.

3.6 Short List Certification and Notification

The Procurement Officer will prepare a dated short list summary sheet listing all consultants (including subconsultants and identifying DBEs) and their scores in the order they ranked. This summary sheet will be transmitted to the Lead Division Administrator by email stating which firms have been selected for an interview/technical presentation. The short list will be affirmed by the Lead Division Administrator and returned to the Procurement Officer.

Once the short list is affirmed, the Selection Committee proceeds with the interviews without requiring the approval of anyone else. Division Administrators are not to have any influence on the short list process.

A list of the short listed firms, arranged in alphabetical order, will be posted on VDOT's web site.

Short listed firms that are selected for interviews/technical presentations will be notified in writing by the Procurement Officer. This notification will also provide information on any detail project briefing meetings that may be required for this contract. This notification letter will include the schedule of their interview/technical presentation and points that the Selection Committee expects to be covered at the interviews/technical presentations.

Typical points for consultant interviews/technical presentations are:

- Understanding of the scope of services
- Approach or innovative solutions to the design or problem
- Tentative work elements
- Work sequence and schedules
- Past experience on projects bearing on the subject project or study
- Identification of person in responsible charge of the work
- Projected office workload and staff availability
- Personnel and time schedules
- Location of offices where the work will be done (if relevant)
- Proposed subconsultants, their qualifications and specific work assignments
- Unique qualifications or work methodology
- Track record for bringing in projects on time and within budget
- Quality control
- Team organization and who will perform each work element
- Public involvement capabilities
- Computer software and equipment
- Budget and cost control methods

3.7 Project Briefing Meeting

If a project briefing meeting is held, all short listed teams are to attend at the same time and are to be given the same information regarding the project. This ensures that all teams are on an equal footing. The VDOT Project Manager will describe the project and explain the services to be provided by the selected team. The Chairperson will provide for review any relevant existing information available to the consultants (geotechnical, road plans, surveys, etc.). The consultants must ask any questions they have at this meeting. After the meeting, no consultant should contact VDOT for any additional information.

The project briefing meeting ensures that all short listed teams have a common understanding of the project, clears up any ambiguities, and resolves any concerns the consultants may have with the scope of services or contractual requirements. Representatives from the other divisions involved are requested to attend as necessary. It is not always possible to answer all questions on the spot and a written response will be provided in such cases. Any question answered or any point clarified from the project briefing meeting will be sent to all firms. This is intended to prevent one firm from learning new information that is not available to the other firms.

On simple projects or where time is critical, project briefing meetings may not be necessary. The required information may be provided to the consultant with their notice of being short listed. In this case, answers to questions raised by any consultant must be answered in writing with a copy sent to all the short listed firms.

3.8 Interview/Technical Presentation Phase

The Selection Committee may elect to compile a list of questions or points of discussion for the consultant interviews/technical presentations concerning the project assignment and the firm's qualifications. If used, questions should be solicited from divisions which have work represented and from data contained in the EOIs and Consultant Performance Reports. The Chairperson will receive, combine, and distribute questions for technical interviews. The question sheet will be supplied to each Selection Committee member. Although the complete answers to these questions will not be recorded, notes will be taken by the Selection Committee members during interviews which summarize the answers. A copy of this material will be retained in the project file.

If a Selection Committee member is late or absent for a presentation, the following options will be considered:

- Delay the start of the presentations while attempting to contact the absent member.
- Allow the presentations to proceed with only two committee members, unless the procurement involves multiple disciplines, in which case one of the two present committee members must not be from the division procuring the services. If the committee is composed of more than three (3) members, no more than one member may be absent. (If this option is exercised, and the absent committee member arrives late, that member cannot vote or participate in the selection process for any of the firms. All voting members must be present for all presentations.)
- At the discretion of the Chairperson, in consultation with the Procurement Officer, cancel the presentation(s) and reschedule at another time.

Consultants usually only have a short time (1-2 weeks) to prepare for their presentations. When the interviews/technical presentations are held, the teams are allowed appropriate time (usually 30-45 minutes) to make a presentation of their qualifications as well as their personnel's qualifications (as given in the EOI), hand out supplemental EOI information, give specific personnel manning assignments, present

project concepts, and any comments they feel will be valuable in evaluating their team, including a brief description of their approach to providing the needed services. Consultants should verify their team members. If there have been any personnel changes since the EOI was prepared, this may be taken into consideration in the final ranking. Consultants should bring their subconsultants to interviews so they may present their qualifications and respond to questions. Previously requested points of discussion and pre-compiled questions related to the project will be asked to each team. Furthermore, each committee member may ask additional questions for clarification. The Procurement Officer will ensure that any impromptu questions are documented along with the responses.

Changes of firms in a consultant's team will not be permitted between submission of the EOI and the final selection. Should this occur, consideration shall be made to determine if the consultant team should be eliminated from being selected for this contract. This is to ensure fairness to all teams and to ensure that the team being interviewed is the same as the team that was short listed. Changes in personnel to be used on the project may occur. If it does, this information along with new resumes and organizational charts must be submitted at the presentation/interview. This information should be considered in determining the impact on consultant team's overall qualifications for final selection. If this information is not provided at the presentation/interview, the selection committee should take into consideration the missing information in the final selection.

3.9 Final Ranking

After the interview/technical presentations are completed, the Selection Committee will hold a meeting to discuss and rank the teams using narrative statements of strengths and weaknesses based on the teams EOI, response to questions and interview/technical presentation. This meeting should be held on the same day of the interview/technical presentations, however, it may be held at a date no later than two (2) days after the interview/technical presentations have occurred. The following activities will occur:

During the meeting:

- The Procurement Officer should ensure a copy of all EOIs is available at the meeting.
- Each Selection Committee member should discuss his/her narrative statements of strengths and weaknesses based on firms' EOI and response to questions and interview/technical presentation.
- The Selection Committee shall check the status of recent awards of work to the interviewed firms and consider this information in the final selection with respect to RFP selection criteria, including but not limited to organizational capabilities, ability to meet time schedules, etc..
- After discussions regarding strengths and weaknesses of each firm, the Selection Committee should take a vote to determine the ranking order ("Final

Ranking”). The Final Ranking shall be based on a majority decision and does not need to be unanimous.

- Once the Final Ranking for selection has been made, it cannot be changed unless approved by the appropriate Chief. The Procurement Officer must be present during any discussions regarding changing the ranking. If approved by the appropriate Chief, the reasons for any change will be documented thoroughly in writing and signed by all members of the Selection Committee, the Procurement Officer and the appropriate Chief.

Once the final ranking has been completed, the Chairperson should prepare a combined narrative statement for the Final Selection Approval as set forth in the steps below.

- There will be one combined narrative statement prepared by all members of the Committee.
- Each team’s narrative should be on a separate page. This new evaluation will consist of concise statements as to why a team was or was not selected in relationship to the evaluation criteria and the RFP’s scope. Items to be considered in preparing the narrative are noted in the RFP.
- The combined narrative statement form will be reviewed and approved by each committee member. A copy will be retained in the project file by the Procurement Officer.
- The original of all certifications and other documents identified in these procedures should be retained by the Procurement Officer.

3.10 Final Selection

For each RFP that is issued, only one top ranked consultant firm can be selected. However, if the RFP allows for multiple awards, multiple firms may be selected in accordance with Section 4.8.

3.10.1 Final Selection Approval

The Lead Division Administrator is notified of the final selection in writing. The final approval authorization for the selection of a specific firm rests with the Lead Division Administrator. Letters to the Lead Division Administrator for approval of final selections shall have a copy of the narratives and certifications attached (EOIs are not to be attached).

The Lead Division Administrator will notify the Procurement Officer in writing when the selection is approved.

3.10.2 Final Selection Notification

Upon approval from the Lead Division Administrator, the Final Selection Notification Letter confirming the selection is sent by the Procurement Officer to the top ranked consultant notifying of the following:

- Items requiring disclosure.
- An invitation to a meeting to further define the scope of the project and a request to prepare a fee proposal.
- The prime and all subconsultants are required to submit their FAR audit data along with a Contractor Cost Certification for indirect cost rates required by FHWA order 4470.1A dated October 27, 2010 to VDOT auditors within ten (10) work days of the date of the notification letter of their selection or the Department may begin negotiating with the next ranked firm.
- The prime and all subconsultants are required to submit their Title VI Evaluation Report Form (T6-2-3-09) within ten (10) work days of the date of the notification letter or the Department may begin negotiating with the next ranked firm.
- Insurance Certificate for General, Workman Compensation, and/or Professional Liability.

The selected firm is also notified by telephone, and a date is established to begin negotiations.

All short listed firms that were not selected are notified in writing by the Procurement Officer, as to the selected firm. A list of the interviewed firms, in final ranking order will be posted on VDOT's web site.

3.11 Retention of Records

All procurement records should be maintained in accordance with records retention and disposition schedule. The Procurement Officer will keep the EOIs from all Offerors for at least ten (10) work days after the contract has been executed and then dispose of all but those from the firms that were short listed. If a written protest of the announcement is received prior to the end of the ten (10) work days, all EOIs will be retained until the protest is resolved. The EOIs from firms that were short listed will be retained until five (5) years after the contract is completed.

The Procurement Officer shall keep a copy of all procurement documents in the project file including, original copies of the scoresheets of individuals and the combined score sheet, certifications of non-conflict of interest, short list certifications, short list approval, final selection certification, final narratives, and final selection approval.

The Procurement Officer should be advised of any changes that would affect the consultant selection at any point in the process so that proper documentation will be made.

3.12 Consultant Debriefings

VDOT's guidelines for debriefings are as follows:

- Only debrief new consultants that made the short list as a prime consultant for the first time if they request it.
- If a short listed consultant requests a copy of the narrative comments from the selection process, a copy of the narrative for that consultant only can be sent to them irrespective of whether or not they are a new consultant.
- If a consultant wants to know their relative standing from the screening process on any solicitation, they can be provided with a list which indicates their relative standing from the screening process without the associated scores.

If the Chairperson debriefs a consultant, the debriefing shall be provided at the earliest possible time following contract award. Debriefings shall be conducted by the Chairperson who will be familiar with the rationale for the selection decision and contract award. It is essential that debriefings be conducted in a fair, objective, and impartial manner. Debriefing information provided to firms must be factual and consistent with the evaluation and may provide suggestions to an offeror for improving future EOIs and/or interviews. While interviewees may be informed of the areas in which their interviews were weak or deficient, point by point comparison with the interviews of other firms shall not be made. Furthermore, debriefings shall not reveal the relative merits or technical standing of competitors. Debriefings will be documented by a summary kept in the file covering salient points and including dates and attendees.

Prior to finalizing negotiations with the selected consultant, consultants submitting EOIs may only have access to information regarding their firm. After negotiations are finalized, all records (except proprietary information) are open to all offerors. After the contract is signed, all records (except proprietary information) are open to the public.

Any additional information requested by consultants would have to be provided if requested through the Freedom of Information Act ("FOIA"), unless the request is for materials that are identified by a consultant as trade secrets or proprietary information, will not be shown to other consultants. The consultant must invoke the protection of Code of Virginia §2.2-4342F, in writing, prior to or upon submission of the data or other materials, and must identify the data or other material to be protected and state the reasons why protection is necessary. The classification of an entire proposal document as proprietary or trade secrets is not acceptable. As stated in Article 3, Section 2.2-4359(D) of the VPPA, a public body is not required to furnish a statement of reasons why a particular proposal was not selected.

CHAPTER 4

CONTRACT
NEGOTIATION



CHAPTER 4 - CONTRACT NEGOTIATION

4.1 General

Virginia law requires state agencies using professional services to acquire the services of consultants by competitive negotiation. The process mandated by the VPPA requires a competitive selection of the consultants based on qualifications, followed by a negotiation process to establish a fee for the desired services. The objective of the total consultant professional services acquisition process is the selection of a well-qualified firm at a fee which is fair, competitive, and reasonable to both the state agency and the consultant. Negotiations should be conducted in good faith, recognizing that compromise by both parties may be required in some cases to achieve an equitable contract.

The negotiation portion of the consultant acquisition process consists of establishing agreement between VDOT and the consultant on the following major points:

- Objectives of the project
- Scope of services to be performed
- Schedule requirements and milestones
- Work effort required (both quantity and level of personnel required)
- Distribution of work among levels of personnel
- Delineation of work to be provided by consultant, subconsultants and the Department
- Cost of services
 - Wage rates, overtime, etc. (or billing rates for some services)
 - Direct expenses and subconsultant costs
- Net fee
- Method of compensation and other contract variables
- Quality control requirements
- Required deliverables

4.2 Scope of Services Meeting and Invitation to Submit Proposal

After receipt of approval from the Lead Division Administrator of the consultant selection and prior to actual negotiation of a contract, a pre-proposal scoping meeting (Scope of Services Meeting) should be arranged with the top ranked consultant to review all matters pertaining to the scope, schedule, character, complexity, and method of compensation for the proposed services.

The Scope of Services Meeting serves as a general orientation for the consultant in its prospective work with VDOT; and to discuss the consultant's submittal of a comprehensive fee proposal. It is essential that VDOT and the consultant reach a thorough understanding of the scope of services to be provided prior to the consultant preparing their fee proposal. In order to do this, the proposed scope of services and what is anticipated in each major sub-part of the services, and the individual tasks that will accomplish the scope of services must be defined.

Prior to the meeting, the VDOT Project Manager should become thoroughly familiar with the data, plans and other supporting information upon which the proposed services are to be based. Checklists are available for reference and should be used to prepare for the meeting as well as and serve as a checklist to follow during the meeting. The checklist covers administrative items, the scope of services, proposal format, the Memorandum of Agreement (“MOA”), materials furnished to the consultant, monitoring of the work, and information required by Assurance and Compliance Office (ACO). A copy of the completed checklist is to be included in the project file.

Representatives of other divisions involved should attend the meeting to present their elements of the scope of services.

The following items and information are provided by VDOT to the consultant at the meeting:

- Available relevant project data (i.e. project description that accurately defines the limits of the work, major work elements, plans, studies, specifications, standards, office practice, survey, survey control, situation plans, geological borings, aerial photographs, mapping, sample existing plans, examples of project deliverables, inspection reports, etc.).
- All relevant VDOT manuals, memoranda, specifications, etc. (or the location of where these references may be found on VDOT’s Website).
- Draft copy of MOA prepared for the specific contract.
- If the services involve the relocation of consultant personnel on a long term basis where it is beneficial to VDOT to pay relocation expenses rather than a daily per diem rate, such as resident field engineers or inspectors, reimbursement will be in accordance with Section 4.6.6 of this manual.
- Overhead for the subject services should be discussed and the consultant advised that VDOT policy requires a pre-award audit evaluation to be made of all firms. As a part of the audit, ACO will determine what the firm's overhead additive rate should be. This will be based on the FAR. The CPO Procurement Officer will be responsible for notifying ACO that the consultant(s) have been selected and will be submitting FAR audit data.

4.3 VDOT's Fee Estimate

Before receipt of the consultant's fee proposal, VDOT shall prepare its own comprehensive independent estimate of the man-hours and costs associated with the consultant providing the services. Information received from the other involved Divisions shall be included in this overall estimate. The estimate prepared by the VDOT Project Manager will be used as comparative data during the evaluation of the proposal and the ultimate negotiations with the selected consultant firm. Consideration shall be given to the nature of the services to be rendered, the scope, complexity, and the nature of the project. VDOT’s independent fee estimate shall be revised as required during negotiations to reflect clarifications and changes to the scope of services to be performed by the consultant.

The VDOT Project Manager may require assistance during preparation of the estimate. Sources for this assistance are the personnel familiar with the preparation of man-hour and cost estimates, man-hour graphs and data maintained by the divisions, historical consultant fee proposal data, and input from other divisions regarding their work must be obtained.

The estimate will include:

- Man hours to perform each task and subtask identified in the Scope of Services
- Distribution of the man hours to the various employee classes required for the project
- Direct expenses required for the project
- Services provided by subconsultants or vendors
- Number of alternate designs or locations to be evaluated
- Level of detail required
- Numbers and types of meetings to be attended (citizen information meeting, public hearing, public workshop, elected officials, local staff, etc.)
- Numbers of reports and/or presentations required
- Schedule for project services

Most of VDOT's contracts use the Cost plus Net Fee compensation method. However, Lump Sum may be used on projects with clearly defined scopes of work. Typically Fixed Billable Rates are used on Limited Services Term Contracts. See Section 5.2 for additional information regarding types of contracts and Section 5.3 for types of compensation.

4.4 Consultant's Fee Proposal

The VDOT Project Manager will request the selected consultant firm to submit its proposal in the proper format, including subconsultants' proposals, with supporting cost or pricing data. Insurance certifications, listed in Section 3.10.2, should be submitted at the same time as the fee proposal. Fee proposals on federally funded projects are not to be furnished to the FHWA. However, for Projects of Division Interest/Projects of Corporate Interest (PoDI/PoCI) the Scope of Services on FHWA oversight projects will be furnished to the FHWA as set forth in Section 1.2.

The fee proposal must contain sufficient information to support the basis for the costs contained in it and must contain a certification that the costs were proposed in a manner consistent with the requirements of the consultant's accounting system, specifically stating that costs proposed as direct expenses are not included in their overhead. The certification should be signed by the consultant's comptroller, Chief Financial Officer ("CFO"), accountant, or other appropriate person who is knowledgeable of the consultant's normal accounting requirements and with such legal authority.

The consultant should be advised of the following:

- Type of compensation (lump sum, cost plus net fee, fixed billable rate, or other) to use and why.
- The importance of a complete breakdown of all elements of the proposal by individual tasks, stages and alternates (where applicable) should be stressed. Divisions should have a standard Fee Proposal Spreadsheet for the consultant and subconsultants to use.
- Lump Sum fee proposals should be broken down in the same manner as cost plus net fee except that no contingency is allowed. While it is understood that with a lump sum proposal, the total fee is the only negotiable element, the other elements are requested only to aid in the evaluation of the total fee.
- Proposal should contain supporting Data, such as:
 - Description of the scope of the work
 - Proposed schedule
 - Man-hours required for each task, stage or element, by each category of personnel
 - Average hourly rates for each category of personnel with payroll register or similar supporting documentation. (Rates are established using all employees in that classification).
 - Estimated direct costs
 - Subconsultant costs
 - Payroll burden and overhead rates audited in accordance with FAR. Rates should be for a period not older than one year prior to the most recent fiscal year.
 - Total number of contract drawings anticipated to be required for each individual set of plans
 - Proposed project or bridge layout sketches
 - Supporting data for computer/CADD rates
 - Summary of planned SWaM or DBE participation
- Insurance requirements:
 - The consultant is required to carry adequate professional liability insurance throughout the life of the contract and to provide a certificate from the insurance carrier that such a policy is in effect.
 - VDOT will be listed as the certificate holder on the certificate. Insurance Certificates are maintained in the project file and should be updated annually by the consultant. Stipulated insurance shall be obtained prior to commencing work and shall be maintained during the entire term of the contract. Further, the consultant certifies that it will maintain the required insurance coverage's during the entire term of the contract.
 - Since VDOT's contract is with the prime consultant, VDOT does not require subconsultants to have insurance except for worker's compensation insurance. However, it is highly recommended that the prime consultant, to avoid liability, not contract with any subconsultant that does not carry insurance.
 - The amount of professional liability insurance that should be carried by a consultant is based on their firm size and exposure to risk and is a function of

- the complexity and total number of projects or work assignments. An amount should not be specified for the consultant to carry, but the consultant should propose the amount and conditions of the coverage. The amount is reviewed and the consultant advised of its acceptability or insufficiency.
- The consultant coverage for Architecture and Professional Engineering services should usually not be less than \$2 million per occurrence, \$6 million aggregate, but should not be less than the greatest of 5% of the estimated construction cost of all VDOT projects which the consultant has under contract or \$1,000,000.
 - The amount of any deductible should not be over an amount which can be covered by the firm's funds on hand or readily available.
 - The consultant will be required to have Worker's Compensation, Employers Liability, Commercial General Liability, and Automobile Liability insurance coverage. Worker's Compensation shall be a Standard Virginia Worker's Compensation Policy with an insurer authorized to transact the business of worker's compensation insurance in the Commonwealth of Virginia with statutory requirements and benefits. Employers Liability shall be for a minimum of \$100,000. Commercial General Liability shall be for a minimum of \$500,000 combined single limit coverage. Automobile Liability shall be for a minimum of \$500,000 combined single limit for bodily injury and property damage per occurrence.
 - The limits mentioned above are minimums and may be increased. The Department of Treasury, Division of Risk Management (804-786-3152), should be contacted when other types of coverage may be required or when in doubt as to the need for other limits.

4.5 Title VI Evaluation Report

The prime and all subconsultants are required to submit their Title VI Evaluation Report Form (T6-2-3-09) within ten (10) work days of the date of the notification letter or VDOT may begin negotiating with the next ranked firm upon receiving approval from CRD. CRD will make its determination for approval or disapproval within three (3) days from submittal. In the event of a finding of non-compliance, the Procurement Officer may seek resolution with the consultant with the assistance of the CRD. If resolution is not reached, VDOT will go to the next ranked firm to negotiate the contract.

The report is only required when the contract amount equals or exceeds \$10,000. If the firm(s) has a current Title VI Evaluation Report on file with VDOT and it will not expire prior to a contract being executed, then a new report is not required. A copy of the completed Title VI Evaluation Report (T6-2-3-09) will be forwarded to the CRD for review and written approval. Title VI Evaluation Report Forms are maintained in the project file and should be updated annually by the consultant, as set forth in Section 7.4.

4.6 Fee Proposal Evaluation

When the consultant's fee proposal is received, the VDOT Project Manager will distribute a copy of the fee proposal to each involved division for their review and comment, with a letter requesting that their comments be returned by a certain date, usually within seven to ten work days.

Fee Proposal evaluation is the process of comparing the proposed fee with that of previous projects and that of VDOT's independent estimate for the project.

Any cost, except overhead rate, may be negotiated. These costs include net fee, individual salaries, non-salary direct costs, etc. which are considered to be too high.

The mathematical accuracy of the fee proposal should be reviewed as well as the supporting data to determine if it adequately supports the costs contained in the fee proposal. Any errors, deficiencies, omissions, etc., noted during the review should be immediately brought to the attention of the consultant, and corrective data requested.

The fee proposal is analyzed and evaluated using VDOT's estimate and resources from Section 4.3 to arrive at a position for negotiation or approval. It is important that written documentation outlining the points evaluated and the conclusions drawn be a part of the correspondence file.

The fee proposal is evaluated to determine if it is reasonable and satisfactory using the following criteria as basis for the evaluation:

- Time limits, conditions, scope and description of the services are checked to see that they are correct and satisfactory.
- Compare with fee data of consultants who have previously performed services for VDOT of a similar nature and complexity.
- Comparison of the number of hours the consultant proposes is needed by each personnel category to perform each operation with those normally needed by VDOT personnel to do similar work.
- Comparison with VDOT data on man-hours required for similar services.

4.6.1 Contingency

Since the scope of services may not be totally defined on a cost plus net fee contract, a contingency is usually used on those contracts. This allows for minor changes in the scope of services without a supplemental agreement being prepared. Contingency also provides for adjustment in the overhead rate at the time of final review (audit). The VDOT Project Manager should review the scope and the cost of additional work including the current stage of project development in determining the use of

contingency. Contingency is not used in establishing a lump sum contract. The contingency rate usually will be 5%. Some types of construction services work may warrant the use of a larger contingency. The scope of construction services work is difficult to define and is dependent on the contractor's schedule. When a project is under construction, VDOT cannot stop a contractor from building a project while a supplemental agreement is negotiated with the consultant. Contingency is calculated on the fee base (Direct Labor + Payroll Burden + Overhead) and non-salary direct cost. Subconsultant contingency is included in its proposal and the prime gets no contingency on the subconsultant's services. Contingency shall not be used by the Prime consultant or subconsultant without written permission from VDOT.

4.6.2 Wage Rates (Direct Salary Cost)

The average wage rates for each class of employee shall be based on all personnel in a particular employee classification in the offices where the work will be performed. The consultant shall submit actual payroll registers information which identifies employees within the classes and their respective wage rates and an explanation of how the average wage rate was computed. A responsible company official must certify that the rates are actual rates on that particular date. An analysis of the proposed salary or billing rates should be performed by the Lead Division to insure that they are in line with prevailing rates for the class of personnel. Rates may be negotiated for either individual employees or as averages for employee classifications.

Principals, partners, associates, CEO's, and similar titles are considered to be administrative and/or management functions whose costs have been included in the overhead markup of the rates for technical categories and shall not be listed separately. If a principal, etc., chooses to perform technical services on the project, they will bill at the comparable rate to the technical activity or function being performed. This will be at the highest technical rate of personnel in the classification providing the same service or function on all but fixed billable rate contracts. On fixed billable rate contracts, a principal, etc., must use the hourly rate established for the classification without his rate being used in establishing the hourly rate. A principal of a firm may perform the function of a project manager, especially in a small firm. In larger firms, a principal, associate or similar titled person may be assigned this responsibility. Regardless of title, this function is the same and the rate should be comparable to project managers of other firms in Virginia.

Time limits or time to complete the work should be a matter proposed by the consultant using regular, not premium time (overtime). Consultants who choose to work overtime without written permission from VDOT will be reimbursed on a straight time basis.

4.6.3 Indirect Cost Rate ("FAR Overhead Rate")

The Prime and all subconsultants are required to include in their proposals indirect cost rates that have been accepted by VDOT.

Contracts awarded for engineering and design services by state transportation departments must follow the cost principles contained in 48 CFR Part 31. As such, consulting firms are required to submit an indirect cost rate audit report to the ACO for the most recent fiscal year. The report contains the overhead rates (e.g. Home Office Rate and Field Office Rate) that ACO will review for acceptance to be used on VDOT contracts. Additional information concerning indirect cost rate audits and the required data to be submitted to ACO is provided at ACO's Indirect Cost Rate Audit Home Page. ACO does not accept "market based rates" for indirect cost rates.

The overhead audit shall be performed by an independent Certified Public Accountant, an agency of the federal government, another state transportation agency or similar independent audit organization. VDOT's policy is that overhead rates are not negotiated. However, the consultant may offer lower overhead rates if the consultant deems the rate unreasonable (high). Overhead is not allowed on direct expenses or subconsultant expenses.

The costs for in-house produced consultant services, including printing and copying, which are charged directly to projects, must not be included in overhead and must be consistently charged to all clients.

4.6.3.1 Home Office Overhead Rate

Home office, as defined in 48 CFR Part 31, means an office responsible for directing or managing two or more, but not necessarily all, segments of an organization. It typically establishes policy for, and provides guidance to, the segments in their operations. It usually performs management, supervisory, or administrative functions, and may also perform service functions in support of operations of the various segments. An organization which has intermediate levels, such as groups, may have several home offices which report to a common home office. An intermediate organization may be both a segment and a home office.

If no audited home office overhead rate is available, a provisional overhead rate) overhead plus payroll burden) of 110% will be used.

4.6.4.2 Field Office

VDOT generally requires its consultants to perform contracted services from their established home or branch offices; however, on special projects, the consultant may be required to establish a field office at or near the job site. A field office is defined as any office which the consultant/contractor specifically establishes or has furnished to him at or near the project site to be used exclusively for project purposes. The office may be a trailer, building, room or series of rooms established for the consultant personnel. Neither the number of personnel nor their mix by employee classification shall have any bearing on this definition. The establishment of the field office, its manpower staffing and its operational costs will be determined by project needs, economy and efficiency, and negotiated with the consultant. In most cases, the field

office operations and staffing will be held to a minimum and the consultant's home or branch office will be expected to provide essential support services. The allowability, allocability and reasonableness of costs will be determined in accordance with criteria contained in the Code of Federal Regulations, Titles 23, 48 and 49 and other applicable Federal and State regulations. The decision on whether a cost should be allowed as a direct or indirect cost depends, to a lesser extent on the consultant's normal and customary practices for estimating and accounting. These practices should be outlined in the consultant's annual FAR overhead audit, in the consultants AASHTO Internal Control Questionnaire (ICQ) for Consulting Engineers, and should be followed during contract pricing and negotiations.

If the proposed services require the establishment of a field office or if the consultant employees will work out of a VDOT provided office (such as Construction Engineering Inspection services), a separate audited field overhead rate must be submitted. Any costs that are reimbursed as direct costs shall be eliminated from the indirect (overhead) field office cost pools. If no audited field overhead rate is available, an overhead rate (overhead plus payroll burden) of 75% will be used.

4.6.5 Facility Cost of Capital

VDOT allows facilities cost of capital for firms owning their own offices. However, it must not be included in the fee base when determining the net fee. These costs are determined by FAR audit and reviewed by the ACO.

4.6.6 Travel Allowances and Meal & Incidental Expense Rates (Direct Non-Salary Cost)

The State employee travel allowance is used for project related consultant travel, in accordance with the rates specified in the current VDOT Travel Policy.

<http://www.virginiadot.org/business/gpmmps.asp>

VDOT does not pay consultant personnel travel/relocation to a Virginia office from out of state in order to perform services/work required by the RFP in a Virginia office. Similar to State employees, the travel expenses are reimbursable from Consultant's Virginia office/Project location at rates consistent with the VDOT Travel Policy. VDOT may pay for out of state travel to include airfare if there is a need for an individual/expert and authorizes it in advance. The air travel must be reasonable and will be reimbursed for economy or coach class accommodations. Upon request, consultants may receive a copy of the VDOT Travel Policy from the VDOT Project Manager. Vehicle allowances should be based on the most economical vehicle class meeting the needs of the project. Parking fees and tolls are reimbursable. Public transportation must be for tourist or coach class accommodations.

The allowable lodging and meal and incidental expense rates to be used should not exceed the rates allowed by Fiscal Division for VDOT employees. Use the rate the consultant proposes unless it exceeds the amount allowable for VDOT employees.

Trips that do not involve an overnight stay should not be shown as a full days per diem in the proposal. For a day trip without lodging, no reimbursement will be paid for meals.

VDOT does not pay for consultants to relocate personnel to a Virginia office in order to perform work in a Virginia office. If a consultant is required to furnish on a long term basis a full time Resident Engineer or construction inspectors during the construction of VDOT's project, relocation expenses will be reimbursed in accordance with the Office of the Comptroller's "Moving and Relocation Policies and Procedures." (http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Topics/20345.pdf).

4.6.7 Direct Expenses (Direct Non-Salary Cost)

Sufficient documentation must be provided with the fee proposal to support the basis for all proposed direct expenses. For goods and services, other than professional services, written or telephone quotes from a minimum of one (1) DSBSD small or micro vendor, if available, is acceptable as a support for the proposed prices for acquisitions up to \$5,000. Telephone (verbal) quotes are acceptable, if adequate supporting documentation (name and telephone number of the person furnishing the price quote) is provided. The acquisition of any individual item or service costing more than \$5,000, but no more than \$50,000, shall be supported by at least four (4) written quotes from DSBSD small or micro vendor, if available. When an acquisition of any individual item or service is expected to exceed \$50,000, competitive sealed bidding or competitive negotiation shall be used. Solicit from a minimum of six (6) valid sources, including a minimum of four (4) DMBE-certified small businesses, if available. Public advertisement is required. See Chapter 9 of this manual for additional information.

Consultants (geotechnical, aerial photography, testing labs, etc.) which normally work on a unit price basis probably cannot provide support for their unit prices for laboratory tests, drilling, flights, etc.; however, they should provide a copy of their standard fee schedule and shall attest that the fees contained thereon are their normal fees for such services.

Normally, consultants are expected to have the necessary equipment, software, computers and tools of the trade to accomplish the services they have been selected to provide. In order for the cost of a non-salary direct cost to be directly billable to a VDOT project, the item must be consumed by the project. Non-consumable items include, but are not limited to, fax machines, computers, software, computer license fees, cell phones, books, refrigerators, copy machines, pagers, helmets, tape measures and fire extinguishers. Since VDOT has no overhead rate limitations, and the consultant firm may use non-consumable items on other projects that provide no benefit to VDOT, costs of these type items should be recovered in the consultant's overhead.

If a consultant proposes to purchase or lease computer hardware and/or software for use on a project, the proposal must be reviewed by Information Technology Division ("ITD"). If the proposal is acceptable, ITD will sign the MOA. In this case, include a place for ITD's signature in the MOA. ITD will determine any involvement which the Virginia Information Technology Agency ("VITA") may have. The purchase or lease of any

hardware and/or software, which a consultant should normally possess to perform the required services, generally will not be allowed.

4.6.8 Escalation Rate

For multi-year contracts, consultants may be allowed escalation of their direct salaries to allow for inflationary increases. For Limited Services Term Contracts, a separate rate for each year of the contract should be established. Consultants must submit certified documentation to support how their salary escalation rates are calculated and to show they are consistent with past increases given to employees. The escalation may not exceed the rate of three percent per year or the rate established by the ACO Division, whichever is less. During the first year of a multi-year contract, half of the annual escalation rate may be allowed.

For Limited Services Term Contracts, a method should be included in the contract to provide for escalation if the completion of providing the services extends past the term of the contract.

For Cost plus Net Fee contracts, the consultant may be paid an escalation on direct salaries at the established rate for the work performed in consecutive or subsequent years beyond agreed upon schedule. However, if the project is suspended or placed on hold for an extended time period (i.e. more than three years) the consultant will be required to submit current FAR audited rate and salary schedule for VDOT's review and approval prior to beginning or restarting the work.

4.6.9 Management of Sub-Consultants

Prime consultant administrative or management add-on costs for the managing of subconsultants, in addition to the overhead, labor, and fixed net fee which are a normal part of the contract, are not allowed. These administrative costs, or whatever they are proposed under, are costs which the consultant is already being reimbursed for through his overhead and net fee portion of the contract. When VDOT enters into a contract with a consultant, we agree to pay the consultant for his labor, administrative overhead (which includes the operation cost of the consultant's home, branch, or field offices) plus a net fee on his labor and overhead costs. In addition, VDOT also reimburses the consultant for any out of pocket expenses on a dollar for dollar basis. These additional expenses include subconsultants. If VDOT allowed the consultant to include an additional administrative add-on for the handling of subconsultants, we would actually be allowing the consultant to bill us twice for what we are already paying him for in our reimbursement for labor, overhead, and net fee. The same personnel who process the subconsultant's paper work for the prime consultant are either being directly reimbursed as part of the direct labor, or their salary and expense cost are part of the prime consultant's overhead. Any additional administrative add-ons contained in a contract over and above the overhead, net fee, and facilities capital cost of money is not allowed.

4.6.10 eVA

The eVA one-time transaction fee may be included in the consultant's fee proposal. There is no transaction fee on supplemental agreements.

4.7 Net Fee

Net fee is the dollar amount established by negotiation to cover the consultant's profit, miscellaneous expenses, and other factors that may be considered under the applicable regulations that are not paid for otherwise. Net fee is intended to compensate the consultant for those normal business expenses which are excluded from allowable overhead by Federal Regulation as well as provide the consultant with a reasonable profit. Since cost plus a percentage of the cost contracts are prohibited, the expression of the net fee as a percentage of consultant costs should be used by VDOT only as a test of the prudence of the net fee proposal and not as a substitute for negotiation.

VDOT has established that the net fee shall vary from 8% to 12% of the direct labor plus loaded labor with the actual FAR overhead rate used, but the overhead rate shall not exceed 156% in determining the net fee. The contingency shall be included in the net fee determination. See Appendix E. The establishment of net fee shall be project specific. The determination of the amount of net fee shall take into account the size, complexity, duration, and degree of risk involved in the work. The factors listed may not apply to large valued mega projects such as GEC. Net fee is based on the overall scope of services and not on the particular part to be performed by the prime or subconsultant. The following factors should be used as a guide for determining the maximum allowable net fee on a project with the actual net fee being a negotiated amount:

1. Complexity/Relative Difficulty of Work – the extent to which the consultant applies his engineering knowledge, experience, technical skills, and independent judgment as listed below from the simplest to the most complex with the more complex/difficult services receiving the larger net fee percentages.

Projects or structures of simplest, utilitarian character which are without complication of design or detail and require a minimum of detail, design or effort.

Projects or structures of conventional character and detail, requiring normal detail, design or effort.

Projects or structures of moderate complexity requiring a moderate amount of detail, design or effort.

Projects or structures of exceptional character and complexity requiring comparatively large amounts of detail, design or effort.

Monumental projects or structures requiring precise detailing, consummate design skills or extraordinary effort.

2. Size of Job - the larger the contract maximum compensation, the smaller the net fee percentage. .
3. Duration/Period of Performance -. For Cost Plus Net Fee project and lump sum contracts duration may considered. For limited service term contracts duration is not a factor.
4. Degree of Cost Risk Assumed by the Consultant - where work involves no risk or the degree of risk is very small, the weighting should be low; as the degree of risk increases, the weighting should be increased. Cost plus net fee contracts generally have a lower risk than lump sum contracts. Construction Engineering Inspection contracts generally involve less risk. Other things to be considered: the portion of the services to be done by subconsultants (the more services provided by the consultant, the lower the factor), nature of the services, where the services are to be performed, low overhead costs, reasonableness of negotiated costs, etc.

One person in the Lead Division should be responsible for determining proposed net fee prior to beginning negotiations so that uniformity will exist in the division. Each factor should be evaluated in the 8% to 12% range and a combined average determined. Different weights may be applied to the net fee factors. This will ensure consideration of the relative value of the appropriate factors in the establishment of the net fee. Because of the differences in the types of services among the different divisions, the determination of net fee is the Lead Division's responsibility.

VDOT allows facilities cost of capital for firms owning their own offices. However, it must not be included in the fee base when determining the net fee. These costs are determined by FAR audit and reviewed by ACO.

Written documentation of how the net fee is determined shall be kept in the project file.

Net fee is not allowed on non-salary direct expenses. A prime consultant may not apply a net fee on a subconsultant's expenses.

For services performed in accordance with the provisions of a cost plus net fee compensation, VDOT agrees to pay the consultant its actual cost, as defined in the agreement, plus the net fee stated in the agreement. The net fee remains fixed regardless of differences between the estimated and actual costs to the consultant except as otherwise stipulated in the agreement or modified by a supplemental agreement. Net fee is compensated proportionally to the work performed.

See Chapter 8 regarding net fee on supplemental agreements.

4.8 Negotiations

The purpose of the negotiations is to negotiate a contract that is acceptable to both parties, using VDOT's estimate and the consultant's proposal, within VDOT's policies. During the entire negotiation process, a written record should be kept in the project file

of all the issues raised and their resolution. It is also necessary to document how pre-award audit issues are handled.

Once the fee proposal is received and evaluated in accordance with Sections 4.6 and 4.7, a meeting may be scheduled between VDOT and the consultant, to discuss man-hours and fee proposal cost. The VDOT Project Manager should prepare an agenda in advance of the meeting.

During the negotiations, the project requirements will be discussed in detail with the selected firm. Revisions of the proposal and supporting cost or pricing data may be made as required during negotiations to reflect changes in or clarification of the scope of the work to be performed by the consultant or findings derived from pre-award audits. Changes in the scope to clarify the intent or better define the lines of responsibility will be considered. The objective of both parties will be to efficiently provide a quality project.

VDOT shall conduct negotiations on the scope of services and professional compensation initially with the top ranked firm. Only one consultant may be negotiated with at any one time, unless the RFP allows for multiple awards. If a fair, reasonable and mutually satisfactory contract cannot be negotiated with that firm, VDOT shall formally terminate the negotiations and notify the firm in writing. Negotiations then shall be initiated with the next-ranked firm and this procedure shall be continued until a fair, reasonable and mutually satisfactory contract has been negotiated. Once negotiations are terminated with a firm, VDOT may not enter into further negotiations with the firm at a later date. In most cases, an agreement will be reached with the first consultant; however, on infrequent occasions it may be necessary to go to another firm. If an agreement cannot be reached with any of the firm's that were interviewed, the Lead Division Administrator will decide whether to interview additional firms that submitted an EOI or to re-advertise the project.

When the RFP states that multiple contracts may be awarded, the negotiations will be initiated with top ranked firms equals to number of anticipated awards. These negotiations can be conducted concurrently. For example, in the case of two contracts being awarded from a single procurement, VDOT will initiate negotiations with the top ranked and the second ranked firms concurrently for contract award one and two respectively. In case of failure to reach a fair, reasonable, and mutually satisfactory contract with any of the selected firms, VDOT will officially terminate the negotiations with the subject firm and commence negotiations with the next firm based on the order of ranking. This process shall continue until the anticipated contracts are successfully negotiated.

If deadlocks occur during negotiations, the consultant firm's management may request a meeting with the Lead Division Administrator to determine if the issues may be resolved prior to negotiations be terminated. The Lead Division Administrator will make all final decisions regarding negotiations.

Upon reaching an equitable solution, the fee proposal is revised and compiled for approval.

Documentation regarding the negotiation should be kept in the procurement file. Results of the negotiation may be reflected immediately in the proposal or the consultant may elect to study the matter and respond by letter or by submitting a revised proposal.

4.9 Pre-Award Audit Evaluation

After selection the firm has ten (10) calendar days to submit the required pre-award documentation. Failure to submit the required documentation within the ten (10) day period could result in the selection being made for the next ranked firm. The pre-award documents are sent electronically to the Procurement Officer for review. The Procurement Officer will submit the completed pre-award documents to the ACO Division mailbox with a request for a pre-award evaluation. The pre-award evaluation is a review performed to determine if the provisions in the proposed agreement are in accordance with the guidelines provided by the Federal Acquisition Regulations in Title 48 of the Code of Federal Regulations, the AASHTO Guide and this manual.

The objectives of the pre-award evaluation are to determine if:

- The consultants' accounting systems are adequate to accumulate and segregate costs. This assertion should be contained in the FAR overhead audit.
- The proposed labor rates are supported by payroll documentation.
- The proposed rates for escalation, overheads and facilities cost of capital are approved by VDOT.
- The proposed direct costs are based on actual costs estimates and are in compliance with VDOT policy and FAR. The consultant is responsible for submitting only costs which are allowable, allocable, and reasonable in accordance with FAR.

When the pre-award evaluation is completed, a pre-award letter is sent to the Procurement Officer detailing the findings. The ACO pre-award evaluation report will be provided to the Contract Administrator. The ACO does not review the Memorandum of Agreement (MOA) as part of the pre-award process.

The consultant may be required to furnish additional information for review for unresolved project costs. Adjustments could be made to the proposed agreement based on the results of the pre-award evaluation report.

Pre-Award Evaluations are not required to be furnished to the FHWA on any project. The final Scope of Services is furnished to the FHWA on FHWA oversight projects.

Under normal circumstances, pre-award evaluations requested by the Procurement Officer are completed within 14 calendar days from the date all required documentation is received from the consultants and submitted to ACO. Incomplete or inaccurate pre-award documentation submitted to the ACO will most likely result in the pre-award

evaluation being delayed. Pre-award evaluations requested by a locality do not follow the 14 calendar day completion.

CHAPTER 5

MEMORANDUM
OF
AGREEMENT



CHAPTER 5 – MEMORANDUM OF AGREEMENT

5.1 General

Once negotiations are finalized, the Procurement Officer will draft a MOA, using the template MOA located at <http://insidevdot/sites/ConsultantProcurementProgram/default.aspx>. The template MOA is essentially a sample contract, broadly drafted to encompass a variety of projects and situations. The Procurement Officer selects those portions of the standard MOA that apply to the current contract and deletes any sections that are not pertinent to the current contract. Standard sections applicable to all MOAs (MOA Attachment A) shall not be deleted or modified.

5.2 Types of Contracts

5.2.1 Project Specific Contracts

Project specific contracts provide for all the work associated with a specific project that is desired to be contracted with the consultant firm and requires detailed scopes of services. These contracts may provide for all work to be placed under contract at the same time depending on availability of funds. A project-specific contract is the traditional type of consultant contract between VDOT and a consultant for the performance of fixed Scope of Work related to a specific project or projects within an established maximum compensation payable and schedule.

The RFP shall provide among other things a description of the scope of work, required disciplines, and expertise, reporting responsibilities, deliverables, compensation method, as pertinent to support the project. A cost plus net fee, lump sum or fixed billable rate compensation methods can be utilized for this type of contract.

5.2.2 Multi-Phase Contracts

Unless the MOA for multi-phase professional service contracts include provisions for a future phase, with the fee to be negotiated at a later date, all future phases are considered as a new project. VDOT is not obligated to use the same consultant for all phases of a project. To continue with a consultant, who has completed a previous phase of the project, will depend upon:

- Satisfactory performance by the consultant of the previous work or services.
- A decision by VDOT that it is in the public's best interest to proceed with the consultant for subsequent work or service.
- Negotiation of a mutually satisfactory MOA for the subsequent phase(s).

5.2.3 *Limited Services Term Contracts*

.1 General

Limited Services Term Contracts may be used for engaging a consultant's services for multiple small projects within an established maximum compensation and over an established time frame. Limited Services Term Contracts are limited to a maximum of \$5,000,000, per term. The initial contract term shall be limited to two years or when the cumulative total of approved task assignment fees reach \$5 million, whichever occurs first. At VDOT's option, the contract may be extended one term at a time for up to two additional terms. An additional term is defined as one year or when the maximum fee per term is reached, whichever occurs first. Any amount not obligated through a task assignment under the term may not be carried over to future years. The amount obligated in any given contract year cannot exceed the limit on the original MOA. In accordance with §2.2-4309 of the Code of Virginia, VDOT may extend the term of an existing contract, through a Supplemental Agreement, to allow completion of any services undertaken but not completed during the last term of the contract as long as the contract value per term is less than \$5,000,000 and did not exceed \$5,000,000.

These contracts are utilized on small projects where the cost of advertising the project as an individual contract is high compared to the cost of the project, or where sufficient time does not exist to procure consultant services through the normal procurement process. Typical services which may be contracted for include: surveying, geotechnical, environmental, design, construction inspection and bridge safety inspection, etc. The RFP shall include a description of the nature of the potential projects, the disciplines/expertise required, and the nature of services to be required. A consultant having a Limited Services Term Contract is not prohibited from competing for, and being selected for, regular RFPs issued by VDOT. The total value of task assignments will be included in the consultant's workload with VDOT and properly entered into Cardinal to reflect this. The workload attributed to the prime and subconsultant will be based on the commitment made during negotiations. The limit of the contract should be closely tailored to the expected workload.

A limited services contract may cover a specific geographic area, may be on a regional or district basis, or may be statewide. VDOT does not represent or guarantee that the consultant will receive any work under a Limited Services Term Contract.

Payment for services is based on fixed billable rates for each employee classification/discipline established in the MOA. The fixed billable rates will include salary, overhead, net fee and escalation. Individual projects are assigned under these contracts and fees established based on the fixed billable rates for each classification/discipline.

.2 Task Assignment/Letter of Agreement

There must be an individual written task assignment, often referenced to as a Letter of Agreement (“LOA”), signed by the Lead Division Administrator or his/her designee, for any services provided under the Limited Services Term Contract. Each LOA will include a scope of services, a fee proposal, and start and completion dates. Work performed under these contracts must be coordinated and tracked by the Central Office divisions and should have a Central Office coordinator assigned to the contract to track and control expenditures.

The individual task assignment/LOA may be either actual cost basis or lump sum, in accordance with the payment type on the MOA. LOAs only require approval of the Lead Division Administrator or his/her designee. The maximum compensation payable for LOAs will be established using the fixed billable rates and the actual non-salary direct costs. The lump sum cost will be billed based on the percentage of the services completed. Adjustments to the fixed billable rates will not be allowed for changes in overhead.

Any change to an approved LOA requires a new written LOA. No extra work, time extensions, or increases in the maximum amount payable shall be authorized without an approved new written LOA.

Unless the project is terminated or suspended, VDOT and the consultant are obligated to fulfill the requirements of all individual LOAs issued even though the term for the contract has concluded. In addition, no LOAs can be issued after the final term of the contract expires.

.3 Limited Services Term Contract with Multiple Awards

For Limited Services Term Contract with multiple awards, task assignments shall be issued by VDOT as follows:

Establish the order in which the selected firms are assigned the task orders. Normally, the order should be based on the selected firms’ ranking at the final decision for selection and award.

However, in certain instances, the assignment can differ from the above guidance if determined to be in the VDOT’s best interest with appropriate justification and approval of the Lead Division Administrator. The justification may include, but not limited to, the following criteria:

- Potential Conflict of Interest
- Availability of consultant personnel to complete the project within the required timeframe
- Workload assigned under current contract
- Fair distribution of assignments in terms of value
- Continuity of services

- Location of firm when that is a major factor in the task assignment

The justification and approval of the Division Administrator for the task assignment shall be kept on file for the record.

.4 Renewal of Limited Services Term Contract

The process of a renewal of Limited Services Term contract is established herein must be followed. It is recommended when renewing a Limited Services Term Contract, the VDOT Project Manager begins the process within 120 days of the expiration date or cumulative project fees reach the contract amount. The VDOT Project Manager should determine whether it is in the best interest of VDOT to renew the Limited Services Term Contract based on review of the consultant's performance and workload. The findings should be presented to the Lead Division Administrator for approval to renew contract. Upon receiving approval, the consultant should be notified and requested to send a written response acknowledging its desire to renew the contract. The appropriate signature should be obtained on the "Consultant Term Contract Renewal Request Form", available at the Consultant Procurement Program team site: <http://insidevdot/sites/ConsultantProcurementProgram/default.aspx>. The completed Consultant Term Contract Renewal Request Form should be submitted to the Consultant Procurement section of the APD. A copy of the executed "Consultant Term Contract Renewal Request Form" should be sent to the consultant with VDOT's decision. If contract is not to be renewed, notify the consultant that contract will not be renewed. Failure to renew the contract prior to expiration date or when the cumulative total of project fees reaches the term contract amount will result in an expired contract. No new LOAs/task assignments including any supplements or extensions of any kind to existing LOAs/task assignments shall be issued after a contract expires. The LOAs, task orders or letter/email regarding intent to renew the contract shall not be construed as the formal notice of a renewal of a Limited Services Term contract.

5.3 Types of Compensation

The type of agreement is generally defined by the method of compensation for services. The usual methods of payment are:

- Lump sum
- Cost per unit of work
- Cost plus net fee
- Specific rates of compensation (fixed billable rates)
- Percentage of construction cost

Lump sum and cost plus net fee are the most common methods used by VDOT. All the methods are acceptable except for percentage of construction cost. This type of contract is illegal in Virginia and prohibited by Federal procurement regulations.

Lump Sum - By this method, the consultant performs the services stated in the MOA for an agreed amount as prime compensation. This method of payment is appropriate only if the extent, scope, complexity, character and duration of the work to be required can be established to a degree that just compensation can be determined and evaluated by all parties at the time of negotiations. This method may be applicable to the design of small bridges or other designs with well-defined scopes. Lump Sum performance periods should not exceed two years and Lump Sum amounts should not exceed \$2,000,000 without ACO's approval. The use of Lump Sum contracts is encouraged whenever feasible. A subconsultant's agreement with the prime consultant may be Lump Sum even when the prime consultant's agreement with VDOT is Cost Plus a Net Fee.

Cost Per Unit of Work - By this method, the consultant is paid on the basis of the work performed. This method is appropriate when cost of the work per unit can be determined in advance with reasonable accuracy, but the extent of the work is indefinite. Provisions in the MOA specify what is included in the price paid.

Cost Plus Net Fee - By this method, the consultant is reimbursed for incurred costs and receives a predetermined fixed amount as a net fee. This method of payment is appropriate when the extent, scope, complexity, character or duration is not clearly defined or where work is of a nature that VDOT does not have the experience or knowledge to permit an evaluation of the consultant's proposal as required to support a lump sum amount. The consultant is reimbursed for all eligible direct and indirect costs within defined limits plus a predetermined amount as a net fee. This type of MOA shall have appended to it the complete breakdown of costs as required to evaluate the proposal. The MOA requires a statement of the net fee and maximum compensation payable for each major element or stage of design.

Specific Rates of Compensation (Fixed Billable Rates) - By this method, the consultant is paid at an agreed and supported specific fixed hourly or daily rate for each employee classification directly engaged in the work. Such rates of pay include the consultant's estimated costs, overhead and net fee.

Percentage of Construction Cost - This method is based on a concept of correlation between engineering design cost and construction cost. A fixed agreed upon percentage of the estimated construction cost is set as the total compensation for services. This method of payment is not allowed to be used in Virginia.

5.4 MOA Development

The standard MOA should be followed as explicitly as possible in so far as it is applicable to the scope of services for which it is to cover.

The draft MOA will be reviewed by all divisions involved in the contract. Drafts of the MOA should be reviewed by one person in the managing division for consistency and content prior to the MOA being transmitted to the Attorney General's Office, as needed.

The draft MOA should be reviewed with the consultant to assure that it meets with their approval. Any changes that are made to the wording or general content of the MOA, must be specifically identified and reviewed by the Attorney General's Office. Changes in standard wording used in all VDOT contracts should not be revised simply because the consultant does not agree with it.

If the consultant desires for payment to be sent to an address other than the office address given in the MOA, a remittance address must be included in the MOA.

After approval has been received from the appropriate divisions all appropriate recommendations are to be incorporated in the final MOA. The results of the Pre-Award evaluation should be reviewed, and corrections should be made to the Fee Proposal, if necessary.

Two (2) copies of the final MOA are to be sent to the consultant for his review and signature, by the appropriate officer of the firm.

Consultant Signature Requirements:

1. Individuals - A contract with an individual shall be signed by that individual. A contract with an individual doing business as a firm shall be signed by that individual, and the signature shall be followed by the individual's typed name and the words, "an individual doing business as _____" (insert name of firm).
2. Partnerships - A contract with a partnership shall be signed in the partnership name, followed by the typed name and title of the person authorized to sign. The Project Manager shall ensure that the individual signing for the partnership has legal and binding signature authority for the partnership.
3. Corporations - A contract with a corporation shall be signed in the corporate name, followed by the signature and typed name and title of the person authorized to sign. The VDOT Project Manager shall ensure that the person signing for the corporation has legal and binding signature authority for the corporation.
4. Joint Ventures - A contract with joint ventures may involve any combination of individuals, partnerships, or corporations. The contract shall be signed by each participant in the joint venture in the manner prescribed above for each type of participant.

The Infrastructure Investment Division or Local Assistance Division must be notified by letter of the consultant's final fees and the current total preliminary engineering cost. For secondary road projects, this information is to be sent to the District Administrator and the Local Assistance Division Administrator. A response verifying the availability of the necessary funds should be received in writing (Form PD4-C). (Some divisions administer special funds that do not require this procedure to be followed).

5.5 MOA Execution

When the MOA is ready for approval, the CP-2 form will be completed and submitted to the Deputy Chief Engineer. The Deputy Chief Engineer has been designated by the Commissioner to execute professional service contracts.

5.6 MOA Distribution

After the MOA has been executed copies of the executed agreement are sent along with the letter of official notification to:

- The Consultant - one original executed copy of the MOA.
- The Lead Division – one copy of the executed MOA.
- District Administrator - one copy of the executed MOA (if applicable).
- FHWA (FHWA oversight projects) - one copy of the final Scope of Services and the executed MOA.
- Other involved divisions (if they are to administer the contract) - one copy each of the executed MOA.
- Project File - one copy of the MOA.

The original copy of the consultant's insurance certification is to be transmitted to the VDOT Contract Administrator with a copy of the executed MOA.

Following execution of the MOA, the current date will be entered on VDOT's web-site. Any firm submitting an Expression of Interest in response to the RFP may protest the award or decision to award a contract by submitting such protest in writing to the Procurement Officer no later than ten days after public notice of the award.

Manuals, guidelines, information, etc., required by the consultant to accomplish the work, should be provided as required.

5.7 Notice to Proceed

A written notice to proceed will be sent to the consultant. The consultant shall not proceed with any work prior to being given a written notice to proceed. A notice to proceed shall not be issued prior to the MOA being fully executed.

Subconsultants - Our agreement with the prime consultant requires that all provisions of the agreement be included in any contracts the prime consultant has or enters into with subconsultants. Since our contract with the prime consultants requires inclusion of certain provisions of our contract in any subcontract, VDOT Project Managers should obtain a copy of any subcontracts for professional services and review them prior to giving the prime consultant a notice to proceed.

In some cases, the scope of the service will have been so well defined during negotiations and the consultant is familiar enough with VDOT work, that no start up

meeting is required. In most cases, it is necessary to have a startup meeting with the consultant to discuss the scope of services, format of receivables, lines of communication, project schedules, priorities, milestones, progress reports, vouchers, etc. and to furnish sample plans/reports and any additional information or data that has become available.

5.8 Critical Infrastructure Information/Sensitive Security Information (CII/SSI), Criminal History Records Checks (CHRC) and VDOT Photo-Identification Badges

Consultants shall be responsible for safeguarding Critical Infrastructure/Sensitive Security Information (CII/SSI) (as defined in the VDOT Criminal History Records Checks Policy; VDOT Department Memorandum 1-25 (DM 1-25) and any succeeding) in their custody or under their control. Individuals are responsible for safeguarding CII/SSI entrusted to them. The extent of protection afforded CII/SSI shall be sufficient to reasonably foreclose the possibility of its loss or compromise. The project material containing CII/SSI in whole or in part will be subject to the terms of the contract and the requirements of CII/SSI Guide and any succeeding, which is available at; <http://www.virginiadot.org/business/const/CII-CriticalStructureInformation.asp>. When the required services will involve the handling of CII/SSI material, firms handling CII/SSI material will be required to sign non-disclosure agreements. Individuals with the firm(s) that handle CII/SSI material will be required to sign non-disclosure agreements.

Once negotiations have been completed and prior to executing a contract, a Criminal History Records Check (CHRC), through VDOT Personnel Security Section (PSS) or other background checks as determined necessary by VDOT, in accordance with the VDOT Criminal History Records Checks Policy DM 1-25 and any succeeding shall be required of all employees of the prime consultant and all subconsultants for;

- [1] Work in Rest Areas, operating in the Safety Service Patrol Program or requiring unrestricted access to VDOT Tier One Critical Infrastructure.
- [2] All individuals having access to any Agency network system or Commonwealth network supporting VDOT. This includes all users with any network logion or account.
- [3] All contingent workers for work conducted at all VDOT locations where VDOT is directly responsible for the day-to-day management of staff.
- [4] All individuals having unrestricted access to personnel information or CII/SSI, protected systems information, FOIA exempt information related to VDOT Tier One Critical Infrastructure.
- [5] Work requiring a VDOT photo-identification badge or other reasons required by VDOT.

An individual employee's failure to successfully pass the fingerprint-based CHRC will not negate the selection and offerors will be allowed to replace those individuals. However, if key personnel fail the fingerprint-based CHRC, the selection may be cancelled and negotiations begun with the next ranked offeror. VDOT reserves the right to conduct fingerprint-based CHRC on all employees of the prime consultant, on any employees of subconsultants or on any proposed replacements during the term of the

contract who will be involved in this project. All costs associated with the fingerprint-based CHRC are the responsibility of the prime consultant.

A VDOT issued photo-identification badge is required for each employee of the prime consultant or any subconsultant who will need unrestricted access to VDOT facilities or information as defined in VDOT Criminal History Records Checks Policy DM 1-25 and any succeeding. Based upon the results of the fingerprint-based CHRC, VDOT reserves the right to deny issuance of a VDOT suitability clearance or a VDOT issued photo-identification badge. Upon denial, appeals will be handled in accordance with the VDOT Criminal History Records Checks Policy DM 1-25 and any succeeding.

Criminal History Records Checks through the PSS and photo-identification issuance through the Access Control and Badging Program is coordinated through VDOT's Safety, Security & Emergency Management Division's (SSEM), Agency Security Section. Specific CHRC or Badging requirements should be coordinated directly with the perspective program areas. Non-Disclosure Agreements and new Consultant billing process is incorporated into the CHRC process.

CHAPTER 6

PAYMENT
PROCESS/
VOUCHERS



CHAPTER 6 - PAYMENT PROCESS / VOUCHER

6.1 General

After the agreement has been fully executed, the VDOT Project Manager should furnish the consultant with either a paper or electronic copy of the voucher format that is required by VDOT. The consultant is also furnished a paper supply or electronic file of the Consultant Progress Report. These forms may be replicated by the consultant on computer spreadsheets which have the capability to produce a similar format, so long as they are close approximations of VDOT forms and approved by the VDOT Project Manager.

After written notice to proceed is given, work can begin on the project. As the project proceeds, the consultant will need to submit vouchers for payment.

6.2 Cardinal Financial Management System (Cardinal)

VDOT utilizes a computer program, Cardinal, to track contract data on all consultant work, including supplemental agreements, vouchers and man-hour reports. Cardinal also provides data on the value of work each consultant has with VDOT and the amount of funds allocated.

Each division is responsible for entering, updating and maintaining its own pertinent project records, in accordance with the procedure outlined in Cardinal User Manuals.

Each contract will be added to Cardinal by the Procurement Officer within seven (7) work days of the contract being executed.

The consultant shall submit Cardinal input data with the voucher giving man-hours and dollars spent during the payment period for the prime and all subconsultants. This information along with a copy of the front sheet of the voucher is to be submitted to the Fiscal Division for Cardinal data entry.

Supplemental agreement data needs to be added to Cardinal within seven (7) work days of the supplement being executed.

When the final voucher is entered on Cardinal, the Contract Final Status box is to be checked.

6.3 Consultant Invoice and Progress Report Submissions

As the project proceeds, the consultant will submit vouchers in duplicate: the original for Fiscal Division and one copy for the VDOT Project Manager. An extra copy should be submitted for each additional division that will be reviewing the voucher.

Unless stated otherwise in the MOA, the frequency for submittal of vouchers for all contracts is once every thirty (30) days. On other types of contracts, the vouchers shall be submitted in accordance with the schedule set forth in the MOA. Vouchers are to be

submitted only when accumulated charges exceed \$500.00. Amounts shown are to be rounded to the nearest dollar.

When the voucher contains billings from subconsultants, the first sheet of each subconsultant's voucher should be distinctly labeled "SUB-CONSULTANT" in large, bold print.

The consultant is required to submit monthly progress reports, along with its voucher, to show the status of the services. The consultant should use standard VDOT progress report forms. The progress report should show the percentage of work accomplished, a narrative of the actual work performed this period, and significant activities anticipated for the next month. These progress reports should note important milestones along the life of the project. If a standard format does not exist, the consultant should submit his progress report format to the VDOT Project Manager for approval prior to the first voucher submittal.

6.4 Review of Invoices & Progress Reports

The voucher is to be date stamped when received by the VDOT Project Manager, reviewed as expeditiously as possible, and input on the Cardinal computer system within ten (10) working days from the receipt, so that it can be paid within the thirty (30) calendar day requirement. In instances, where there is an error in a voucher or defect in services received, the VDOT Project Manager must immediately notify the consultant upon discovery of the error or defect that would prevent payment. Upon notification, the consultant should submit a revision. A new date received will be stamped on the voucher on the date the revision is received.

The progress of the services is reviewed to verify that the consultant is on schedule and will complete the services on schedule. Should the review show that proper progress is not being made, the consultant shall be notified and reminded of the firm's obligation to meet the time schedule specified in the MOA. No Consultant's Estimate Voucher will be paid without a progress report covering the period of the voucher. No voucher should be approved for payment when the percentage of money requested is more than 10% ahead of the actual percentage of completion of the work.

The VDOT Project Manager will review the invoice to determine if the progress claimed by the consultant is reasonable and consistent based on knowledge of the project progress. The VDOT Project Manager will also assure the billing is reasonable and in accordance with the MOA and other written authorizations. No consultant is to be allowed to perform or invoice for any services beyond the original or supplemented contract scope of services without a fully justified and properly executed supplemental agreement. The total net fee that is billed with each voucher should match the overall progress of the completed activities for the project, irrespective of the amount of monies that have been expended.

Review primarily consists of verifying the percentages of completion upon which the voucher is based; verifying current overhead rates; reviewing direct labor, net fee and non-salary direct costs; and checking math.

The purchase of items to be used on the project but which are not consumed by the project and are kept by the consultant for use on other projects are not billable to the project. These items include computers, software, specifications or reference books.

VDOT pays reasonable direct costs on cost plus net fee contracts. Consultant per diem rates shall be in accordance with Fiscal Division's guidelines for state employees.

VDOT does not pay for consultants to relocate personnel to a Virginia office in order to perform work in a Virginia office. If a consultant is required to furnish on a long term basis a full time Resident Engineer or construction inspectors during the construction of VDOT's project, relocation expenses will be reimbursed in accordance with the Office of the Comptroller's "Moving and Relocation Policies and Procedures."

http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Topics/20345.pdf..

Consultants are not permitted to work overtime unless authorized to do so in writing by the VDOT Project Manager. Non-exempt employees may be paid at time and a half. Others are paid at their regular rate. Overtime is generally not allowed except in special cases where VDOT requires the project to be completed on an aggressive or accelerated schedule and where it is the only way the schedule may be met. A consultant's own scheduling problems are not justification for overtime. A copy of the letter authorizing overtime shall be included with the invoice.

Consultants are not permitted to use any of the contingency without the written permission of VDOT.

Common voucher errors made by consultants:

- Salaried payroll costs are not supported with adequate documentation
- Sub-consultant work not clearly distinguished from prime
- All phases/stages of work must be included with each estimate
- Errors in net fee percentage
- Errors in arithmetic
- Previously billed amounts incorrect
- Exceeding allowable hotel and M&IE expenses
- Progress Report not included
- Project mileage logs not provided
- Billing Rates not consistent with the Contract Billable Rates
- Not using current FAR overhead rates or safe harbor rates approved by the ACO (Cost Plus Net Fee compensation)

When vouchers show a percent complete or stage beyond a point, which by prior agreement, certain reviews should have been completed and have not, payment should not be approved and the consultant should be questioned.

On projects involving multiple bridges, the progress report must indicate the percent completion of each individual bridge.

Consultant Contract Data Tracking information shall be submitted by the consultant with the voucher.

Once the voucher and progress schedule have been checked by the VDOT Project Manager and found to be in agreement, Forms FD-AP-01 and FD-AP-02 must be filled out with the correct information from the voucher. The vouchers, FD-AP-01, FD-AP-02 and progress reports are then sent to an individual designated by the Lead Division Administrator for approval and signature. If review and approval by other divisions is required, the voucher and progress report must be sent to the other divisions.

Once the voucher, FD-AP-01 and FD-AP-02 have been approved, a letter must be sent to the consultant, informing the firm the voucher was approved and has been processed for payment. The voucher information and the contract data is then entered into Cardinal.

One signed voucher (original), along with a copy of the letter for payment, is sent to Fiscal Division for entry into Cardinal. Divisions and Districts are responsible for maintaining records of voucher payments and are subject to review of pertinent Chief or his/her designee.

VDOT does not withhold retainage on consultant vouchers. Prime consultants should be encouraged to not withhold retainage on subconsultants.

When the final voucher is sent to Fiscal Division, the transmittal letter should indicate it is the final voucher and closes out the project. The first sheet of the voucher should be marked "Final Voucher." A letter will be sent to the ACO mailbox (ACO@VDOT.Virginia.gov) informing them that the final voucher has been processed on the project and request that they perform the final audit. After current FAR rates are provided to VDOT on cost plus net fee contracts, final audits will be completed within twelve (12) months of satisfactory completion of the contract as defined in the MOA. Lump sum contracts usually are not audited.

6.5 Annual FAR Audits

Upon annual submittal of FAR audit information and the acceptance of a new overhead rate by ACO, the consultant must start using the new rate on future billings for cost plus net fee contracts. The consultant is not permitted to use the new rate to go back and make adjustments for work previously billed. This adjustment will be made at the time of final audit of Cost plus Net Fee contracts. New overhead rates do not change the maximum compensation payable in the contract.

6.6 Voucher Package Distribution

Voucher	1 - Project File 1 - Fiscal Division (original) 1 - Other Divisions Involved
Cover Letter & Progress Report	1 - Project File 1 - Other Divisions Involved
Cardinal Data	1 - Project File 1 - Cardinal Input Person 1 - Other Divisions Involved (if requested)

6.7 Interim and Final Audits

ACO performs final reviews after the completion of the project on Cost Plus Net Fee and upon close out of Fixed Billable Rate contracts, based upon a risk-based approach. This approach may include, but not be limited to, the following:

- Requesting the consultant(s) provide the ACO with an electronic copy of the consultants complete job costing system data for the project(s) being reviewed. Note: the FAR overhead audit examines if the consultants' accounting systems are adequate to accumulate and segregate costs (e.g. job costing system). The FAR overhead audit should contain an assertion to this effect.
- Review selected areas of cost such as the following:
 - Direct salaries
 - Payroll burden and overhead
 - Net fee
 - Non-salary direct costs
 - Sub-consultant costs
- Verify the hourly rates used to develop the average rate or fixed billable rate per classification to determine that they are in accordance with the MOA and any supplements.
- Verify that the consultant certified that "amounts billed to VDOT" are allocable, allowable, and reasonable in accordance with FAR. (Note: The consultant is responsible for ensuring that all amounts submitted for reimbursement include documentation on how they calculated the FAR allowable amount, where applicable).
- Sample the invoices to verify that the amounts billed were reviewed and approved by the VDOT Project Manager.
- Verify that hourly rates used to develop the average rate or fixed billable rate per classification to determine that they were not misrepresented.
- Review contracts to verify that the direct costs billed are allowed in accordance with the terms of the MOA.
- Verify the net-fee billed is in compliance with the MOA and any supplements.
- Review VDOT Project Manager's requests to the consultant for supporting documentation, in accordance with VDOT policy "Professional Services Consultant Invoices" and related monitoring activities.

- Verify hours billed and labor cost per invoice agree with official payroll records (for Cost plus Fixed Fee Contracts)
- Agree selected non-salary direct costs to source documents, i.e. travel expense vouchers, lease and rental master agreements, equipment and building lease agreements, consultant paid invoices, consultant receipts, etc. Verify that the amounts are allowable by the terms of the MOA and are reasonable. Ensure that all amounts submitted for reimbursement include documentation. Verify that mileage logs were submitted with invoices for payment and the logs separately identify business and personal miles.
- Review of FAR overhead rates billed versus FAR audited overhead rates, cost plus net fee projects, adjusting any difference in accordance with the terms and conditions of the contract.

6.7.1 Payroll Burden and Overhead

Prepare a schedule of provisional overhead rates billed versus audited overhead rates, adjusting any differences in accordance with the terms and conditions of the contract.

6.7.2 Exit Conference

Upon completion of the audit, review audit findings with controller or appropriate consultant representative.

6.7.3 Audit Report

ACO will issue an email with findings, if applicable, to the appropriate consultant representative with copies of the report provided to the appropriate VDOT personnel.

6.8 Items Eligible For Reimbursement As Consultant's Costs

- A. Direct Salary Costs are the Direct Productive Payroll (actual wages paid all employees of the consultant regardless of job classification when directly engaged in work necessary to fulfill the terms of the agreement) less the premium portion of such wages paid for overtime. When the method of compensation includes payment for non-salary direct costs, those amounts must be allocable, allowable, or reasonable in accordance with FAR. The consultant will incur various costs; however, the “actual” cost may not be fully reimbursable.
- B. Direct Salary Costs are the Direct Productive Payroll (actual wages paid all employees of the consultant regardless of job classification when directly engaged in work necessary to fulfill the terms of the agreement) less the premium portion of such wages paid for overtime.
 1. Related costs which are normally paid by the consultant may include items such as:
 - a. Wages paid or accrued for vacation time.

- b. Wages paid for holidays and for sick, military, jury, and other authorized leave.
 - c. Group and Workmen's compensation insurance costs.
 - d. Bonus, incentive compensation or deferred compensation. The allowability of the compensation costs for the senior executives of Government contracts is capped by statute (10 U.S.C. 2323 (e)(1)(P) and 41 U.S.C. 4303(a)(16), both as in effect prior to June 21, 2014) at a benchmark compensation cap amount determined in accordance with a statutory formula.
 - e. Social Security and Unemployment taxes.
 - f. Pension or retirement benefits.
 - g. Group Medical Plan and Life Insurance Premiums.
2. The allocation of the related costs shall be in accordance with FAR. Generally, these costs will be expressed as a percentage of the Direct Salary Costs.
 3. Principals, partners, associates, Chief Executive Officers ("CEOs"), and similar titles are considered to be administrative and/or management functions whose costs have been included in the overhead markup of the rates for technical categories. Salaries of principals of the firm who perform technical services on the project may be included in the Direct Salary Costs for all times they are productively engaged in work necessary to fulfill the terms of the agreement, providing this is the consultant's normal practice and that the cost is not also included in Indirect Salary Costs. If principals of the consultant perform routine services, such as standard design and drafting work which could be performed by lesser-salaried personnel, the wage rates billed directly for those services shall not exceed those rates paid to the consultant's salaried personnel performing the same or similar work. A principal of a firm may perform the function of a project manager, especially in a small firm. In larger firms, a principal, associate or similar titled person may be assigned this responsibility. Regardless of title, this function is the same and the marked-up rate should be comparable to project managers of other firms in Virginia.
 4. Premium Wages for overtime paid to employees, in accordance with the consultant's normal practice and directly chargeable to the project, may be reimbursed as Direct Productive Payroll with no surcharge for related costs provided the consultant obtained prior written approval from VDOT to work overtime.
- C. Direct Non-salary Costs submitted for payment must be allocable, allowable, and reasonable in accordance with FAR. The consultant will incur various costs; however the "actual" cost may not be fully reimbursable. Some direct non-salary costs include:
1. Travel, food and lodging, including automotive equipment rentals, fuel, maintenance, tolls, mileage or per diem paid by the consultant for personal expenses of only his own employees in accordance with his normal company policy and VDOT limits. Costs of alcoholic beverages are unallowable. Cost for airfare requires advance authorization in order to be reimbursable.

2. Communications, including telephone, fax, postage, parcel post, air freight and package express.
 3. Reproductions including photographs, prints and offset work.
 4. Outside professional service and laboratory charges, including, but not limited to, those for surveys, photogrammetry, soils investigations and testing and other charges for engineers, surveyors, lawyers, sociologists, economists, model makers, architects, scientists and other specialists. These charges must be authorized in advance by VDOT to be reimbursable.
 5. Special Equipment as authorized in writing by VDOT and materials required for and used solely in the fulfillment of the agreement. The consultant shall deliver all such equipment and material to VDOT upon completion of the work.
 6. Special insurance for the project that is requested in writing by VDOT.
 7. Rental charges for equipment owned by the consultant are only recoverable to the extent they are allocable, allowable, and reasonable, necessary and consistently treated in like circumstances in accordance with FAR.
 8. Costs of leasing or renting vehicles/equipment are only recoverable to the extent they are allocable, allowable, and reasonable, necessary and consistently treated in like circumstances in accordance with FAR. Insurance, maintenance, taxes, tags, decals, registration, and gas charges are recoverable through the leased vehicle mileage rate for vehicles charged directly to a project. As such, these charges shall not be included in the calculation of the firm's overhead rate. Mileage rates are subject to change based on changes in the IRS mileage rates or other assumptions.
 9. The eVA one-time transaction fee.
- D. Indirect Costs (or overhead costs) are the remaining costs of the consultant's business operations after the assignment to all his clients of all Direct Costs, exclusive of costs ineligible for compensation such as uncollectible charges, advertising, amusement, entertainment, contributions, donations, interest on borrowed money and the like. (For a complete list see 49 CFR Part 31.)The consultant's established practices for allocation of eligible Indirect Costs to each project shall be used if in accordance with generally accepted accounting procedures. In general, these costs will be expressed as a percentage of the Direct Salary Costs charged to the consultant's clients.
- E. Indirect Salary Costs are the actual wages paid to all employees of the consultant for work not directly chargeable to individual clients plus the same related costs as previously outlined in Direct Salary Costs if not included in Direct Cost, such as:

1. Wages paid for preparation of proposals.
2. Severance wages paid to employees.
3. Wages paid for negotiating (not promoting) new business.
4. Research and development wages. This cost is primarily the salaries of the consultant's personnel in the development of new computer programs and labor saving devices. Eligible costs will be as defined in Part 31 of the FAR.
5. Training and education wages. This cost consists of the salaries paid employees while attending classes at accredited colleges or universities for post graduate work in subjects related to the consultant's practice. Also included in this category is attendance at meetings and seminars conducted by recognized technical and professional organizations.
6. General office administration and supervisory salaries.
7. Salaries in connection with the recruitment of employees.
8. Salaries paid to furnish access to or copies of records, if not reimbursed by the Client.
9. Salaries of principals for time actively engaged in the preparation of proposals and pre-agreement negotiation (not promotion) of new business.

F. Indirect Non-Salary Costs are all non-salary costs of the Consultant's business operations eligible for compensation (Section C.) not directly chargeable to individual clients. Those costs are only recoverable to the extent that they are allocable, allowable reasonable and consistently treated in like circumstances in accordance with FAR such as:

1. Travel, food and lodging (see Direct Non-Salary Costs).
2. Communications, including telephone, fax, telegraph, postage, parcel posts, etc.
3. Reproduction costs, including blueprints, photography, photostats, etc.
4. Electronic computer charges including those for computers and related equipment operated by the consultant and those for outside computer services if not consistently billed as a direct cost to all clients. Computer costs in connection with research and development, bookkeeping, new business negotiation and Non-Salary Costs. (Section C.5).

Eligible research and development costs will be as defined in Part 31 of the FAR.

5. Professional service costs. This includes costs of professional services rendered by members of a particular profession such as legal and accounting, which are necessary to the proper operation of the business, but who are not members of the consultant's staff.
6. Sundry taxes levied by Federal, State and Local agencies exclusive of Federal Income Tax.
7. Premiums of all business insurance other than those included in direct costs to clients.
8. Office supplies.
9. Rent, heat, power, light and janitorial services.
10. Licenses and dues in technical and professional organizations.
11. Maintenance and repair of office equipment.

12. Rentals of equipment (see Direct Non-Salary Costs).
13. Costs of meetings and conferences.
14. Library expenses, including technical books, magazines, journals and supplies in connection with education and training.
15. Cost of duplicating records as required by the client.
16. Relocation costs for employees.
17. Depreciation.
18. Recruiting expenses including advertising agency fees and travel and subsistence incidental thereto.
19. Life insurance premiums in lieu of additional compensation for key employees and principals, provided the beneficiary is the employee's estate or his relative and is not the consultant or another key employee or principal of the consultant.

6.9 Final Payment

Upon completion of the review, ACO will communicate the results with the VDOT Project Manager to review and provide comments. After this review, ACO will determine if any additional follow-up is necessary with VDOT personnel and/or appropriate consultant representatives.

ACO will issue an email report with findings, if applicable, to the appropriate consultant representative with copies of the report provided to the appropriate VDOT personnel, when applicable.

If, as a result of the final audit, the consultant owes VDOT a reimbursement of some amounts, the consultant will be notified in an ACO final review report issued by email. The appropriate staff in Fiscal Division will be copied on the email so they can establish an accounts receivable in Cardinal. The consultant should ensure their check is made payable to VDOT and includes the contract number, project number and includes a copy of the ACO final report.

All checks should be sent to the following:
Virginia Department of Transportation
Fiscal Division, Cash Receipts
1401 E. Broad Street
Richmond, VA 23219

If VDOT owes the consultant additional compensation, the VDOT Project Manager will have the consultant submit another Consultant Estimate Voucher to claim the payment. If the project has been closed-out to charges, the VDOT Project Manager will have to contact the funding division and have the project opened for additional charges.

CHAPTER 7

CONTRACT
ADMINISTRATION/
REVIEWS



CHAPTER 7 - CONTRACT ADMINISTRATION / REVIEWS

7.1 Contract Administration

VDOT shall assign or designate a Project Manager and a Contract Administrator to deliver the project and to oversee the contract and ensure that the consultant performs in accordance with the terms, conditions, and specifications of its contract.

Contract Administrators are responsible for the control of their assigned contracts. They must be fully knowledgeable of the contract general terms and conditions, rate structures and deliverable requirements. This responsibility includes coordination with contract users to assure consistent contract compliance.

The overall duties of the VDOT Contract Administrator include, but are not limited to the following:

- Coordinating contract “start-up” activities with the appropriate personnel (facilities, security, etc.)
- Assurance that services are delivered in accordance with the contract price, terms and conditions.
- Coordinates the development of contract task order assignments to include project description, scope of work, schedule, and fee proposal with support from the VDOT Project Manager.
- Obtains signature approval of task order assignments from the Lead Division Administrator and distributes final approved task orders for implementation.
- Collecting and filing of mandatory documentation such as sub-consultant agreements, insurance forms, etc.
- Regular input into PSCRS and Cardinal (task orders, invoices, etc.).
- Prompt reporting of delivery failures or consultant performance problems to the Procurement Officer.
- Coordinates the preparation and submittal of the evaluations with support from the VDOT Project Manager.
- Ensure that the contract terms, conditions and maximum compensation are not modified in any way with action the Procurement Officer.
- Ensure that contact renewals are processed on-time in coordination with the Procurement Officer.

The Contract Administrator reviews invoices for compliance with the MOA and applicable task orders, reasonableness, etc., and coordinates review and approval of the invoice with the VDOT Project Manager. Once the invoice is approved, the Contract Administrator prepares the invoice for payment.

Project Managers are responsible for the control of their assigned projects. They must be fully aware of the project scope, objectives and the proper flow of the work activities. This responsibility includes coordination with the functional work areas to assure the blending of all activities into a quality product produced within the required schedule.

The overall duties of a VDOT Project Manager include, but are not limited to the following:

- Day to day coordination for the delivery of the consultant services.
- Coordinate contract “start-up” activities with the appropriate personnel.
- Develop overall project goals, plans, and schedules.
- Maintain complete project files and satisfy the requirements for record keeping, filing, and reporting.
- Provide liaison with consultants in preliminary stage, design stage and during construction.
- Ensures that no work is done or costs incurred until written authorization is given by VDOT.
- Monitor the consultant’s progress on work assignments to ensure on time, on budget delivery of expected quality product.
- Review and approve consultant invoices and status reports. Process invoices for payment in a timely fashion. Ensures project data is input into Cardinal.
- Gather, coordinate and transmit information required to complete the contractual services.
- Work with other functional specialists and divisions to coordinate plans and schedules, obtain commitments, and resolve problems.
- Coordinate and provide liaison with other entities such as FHWA, city, county, and State regulatory agencies, environmental resource agencies, citizen groups, and elected and appointed government officials.
- Review preliminary, intermediate, pre-final and final plans and special provisions, etc. prepared by the consultant(s) for accuracy and completeness prior to submitting them for the designated activity.
- Distribute and obtain approval of plans and special provisions from other divisions and outside agencies.
- Answer inquiries relating to VDOT's practices and specifications, including AASHTO modifications and geometric standards.
- Prepare Consultant Performance Reports, at a minimum, in January and June of each year and upon expiration of the agreement.
- Assist field personnel in solving construction problems. Coordinate field inquiries regarding the review of shop drawings.
- All internal coordination of the consultant plans, reports, etc. shall be arranged by the VDOT Project Manager. Once the plans, reports, etc. have been accepted, the appropriate division will be responsible for making in-house revisions or returning the plans, reports, etc. to the consultant for revisions.
- Coordinate and process plan revisions.
- Identify changes to scope of services, review man-hour estimates and prepare contract amendments (supplemental agreements).
- Participate in the review of consultant claims and time extension requests.
- Provide technical information and report project status to upper management.

Coordination may involve: field survey, aerial photography, traffic, environmental, right-of-way, corridor analysis, hydraulic and hydrologic analysis, geotechnical, value

engineering, road plans, structure and bridge plans, public involvement, specifications, FHWA, signs, signals, lighting, utilities, drainage, navigation permit, quality control reviews, etc.

Status meetings and other project reviews are necessary for the VDOT Project Manager to satisfactorily control his/her assigned project. These meetings will allow him/her to evaluate the work progress and to determine if any activities should be redirected to meet the goals of the project. Through effective leadership by the VDOT Project Manager, these meetings will also provide information and produce decisions for the efficient advancement of the project to the next level of completion.

In addition to the scheduled meetings, the VDOT Project Manager must anticipate other meetings or reviews which may be required. Quality Assurance audits, coordination meetings and value engineering reviews may require the VDOT Project Manager's participation during the project development. The satisfactory accomplishment of these meetings will be necessary for the success of the project.

7.2 Evaluation of Consultant Performance and Services

It will be the responsibility of the VDOT Project Manager and each division involved in the contract to evaluate the consultant's performance, including named subconsultants performing any major type of work, at a minimum, in January and June of each year over the duration of the project and upon expiration of the agreement. However, additional performance evaluation reports may be filed at any time over the duration of the project as deemed necessary by the VDOT Project Manager. The Lead Division will be responsible for monitoring and ensuring timely completion of these reports by the VDOT Project Manager. The Consultant Performance Report will be used for the evaluation.

The analysis must be completely fair and honest; personal dislikes and biased opinions of the firm must be set aside. Ratings shall be based on facts and documentation and not personal prejudices. The evaluation should consider only the performance of the consultant during the production of the project. Attention must be paid to the rating values. A consultant that fully meets the terms and conditions of the contract receives a score of three. Scores higher than three must result from exceptional performance from which VDOT realizes some benefit to the schedule or budget and must have supporting comments. Scores of less than three without any supporting comments will result in the performance report being returned to the rater for the comments to be added. Attention must be paid to the utilization of DBEs/SWaMs and appropriate scores given.

Each division involved in a contract is responsible for completing performance reports for their portion of the work. The following steps shall be taken with the report for signature and approval:

- Reviewed by the consultant and the consultant given an opportunity to respond back with written comments
- Reviewed and signed by the Division/District Administrator (Reviewer)
- Filed with Procurement Officer, along with the firm's written comments

The consultant may appeal the evaluation to the rater's supervisor, Division/District Administrator or the appropriate Chief Administrator. If the report is revised, the VDOT Project Manager will make sure that any previously distributed copies of the original report are voided and that the correct information is in the database. Consultant Performance Reports shall be retained in the performance database for five (5) years after the date of the report. If requested by the prime consultant, the performance reports of their subconsultants on a project will be furnished to the prime consultant. This will provide feedback to the prime consultant on the subconsultant's performance.

The reports will be used as back-up data for future justification in using that firm for work. The Consultant Performance Reports shall be uploaded to the Consultant Performance Evaluation library for use by Selection Committees. Individual scores for each item rated will be in the SharePoint table, not just the average score. This will allow committee members to see if there are any individual category low scores while the average score is still high. Report data over five (5) years old will be deleted from the database. If requested by a consultant in writing, a copy of the Performance Report spreadsheet will be provided to the consultants on a frequency of not more than twice a year.

If a contract is of such a nature that no useful purpose will be served by periodic reviews, the Lead Division Administrator may exempt the specific contract from the review procedures stated above and substitute other procedures deemed appropriate to accomplish the intended purpose. A record of this exemption should be maintained in the project file. The reasons for exemption and the substitute procedures used must be stated in writing and retained in the project file.

In the event the consultant's performance is unsatisfactory or it is deemed in the best interest of VDOT to cease work on a project, a written notification to stop work shall be issued to the consultant. The consultant may not proceed with work on the project unless a subsequent written authorization to proceed is given. If VDOT decides to terminate the contract, it must be done in compliance with the terms and conditions stated in the MOA.

7.3 Final Consultant Performance Report

VDOT requires that a final Consultant Performance Report to be completed by the VDOT Project Manager from each division that works with the consultant within sixty calendar (60) days after the completion of the work from the prime, sub-consultant and DBE. Work will be considered complete after payment of the final voucher. If errors are found in the plans during construction, the procedure outlined in the MOA should be followed and an additional Consultant Performance Report should be completed and filed with Procurement Officer. The report must be reviewed with the consultant and the consultant given the opportunity to submit written comments regarding an unsatisfactory evaluation.

7.4 Title VI Evaluation Report

Title VI Evaluation Reports (T6-2-3-09) must be updated annually by consultants whose portion of the contract is \$10,000 or greater, as long as the consultant or subconsultant(s) is performing in accordance with the MOA. A copy is furnished to the CRD for their review and approval. The VDOT Project Manager is responsible for ensuring the Title VI Evaluation Reports (T6-2-3-09) is updated annually by consultants and approved by CRD.

In the event of a finding of non-compliance, the Project Manager may seek resolution with the consultant with the assistance of the CRD.

7.5 Insurance

Certificates of Insurance evidencing that the insurance coverages required by the MOA are in effect must be submitted annually, from the date of execution of the MOA, by the consultants. The VDOT Contract Administrator is responsible for ensuring the Certificate of Insurance filed with VDOT is up-to-date.

7.6 Annual FAR Audits

FAR audit information and new overhead and payroll burden rate must be submitted annually and approved by ACO. The documentation required is contained on the ACO website. The VDOT Project Manager is responsible for ensuring this information is submitted and approved on an annual basis.

7.7 Plan Errors and Omissions

VDOT's policy is to take all reasonable steps to preclude significant design errors/omissions both by its own designers and by consultants. Upon discovery of an alleged design error/omission, immediate action is mandatory to minimize potential delay costs. This should include communication with the designer unless the solution is immediately obvious without this input. The consultant must be made aware of the circumstances and put on notice as soon as possible that there may be a claim against them for errors/omissions. The consultant must be given an opportunity to help resolve problems that arise during construction as a result of unforeseen conditions or alleged or potential plan errors/omissions. VDOT will seek to recover costs incurred as a result of design errors/omissions determined to be the liability of a consultant. If the error/omission results in additional quantities being added to the project that would have been required anyway, no compensation is sought from the consultant unless obtaining the additional quantities caused a delay in the project and there were other costs associated with the delay or there were premium costs created because new pay items had to be set up to pay for additional quantities. All alleged design errors/omissions relating to this policy and known facts surrounding the alleged error will be carefully and fully reviewed by VDOT personnel and affected consultant as indicated herein. If necessary, a review committee shall establish the official position of VDOT with respect

to liability for additional costs incurred as a result of a particular alleged design error/omission. All decisions shall be subject to appeal to the appropriate Chief at the option of the consultant.

At the first indication of a potential design error/omission, the Project Manager shall take the following action; however, an error/omission alleged by a contractor does not necessarily start this process.

- Immediately notify supervisor and consultant. Correspondence regarding errors/omissions must be addressed to an Officer in the firm.
- Alert subordinates that more detailed documentation than that normally required on the work performed shall begin; include all decisions and descriptions of work, photographs, records of labor, materials, and equipment.
- Notify the consultant and offer the consultant an opportunity to participate in a solution.
- Attempt to resolve the issue. This attempt should proceed through channels to the Administrator of the Central Office procuring division as necessary.

Upon notification of an alleged error/omission, the Division Administrator (or designee) shall:

- Review all available information, including costs, and determine the appropriateness of attempting to secure reimbursement from the consultant for the legally recoverable additional costs incurred as a result of the alleged error.
- Request assistance from the Attorney General's Office if legal interpretation is required.
- Drop further action if it would not be appropriate to pursue reimbursement from a cost viewpoint, or proceed to next step.
- If the decision is to proceed, schedule a meeting of a review committee.
- Lead the review committee in its deliberations to determine if the consultant has responsibility for the alleged error/omission, if reimbursement should be pursued, and amount of reimbursement.
- If the review committee determines the Consultant committed an error/omission and the consensus of the committee is to recommend reimbursement, notify the consultant and the appropriate Chief of the decision and outline the options for repayment or appeal.
- Take the following steps when applicable:
 - Negotiate a settlement. Settlements of \$50,000 or larger require approval of the Governor's office.
 - Acceptable methods of settlement include cash payment, installment cash payments, services in kind in lieu of money, and withholding payment from future vouchers.
 - If the consultant agrees to reimburse VDOT through deductions from other payments due, notify Fiscal Division to make appropriate deductions and release the consultant from further liability.

- If the consultant repays in full, acknowledge receipt and tender release from further liability for the specific error/omission.
- If the consultant refuses repayment, does not appeal the decision, and has payments due from other agreements, notify Fiscal Division and advise him/her to withhold payments due the consultant.
- If the consultant refuses repayment, does not appeal the decision, and has no other payments due, notify the Office of Attorney General to proceed with legal action.
- If the consultant requests an appeal of the decision, notify the appropriate Chief that the consultant wishes to appeal the decision. Provide all pertinent details concerning the alleged error and actions and decisions to date.
- Notify the consultant of any actions taken.

7.8 Ethics in Contracting

Sections 2.2-4367 through 2.2-4377 of the VPPA and Department of Personnel and Training Policy and Procedures Policy 1.60 discuss ethics in contracting.

Governmental business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in VDOT-consultant relationships.

Accepting unsolicited advertising or promotional items such as calendars, pens, pencils, key rings, golf balls, coffee cups, etc., (Usually costing less than \$10) is acceptable since these would not reasonably tend to influence the discharge of an employee's duties and they are of nominal value. Employees may accept food, drinks and give-away items offered to all participants of consultant sponsored seminars or trade shows.

7.9 Critical Infrastructure Information/Sensitive Security Information (CII/SSI)

Consultants shall be responsible for safeguarding CII/SSI (as defined in VDOT CII/SSI Policy) in their custody or under their control. Individuals are responsible for safeguarding CII/SSI entrusted to them. The extent of protection afforded CII/SSI shall be sufficient to reasonably foreclose the possibility of its loss or compromise. Consultants shall ensure that all employees using this information are aware of the prohibition against disclosing CII/SSI in any manner (written, verbal, graphic, electronic, etc.) that permits interception by unauthorized persons.

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

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

The reproduction of CII/SSI documents or material containing CII/SSI shall be kept to the minimum extent necessary consistent with the need to carry out official duties. The reproduced CII/SSI material shall be marked and protected in the same manner as the original material. Material containing CII/SSI shall be disposed of by any method that prevents unauthorized retrieval. (e.g. shredding, burning, returning to original source, etc.) CII/SSI shall be transmitted only by US first class, express (US Postal, FedEx, UPS, etc.), certified or registered mail, or through secure electronic means.

The portions of the documents that are marked as CII/SSI are not subject to release under the FOIA (Code of Virginia §2.2-3705.2), and may not be released except with written permission from VDOT. Unauthorized release or reproduction of these documents may result in civil penalty or other legal action.

By copying, downloading, or receiving a copy of any documentation containing CII/SSI, or any part thereof, the consultant or any other recipient acknowledges and agrees to the terms of the MOA and will advise any individual using these documents, or any part thereof, that they too shall be responsible for safeguarding the CII/SSI in their custody or under their control. All costs associated with performing these CII/SSI requirements are the responsibility of the prime consultant.

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

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

CHAPTER 8

SUPPLEMENTAL
AGREEMENTS



CHAPTER 8 - SUPPLEMENTAL AGREEMENTS

The MOA provides that supplemental agreements may be needed to amend the services and/or compensation that were agreed upon in the original contract. The additional work required must fall within the original scope and provides for services that are essentially the same as those in the original contract. Supplemental agreements will state the proposed changes of work, extension of time and completion, and adjustment of fees to be paid, if any.

8.1 Allowable Uses of Supplement Agreements

Frequently, changes must be made in the services covered by agreements for transportation projects. Supplemental agreements may increase or decrease the consultant's compensation and/or time and are used for the following:

- Increasing or decreasing the scope, character or complexity of the original services to be provided. When VDOT reduces the scope of work and eliminates some consultant services, a supplemental agreement will be executed decreasing the maximum compensation payable and decreasing the net fee payable.
- Adjustment of the project schedule or time of completion.
- Correction of errors or omissions in the wording of the original contract.
- Additional phases of a Multiphase Professional Services Contract.
- Sole source and emergency contracts (are to be awarded only when the circumstances surrounding the original procurement still exist and, therefore, warrant continued use of sole source or emergency services). If these changes require an adjustment of the prime compensation provided in the prime consultant agreement, the authorization to perform the work must include the method to be used in determining the adjustment in the prime compensation and the amount of such adjustment. The Consultant's Estimate Voucher shall be modified to include any changes and the date of the supplemental agreement noted on the first page.

If using a supplemental agreement for a contract with lump sum compensation, the total contract amount cannot be increased by more than the greater of \$50,000 or twenty-five percent of the original contract amount, unless advance written approval of the Governor or his designee is obtained. This does not apply to cost-plus-net-fee type of compensation.

8.2 Non-Allowable Uses of Supplemental Agreements

Supplemental agreements cannot be used for:

- Any changes which are outside the general scope of services defined in the RFP and/or MOA. Such changes would have the effect of making the services performed substantially different from the services the parties bargained for at the time the original contract was awarded (i.e. a contract for road design work may not

have a bridge added to it if there was not any bridge design work in the original RFP and MOA).

- Transferring authorized amounts among the consultants working on a project does not require a supplemental agreement as long as the transfer does not change the total maximum compensation. Transfers may be from the prime consultant to subconsultant(s), subconsultant(s) to subconsultant(s), or subconsultant(s) to prime consultant. To document the transfer, a letter which outlines the changes must be submitted by the involved prime consultant, to each affected subconsultant, and the Lead Division Administrator. A copy of the letter will be furnished to ACO and the Procurement Officer.
- Supplemental agreements will not be processed to compensate the consultant for changes in overhead.
- If there is any question as to whether or not the extra work is within the scope of the MOA, the Attorney General's office shall be consulted.

8.3 Justification of Supplemental Agreements

In justifying the supplemental services, it is of particular importance that specific reasons are stated why the additional services are not contained in the original agreement; and, that a clear indication is given to show that circumstances would not require the consultant to anticipate the conditions warranting the change.

Evidence to justify a supplemental agreement should, at a minimum, address the following: project continuity, time savings, cost effectiveness, and the learning curve for a new consultant. Proposals will be submitted, reviewed and approved by the Procurement Officer for any supplemental agreement using the same process covered in Chapter 4.

8.4 Net Fee

When the consultant provides additional services clearly outside the scope of agreement and at the request of VDOT that require a supplemental agreement, additional net fee will be paid to the consultant. Additional services outside the scope of the original agreement may include providing the same services, but for an extended time past the original contract completion date or in a quantity significantly larger than expected when originally scoped.

The net fee is a negotiated amount and not a set percentage of the contract. The net fee on supplemental agreements will be determined independently of the process used to determine the net fee for the original agreement. This would not be a cost plus a percentage of the cost situation since the net fee on the supplemental agreement is a negotiated amount and not a set percentage.

8.5 Execution of Supplement Agreement

The process for executing a supplement is the same as used in the original agreement. FHWA shall be notified when any of the instances set forth in Chapter 1, Section 1.2, of

this Manual apply. It must be verified that funds are available to perform the additional services. The general procedure for negotiating the fee proposal is similar to the original MOA. Supplemental agreements do not have to use the same net fee as the original contract, and the net fee should be a negotiated amount based on the factors in Section 4.6 for the additional services. Once the supplemental fee proposal has been negotiated, and man-hours and fees have been agreed upon, the process for approval is the same as with the original MOA. The supplemental agreement will state the proposed changes of work or services, extension of time and completion, and adjustments of fees to be paid, if any. VITA or ITD approval is required if computer hardware and/or software acquisition or lease is indicated in the agreement. Supplemental agreements must be signed by the same entity as the original agreements of which they are to become a part.

Once approved, the supplement should be sent to everyone who received a copy of the original. The Cardinal system will be updated to reflect the current dollar amounts as revised by the supplemental agreement and the funding division should be notified of the increase in cost. A copy of the supplemental agreement will be sent to the ACO.

8.6 Notice to Proceed

The consultant must have an executed supplemental agreement and receive authorization and a written notice to proceed prior to proceeding with the work.

If not feasible, the consultant may be given authorization to proceed, with approval from the appropriate Chief, with the services up to the maximum compensation payable of the current contract. However, the authorization and approval to proceed must not be considered a substitution for the supplemental agreement. The consultant shall submit a proposal to perform the services. The proposal will be negotiated and an agreement reached. The consultant will be given a written notice to proceed with the understanding that a supplemental agreement will be executed as soon as possible. The consultant may not exceed the current maximum compensation payable in the original agreement and any existing supplemental agreements until the new supplemental agreement is executed.

CHAPTER 9

SMALL
PURCHASE
PROCEDURES



CHAPTER 9 - SMALL PURCHASE PROCEDURES

9.1 Small Purchase Procedures for Professional Services

Divisions requiring the use of professional services are authorized to procure such services in the following manner if the anticipated contract amount is expected to be \$60,000 or less. The Division Administrator will:

1. Develop a scope of services and proposed schedule for the project.
2. From a list of firms which have performed similar services over the previous two biennium or which are available to perform a specialty service, select not less than three (3) firms which appear to be most qualified and suitable to render the required services. Consideration should be given to the current amount of existing work with VDOT and to selecting a business to meet VDOT's overall DBE/SWaM goal.
3. Solicit interest from the selected firms to determine their current personnel's qualifications, experience, workload, capacity, past performance on similar projects, and ability to perform the scope of services and meet the proposed schedule. Written documentation of the interviews must be made a part of the project file. It shall include the names and addresses of the firms contacted, the description of the required services, the names of the persons requesting and receiving the information, and the date the information was obtained. Professional service procurements of \$60,000 or less are not advertised on eVA.
4. Rank the firms in the order deemed most qualified and include written documentation of the reasons for the ranking in the project file. Past performance on VDOT projects will be considered. Consideration should be given to the number and value of previous VDOT contracts awarded to each firm and the work should be spread around to avoid favoritism or the appearance of favoritism.
5. Negotiate a fee for the service with the first ranked firm. If negotiations fail to obtain a satisfactory agreement which is advantageous to VDOT and at a fair and reasonable fee, negotiations shall be formally terminated and the second ranked firm shall be selected for negotiation. This procedure shall be continued until a contract can be negotiated at a fair and reasonable fee.
6. Prepare a MOA using the latest guide agreement approved by the Attorney General's office. The agreement shall be on a lump sum or on a unit cost (hourly rate) basis and the overhead rates, average salary rates and fixed fee shall be within the range normally accepted by VDOT and shall be determined by the Division Administrator to be reasonable. No pre-award audit will be required.
7. The agreement shall be executed by the Division Administrator designated to execute an agreement of this nature.

8. A written notice shall be issued identifying the consulting firm to be hired, the type of work to be performed, and the date the contract was or will be awarded. This notice shall be sent to the ASD at "CO ASD Procurement Request" email address in Outlook with a request to post it in a public place for 10 workdays. The notice of award must be posted on the On-Line Bids page of eVA: <http://www.eva.state.va.us>.
9. If the anticipated contract amount is expected to be less than \$5,000, it is only necessary to solicit interest from one firm.
10. The remainder of the procurement and contract administration process follows that of a regular contract beginning with Chapter 6.
11. See the DGS, Division of Engineering & Building's *Construction and Professional Services Manual* for additional information.

9.2 Small Purchase Procedures for Goods and Services Other Than Professional Services

When consultants make small purchases of goods and services other than professional services that are directly billable to the project and are not expected to exceed \$100,000, the consultant should comply with the following procedures:

1. Purchases made pursuant to these procedures do not require public bid openings or newspaper and eVA advertising.
2. Small purchase procedures shall provide for competition wherever practicable.
3. Single Quotation. (Up to \$5,000)

Where the estimated cost of goods or nonprofessional services is \$5,000 or less, purchases shall be made upon the receipt of one (1) written or telephone (oral) quotation from at least one (1) DSBSD-certified micro business, if available. Additional sources may also be solicited. A record of the quotation shall be kept to document the name and address of the vendors contacted, the item description or service offered, price quoted, delivery dates and F.O.B. point, names of persons giving and receiving prices and the date the information was obtained. If more than one quote is solicited, the award will be made to the lowest responsive and responsible bidder.

4. Unsealed Bidding. (Over \$5,000 to \$100,000)

Solicit written bids or quotes for goods and nonprofessional services from \$5,000 to \$100,000. Solicit four (4) valid sources, including a minimum of four (4) DSBSD-certified micro businesses, if available, in writing or electronically. A record of the solicitation and responses shall be kept. If fewer than the required

number of sources are solicited, the reasons shall be documented. The award will be made to the lowest responsive and responsible bidder.

5. Unsealed Proposals (Over \$5,000 to \$100,000)

Solicit written offers for goods and nonprofessional services from \$5,000 to \$100,000 using an informal RFP. The solicitation should include a cover sheet, a general description of what is being sought, the factors and weights to be used in evaluation, any general terms and conditions including unique capabilities or qualifications that will be required. Solicit four (4) valid sources, including a minimum of two (2) DSBSD-certified micro businesses, if available, by mail, fax, or electronically. All responses must be received at the designated location by the date and hour stated in the solicitation. In lieu of an evaluation committee, the buyer or end user may solely evaluate and rank offers. Upon completion of the evaluation, negotiations shall be conducted with the offeror selected. A record of the solicitation, the responses, and the evaluations shall be kept. If fewer than the required number of sources are solicited, the reasons shall be documented.

When purchases of goods and services other than professional services are expected to exceed \$100,000, it's not considered small purchase procurement. Competitive sealed bidding or competitive negotiation shall be used. Solicit from a minimum of six (6) valid sources, including a minimum of four (4) DSBSD-certified micro businesses, if available. Public advertisement is required.

See the DGS, DPS's *Agency Procurement and Surplus Property Manual*, Chapter 3 & 5, for additional information.

CHAPTER 10

SOLE
SOURCE/
EMERGENCY
CONTRACTS



CHAPTER 10 - SOLE SOURCE AND EMERGENCY CONTRACTS

10.1 General

Section 2.2-4303 of the Code of Virginia provide for sole source and emergency contracts. Written determination must be made of the need for a sole source or emergency contract and retained in the file. A written notice must be posted for at least ten (10) working days in a designated public area and on the On-Line Bids page of eVA (<http://www.eva.state.va.us>) on the day the contract is awarded or the decision to award is made. The notice must include the determination of need and identify that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the Scheduling and Contract Division's Bulletin Board on the first floor at 1221 East Broad St., Richmond, VA. In addition, all sole source and emergency contracts shall be posted on the designated bulletin board in the ASD located on the first floor at 1201 East Broad St., Richmond, VA. It will be necessary to furnish a copy of the notice to the ASD for this posting. A copy of the notice may be faxed to the district with a request that it be posted in a public area for at least ten (10) work days. Sole source or emergency procurements are improper if used only for the administrative convenience of VDOT.

10.2 Sole Source Contracts

Sole source procurement is authorized when there is only one source practicably available for the goods or services required. Sole source procurements up to \$50,000 are approved by the Commissioner. Sole source contracts exceeding \$50,000 shall be approved by the DGS/DPS. Submissions for approval shall address the following four points in the order given: explain why this is the only product or service that can meet the needs of the purchasing agency; explain why this vendor is the only practicably available source from which to obtain this service; explain why the price is considered reasonable; and describe the efforts that were made to conduct a non-competitive negotiation to get the best possible price for the taxpayer. When sole source contracts exceed \$50,000, forward the request to the Procurement Section of the APD who will seek the DGS/DPS approval for you. APD will complete the Sole Source Procurement Approval Request form.

The ASD maintains a central file of all VDOT sole source requests. Ensure that ASD is provided a copy of requests for \$10,000 or less.

Upon the division's receipt of approval to proceed, the public notice will be posted.

Sole source procurements up to \$50,000 are not posted to eVA.

The remainder of the procurement process follows that of the small purchase procedure in Chapter 9 except there are no other firms to select for negotiations if negotiations fail with the sole source firm. The contract may be awarded lump sum or cost plus net fee. A Pre-Award Audit Evaluation shall be performed when the contract is greater than \$25,000.

See the DGS/DPS's *Agency Procurement and Surplus Property Manual*, Chapter 8, for additional information.

10.3 Emergency Contracts

Divisions requiring the use of professional services for emergency contracts are authorized to procure such services in the following manner. Emergency contracts may be for any amount and are authorized and approved by the appropriate Chief. "Emergency" means a set of unforeseen circumstances beyond the control of VDOT of a serious and urgent nature that either presents a real, immediate threat to the proper performance of essential functions or may result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

The Division Administrator shall:

1. Obtain approval in writing from the appropriate Chief to proceed on an emergency basis. Documented justification which must accompany each emergency request is to include an explanation of the following:
 - Explain the nature of the emergency and the relevant circumstances associated therewith.
 - Describe the threat to the health or safety of individuals, property, or essential state functions if immediate action is not taken. Provide an estimate of the potential material loss or damage.
 - Explain how the services of the consultant will alleviate or eliminate the emergency.
 - Describe what the consequences will be if the emergency action is not taken and the risks associated therewith.
2. Develop a scope of services and proposed schedule for the project.
3. Select a firm which has performed similar services over the previous two biennium or which is available to perform a specialty service and which appears to be the most qualified to render the required services. The selected firm should have sufficient staff and expertise to rapidly perform the services. The procurement shall be made with such competition as is practicable under the circumstances.
4. Conduct a telephone or personal interview with a representative of the selected firm to determine their current personnel's qualifications, experience, workload, capacity, and ability to perform the scope of services and meet the proposed schedule. Written documentation of the interview must be made a part of the project file.
5. Negotiate a fee for the services. If negotiations fail to reach a satisfactory agreement which is advantageous to VDOT and at a fair and reasonable fee, negotiations shall be formally terminated and another firm selected as indicated in Steps 3 and 4. This procedure shall be continued until a contract can be negotiated

at a fair and reasonable fee. Written documentation of the negotiation process must be made a part of the project file.

6. Prepare a MOA using the latest standard agreement approved by the Attorney General's office. The agreement will usually be on a lump sum basis and the overhead rates, average salary rates and fixed fee shall be within the range normally accepted by VDOT for work performed under emergency conditions and shall be determined by the Division Administrator to be reasonable. Because of the necessity to rapidly proceed with emergency work, Pre-Award Audit Evaluations and Legal Reviews are not required.
7. The agreement shall be executed by the appropriate Chief. The agreement transmittal letter shall include a description of the contractor's qualifications, experience and background to provide the emergency service and the basis on which this consultant was selected over other qualified firms. Also include an explanation of how you concluded that the cost is fair and reasonable since competition was not conducted.
8. For emergency procurements over \$50,000, notices of award must be posted on the eVA website and at a minimum state that the procurement has been declared an emergency, what is being procured, the contractor selected, and the date the contract was or will be awarded.
9. See the DGS/DPS's *Agency Procurement and Surplus Property Manual*, Chapter 9, for additional information.

CHAPTER 11

CONSULTANT
ENGINEERING
INSPECTION



CHAPTER 11 – CONSULTANT ENGINEERING INSPECTION

This chapter provides additional guidance for the procurement of Consultant Engineering and Inspection services. It is not meant to replace any applicable requirements listed in previous chapters.

11.1 General

VDOT utilizes Consultant Engineering Inspection (“CEI”) firms to provide inspection services when VDOT cannot provide the program objectives for roadway construction inspection. The need for CEI is generally determined at the District or Residency level by use of construction manpower management techniques, upcoming project data, and existing inspector manpower levels. The Construction Division, as requested through the Districts, will serve as the Lead Division for the procurement of CEI services.

In addition to the standard inspection services contract, the Scheduling and Contract Division also procures Bridge Repair and Coatings Inspection Contracts, Technical Inspection Services Contracts, Schedule and Constructability Contracts and Finals Preparation Contracts. Due to the unique nature of the Finals Preparations Contracts, to avoid any real or perceived conflict of interest, no employee of a Consultant Firm shall be permitted to audit work on any project in which that firm performed any design work.

11.2 CEI Services RFP

The RFP for CEI contracts identify the scope of services, method of compensation, i.e., Fixed Billable Rate or Cost Plus Net Fee, the number of CEI staff requested, and the need for additional engineering services such as shop drawing reviews, schedule analysis, etc. For each classification of staff requested by the RFP, there may be Staff Functions, Features of Work and Knowledge Skills and Abilities Requirements.

The EOI may include up to four Team members who are not currently employed by the firm, under which they are proposed. They each shall have a signed commitment letter attached to their resume, demonstrating their commitment to the firm under which they are proposed. An example commitment letter may be found in the RFP.

Two methods of payment are generally used for CEI contracts: (1) cost plus net fee payment, which is used for payment of project specific inspection contracts and (2) fixed billable rate payment (actual cost basis) for each project assignment which is used for payment of district-wide and/or regional contracts.

The Construction Division has established base hourly rates (caps) for various staff classifications requested by the RFP. These rates can be found in the method of payment section of the RFP.

For short listing purposes, the submitting firm’s experience in the type of service qualifications of the proposed inspection team and the firm’s current workload are evaluated with a numerical scoring system based on criteria contained in the RFP.

Emphasis is placed on the inspection staff's knowledge, skills and abilities. Prior to scoring, each Selection Committee member is briefed on the use of the RFP's Evaluation Criteria and provided information on other various items found therein, such as the required materials certifications.

The Construction Division chairs the Selection Committee, with the two remaining members representing the districts. The Selection Committee shall consist of three members; one member represents the central office Lead Division, one is from the district in which the construction inspection services are to be provided, and the remaining member is chosen from central office or another district.

Upon completion of the interview and selection process, the district will often schedule a meeting with the selected firm so that the district and residency personnel can better define the scope of services and identify issues of concern associated with the inspection services. At this meeting, notes should be taken and a copy submitted with the consultant's fee proposal. This meeting will define construction time frames, staffing requirements, and direct cost items such as numbers of cell phones and computers. The consultant should also be advised, as general policy, VDOT will not pay per diems for the inspection staff. However, depending on the anticipated inspection needs, two to four weeks of per diem expenses may be included in the fee proposal and noted "for use only when authorized by VDOT." The consultant should understand that these per diems are for use only in the event that an increase in staff is required for a short duration, or when safety is a concern. A short duration is defined as one to two weeks only. Both the Construction Division and the ACO will review cost associated with direct cost items identified during the scoping meeting. Should an Inspector Coordinator position be required the consultant should be informed that supervision and support of the consultant's own inspection staff is not considered billable to VDOT.

11.3 Direct and Indirect Cost

VDOT will allow the direct labor costs required for the field office operations as well as home or branch office direct labor costs, which are specifically identified and approved. The job classifications, man-hours, wage rates, etc. will be determined during contract negotiations. As a general rule, the home or branch office direct labor will be limited to only those essential services, which can be provided from the home or branch office more effectively and/or economically.

As a general rule, VDOT will provide a field office with the necessary office equipment for its establishment and the operations associated with it. Should VDOT not own or have access to the required equipment items, the decision as to whether the items should be leased or provided in some other manner will be made during the contract negotiations, consistent with VDOT's normal contracting practices. Payment for mobilization i.e., the consultant cost for implementation or providing and establishing inspection services is not allowable as a direct cost item.

The consultant is responsible for providing office supplies to the field office for their employees such as pencils, paper etc. as well as, those items commonly used when providing construction inspection.

The list below provides some direct cost items normally associated with consultant inspection. This list is not all-inclusive, but provides a general description of costs, which might be expected and also indicates VDOT's policy on the allowance of such costs. It should also be noted, that VDOT has an option to furnish these items.

1. Survey equipment
2. Nuclear gauge film badges.
3. Specialized test and safety equipment are normally not considered "Tools of the Trade", such as a respirator and paint test equipment on a task specific contract, such as a bridge painting inspection contract, or a nuclear density gauge.
4. Computer, imaging and communication equipment only when the district requests it.
5. Inspection vehicles and mileage will be will be reimbursed in accordance with the Department's current policy.

The following have been identified as indirect cost and therefore cost for these items should be included in the consultant's overhead expense.

1. "Tools of the Trade" or normal inspector equipment such as rules, manuals, safety vest and normal safety equipment i.e. steel toed shoes, hard hats, first aid kits, flares, fire extinguishers and flashers.
2. Storage and security requirements for the consultant firm's owned and leased equipment.
3. Field office supplies such as paper, pens, pencils, paper clips, etc.
4. Supervision and support of the consultant's own inspection staff.

APPENDIX A

CONSULTANT
AGREEMENT
CHECKLIST



CONSULTANT AGREEMENT PROCESS
NEW AGREEMENT

This checklist has been developed to ensure the procurement process is followed consistently for all VDOT professional services contracts. The Procurement Officer shall insert the date of completion in the space provided for all of the activities listed below.

Project: _____

Chapter 1

- _____ Determination if outside services are needed based on Section 1.1.
- _____ Procurement Officer assigned.
- _____ Determine if other divisions are included.
- _____ Scoping meeting with other divisions (if applicable).
- _____ Develop Comprehensive Scope
- _____ Check to see if the project is on the PoDI/PoCI list.
- _____ Notify FHWA if criteria listed from Section 1.2 applies.
- _____ Prepare PE cost estimate and determine if PE funds are available (Form IID4-C).
- _____ If PE funds not available, review with appropriate Chief.
- _____ Selection Committee appointed.
- _____ Rating criteria established to short list (RFP score sheet).
- _____ Approval of Lead Division Administrator of selection committee, including rating criteria for short list via the CP-1 form
- _____ Approval of FHWA to use consultant, if applicable, in accordance with Section 1.4.

Chapter 2

- _____ Request for Proposal (RFP) prepared.
- _____ CRD review and approve RFP, for Project Specific Contract _____ RFP review for quality assurance by an independent reviewer by the Lead Division.
- _____ Final scope reviewed by Lead Division Administrator prior to advertisement.
- _____ RFP posted on Internet.
- _____ eVA Internet notice posted.
- _____ Date public notice to be printed in newspaper.
- _____ Date public notice to be printed in eVA.
- _____ RFP and rating criteria sent to consultants when requested.
- _____ Cutoff date for EOI responses to RFP.
- _____ Consultant EOIs checked out of Falcon.

_____ Perform a responsiveness check on all EOIs to verify all required information per the RFP has been submitted including verification of applicable governmental licensing requirements.

Chapter 3

_____ Verify to ensure the Selection Committee members' training and certification requirements are met.

_____ Distribute EOI's and additional documentation in accordance with Section 3.3.

_____ Hold short list meeting

_____ Short listed firms workload verified.

_____ Short listed firms performance reports reviewed/ reference checks made.

_____ Short listed firms debarment status verified.

_____ Short list with scores of all firms evaluated and rating forms for the short listed firms certified by Procurement Officer and Lead Division Administrator.

_____ Notice of short listed firms posted to VDOT's web site.

_____ Notification of short list to short listed firms in writing.

_____ Notice to short listed firms to make technical presentations.

_____ Project Briefing Meeting to give short listed firms the detailed scope of services (if applicable).

_____ Prepare questions for interviews/technical presentations (if applicable).

_____ Short listed firms make technical presentations.

_____ Short listed firms evaluated and final ranking for selection made, along with combined narrative.

_____ Final Selection to Lead Division Administrator for approval with narratives and certifications for all firms interviewed.

_____ Final Selection approval from Lead Division Administrator.

_____ Notice to selected firm in writing and by telephone.

_____ Written notice sent to consultants not selected.

_____ Notice of final selection posted to VDOT's web site with the top ranked firm

_____ Receipt of FAR audit data, Contractor Cost Certification for indirect cost rates, Insurance Certificate, Workman's compensation and/or professional liability information as required.

_____ Receipt of the selected firm's submittal of the Title VI Evaluation Report Form to CRD (if not currently on file).

_____ Send the selected firm's Title VI Evaluation Report Form to CRD or confirmation that the form is currently on file to CRD.

_____ Receive confirmation of Title VI Evaluation Report on file.

Chapter 4

_____ Scope of Services Meeting held with top ranked firm, if applicable

_____ Items and information provided to the top ranked firm in accordance with Section 4.2.

_____ Prepare VDOT's fee estimate in accordance with Section 4.3.

_____ Request top ranked firm's fee proposal.

_____ Fee proposal received.

_____ Ensure required data and forms are submitted with the fee proposal in accordance with Section 4.4.

- _____ Distribute fee proposal to involved divisions for review and comment (if applicable).
- _____ Analyze the fee proposal in accordance by using VDOT's estimate and resources outlined in Section 4.3
- _____ Proposal negotiated.
- _____ Revised proposal received and analyzed.
- _____ Revised proposal negotiated, (if applicable).
- _____ Pre-Award Audit letter received.
- _____ Adjustments made to the fee proposal to include audit comments.
- _____ Consult with and submit to FHWA final Scope of Services in accordance with Section 1.4.
- _____ Out-of-state corporation submits registration as professional corporation in Virginia and Certificate of Authority.

Chapter 5

- _____ Prepare MOA
- _____ Draft MOA reviewed by other involved divisions.
- _____ Draft MOA to consultant for review and comment.
- _____ Draft MOA concurrence received from consultant.
- _____ MOA submitted to ITD for review (if computer equipment and/or software in fee proposal).
- _____ MOAs returned by ITD.
- _____ Adjustments made to the MOA to include comments received from other divisions.
- _____ Send MOA to consultant for concurrence and execution.
- _____ Executed MOA's returned by consultant (check for authorized signatures and dates on all copies).
- _____ Notify Infrastructure Investment Division or Local Assistance Division by letter of consultant's final fees and the current total preliminary engineering cost. If secondary, notify District Administrator and Local Assistance.
- _____ Submit CP-2 form, with MOA to Deputy Chief Engineer for signature.
- _____ Distribute executed MOA in accordance with Section 5.6.
- _____ Post Award of contract on VDOT's web site.
- _____ Expiration of 10 work days appeal of award.
- _____ Send firm any manuals, guidelines, etc., required for the firm to accomplish the work.
- _____ Issue Notice to Proceed in accordance with Section 5.7.

Chapter 6

- _____ Project/contract information entered into Cardinal.
- _____ Submit invoice template to consultant.

Chapter 7

- _____ Furnish agreement data file to Asst. Div. Admin.
- _____ District advised regarding review of shop drawings.

Note: Some correspondence may be combined into one letter.

Final Scopes of Work and MOA's are required to be sent to the FHWA only for federally funded NHS oversight projects, federal projects with an estimated total cost of \$500,000,000 or more, or when the consultants are to act in a management role for VDOT on federal projects. (Do not send proposals)

Escrow Agreements must be furnished to ACO Division prior to submitting any vouchers to them.

CONSULTANT AGREEMENT PROCESS
SUPPLEMENTAL AGREEMENT

This checklist has been developed to ensure the procurement process is followed consistently for all VDOT professional services contracts. The VDOT Project Manager shall insert the date of completion in the space provided for all of the activities listed below.

Project: _____

Note: Supplements are approved by the Commissioner.

Chapter 8

- _____ Letter to Lead Division Administrator for authorization to proceed with a Supplemental Agreement.
- _____ Approval of the FHWA for Supplemental Agreement if criteria listed from Section 1.2 applies.
- _____ Prepare PE cost estimate and determine if PE funds are available.
- _____ If PE funds not available, review with appropriate Chief.
- _____ Invitation to consultant for proposal.
- _____ Meeting with consultant to discuss scope of services.
- _____ Coordinate with ACO Division regarding status of most current FAR Review.
- _____ Proposal received.
- _____ Proposal analyzed by all divisions involved.
- _____ Proposal negotiated.
- _____ Revised proposal received and analyzed.
- _____ Revised proposal negotiated.
- _____ Adjust fee proposal to include audit comments, if appropriate.
- _____ Final Scope of Services to FHWA on federally funded NHS oversight projects, projects with an estimated total cost of \$500,000,000 or more, or when the consultants are to act in a management role for VDOT.
- _____ Prepare Supplement to Memorandum of Agreement ("SMOA") (Supplement to be signed by same person as original Agreement).
- _____ Draft SMOA reviewed by other divisions involved.
- _____ Draft SMOA to consultant for review and comment.
- _____ Draft SMOA concurrence received from consultant.
- _____ 1 SMOA to Legal for review, if appropriate.
- _____ SMOA returned by Legal.
- _____ SMOA to ITD for review (if computer equipment and/or software is involved in fee proposal).
- _____ SMOAs returned by ITD.

Chapter 8 (continued)

- _____ Send SMOA to consultant for concurrence and execution.
- _____ Executed SMOA's returned by consultant.
- _____ Submit CP-2 form, with MOA to Deputy Chief Engineer for signature.

- _____ Letter to Infrastructure Investment Division Administrator informing whether or not fee exceeds established preliminary engineering cost. If secondary, use letter to District Engineer instead. If Urban, notify Local Assistance Division Administrator
- _____ Executed SMOAs returned.
- _____ Executed SMOA to consultant with notice to proceed (original).
- _____ Executed SMOA to Project File (copy).
- _____ 1 SMOA to FHWA on federally funded NHS oversight projects, projects with an estimated total cost of \$500,000,000 or more, or when the consultants are to act in a management role for VDOT.
- _____ Add supplement date to consultant voucher.
- _____ Supplement entered on Cardinal.

Note: Final Scopes of Work and SMOAs are required to be sent to the FHWA only for federally funded NHS oversight projects, projects with an estimated total cost of \$500,000,000 or more, or when the consultants are to act in a management role for VDOT. (Do not send proposals)

CONSULTANT AGREEMENT PROCESS
TERM CONTRACT RENEWALS

This checklist has been developed to ensure the process for a renewal of Limited Services Term Contract is followed consistently for all VDOT professional services contracts. The VDOT Project Manager shall insert the date of completion in the space provided for all of the activities listed below.

Project: _____

- _____ Sent Letter/email to Districts requesting feedback on consultant's suitability to have the contract renewed for another term
- _____ Received reply from the District on whether to renew or not
- _____ Sent letter notifying consultant of recommendation to renew the contract for another term.
- _____ Received response form the consultant
- _____ Prepare CONSUTANT TERM CONTRACT RENEWAL REQUEST FORM (Renewal Form)
- _____ Renewal Form signed by Lead Division Administrator
- _____ Renewal Form Procurement Officer
- _____ Procurement Officer prepares CP-2 form for approval.
- _____ Renewal notification letter sent to consultant with copies sent to pertinent personnel (Engineers in CO and Districts)
- _____ Update the contract amount in Cardinal
- _____ Update information on Division Project list
- _____ Update PSCRS for consultant services

APPENDIX B
23 CFR 172



PART 172—PROCUREMENT, MANAGEMENT, AND ADMINISTRATION OF ENGINEERING AND DESIGN RELATED SERVICES

§172.1 Purpose and applicability.

This part prescribes the requirements for the procurement, management, and administration of engineering and design related services under 23 U.S.C. 112 and as supplemented by the Uniform Administrative Requirements For Federal Awards rule. The Uniform Administrative Requirements, Cost Principles and Audit Requirements For Federal Awards rule (2 CFR parts 200) shall apply except where inconsistent with the requirements of this part and other laws and regulations applicable to the Federal-aid highway program (FAHP). The requirements herein apply to federally funded contracts for engineering and design related services for projects subject to the provisions of 23 U.S.C. 112(a) (related to construction) and are issued to ensure that a qualified consultant is obtained through an equitable qualifications-based selection procurement process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost. State transportation agencies (STA) (or other recipients) shall ensure that sub recipients comply with the requirements of this part and the Uniform Administrative Requirements, Cost Principles and Audit Requirements For Federal Awards rule. Federally funded contracts for services not defined as engineering and design related, or for services not in furtherance of a highway construction project or activity subject to the provisions of 23 U.S.C. 112(a), are not subject to the requirements of this part and shall be procured and administered under the requirements of the Uniform Administrative Requirements, Cost Principles and Audit Requirements For Federal Awards rule and procedures applicable to such activities.

§172.3 Definitions.

As used in this part:

Audit means a formal examination, in accordance with professional standards, of a consultant's accounting systems, incurred cost records, and other cost presentations to test the reasonableness, allowability, and allocability of costs in accordance with the Federal cost principles (as specified in 48 CFR part 31).

Cognizant agency means any governmental agency that has performed an audit in accordance with generally accepted government auditing standards to test compliance with the requirements of the Federal cost principles (as specified in 48 CFR part 31) and issued an audit report of the consultant's indirect cost rate, or any described agency that has conducted a review of an audit report and related workpapers prepared by a certified public accountant and issued a letter of concurrence with the audited indirect cost rate(s). A cognizant agency may be any of the following:

- (1) A Federal agency;
- (2) A State transportation agency of the State where the consultant's accounting and financial records are located; or
- (3) A State transportation agency to which cognizance for the particular indirect cost rate(s) of a consulting firm has been delegated or transferred in writing by the State transportation agency identified in paragraph (2) of this definition.

Competitive negotiation means qualifications-based selection procurement procedures complying with 40 U.S.C. 1101-1104, commonly referred to as the Brooks Act.

Consultant means the individual or firm providing engineering and design related services as a party to a contract with a recipient or sub recipient of Federal assistance (as defined in 2 CFR 200.86 or 2 CFR 200.93, respectively).

Contract means a written procurement contract or agreement between a contracting agency and consultant reimbursed under a FAHP grant or subgrant and includes any procurement subcontract under a contract.

Contracting agencies means a State transportation agency or a procuring agency of the State acting in conjunction with and at the direction of the State transportation agency, other recipients, and all subrecipients that are responsible for the procurement, management, and administration of engineering and design related services.

Contract modification means an agreement modifying the terms or conditions of an original or existing contract.

Engineering and design related services means:

(1) Program management, construction management, feasibility studies, preliminary engineering, design engineering, surveying, mapping, or architectural related services with respect to a highway construction project subject to 23 U.S.C. 112(a) as defined in 23 U.S.C. 112(b)(2)(A); and

(2) Professional services of an architectural or engineering nature, as defined by State law, which are required to or may logically or justifiably be performed or approved by a person licensed, registered, or certified to provide the services with respect to a highway construction project subject to 23 U.S.C. 112(a) and as defined in 40 U.S.C. 1102(2).

Federal cost principles means the cost principles contained in 48 CFR part 31 of the Federal Acquisition Regulation for determination of allowable costs of commercial, for-profit entities.

Fixed fee means a sum expressed in U.S. dollars established to cover the consultant's profit and other business expenses not allowable or otherwise included as a direct or indirect cost.

Management support role means performing engineering management services or other services acting on the contracting agency's behalf, which are subject to review and oversight by agency officials, such as a program or project administration role typically performed by the contracting agency and necessary to fulfill the duties imposed by title 23 of the United States Code, other Federal and State laws, and applicable regulations.

Noncompetitive means the method of procurement of engineering and design related services when it is not feasible to award the contract using competitive negotiation or small purchase procurement methods.

One-year applicable accounting period means the annual accounting period for which financial statements are regularly prepared by the consultant.

Scope of work means all services, work activities, and actions required of the consultant by the obligations of the contract.

Small purchases means the method of procurement of engineering and design related services where an adequate number of qualified sources are reviewed and the total contract costs do not exceed an established simplified acquisition threshold.

State transportation agency (STA) means that department or agency maintained in conformity with 23 U.S.C. 302 and charged under State law with the responsibility for highway construction (as defined in 23 U.S.C. 101); and that is authorized by the laws of the State to make final decisions in all matters relating to, and to enter into, all contracts and agreements for projects and activities to fulfill the duties imposed by title 23 United States Code, title 23 Code of Federal Regulations, and other applicable Federal laws and regulations.

Subconsultant means the individual or firm contracted by a consultant to provide engineering and design related or other types of services that are part of the services which the consultant is under contract to provide to a recipient (as defined in 23 CFR 200.86) or subrecipient (as defined in 2 CFR 200.93) of Federal assistance.

§172.5 Program management and oversight.

(a) *STA responsibilities.* STAs or other recipients shall develop and sustain organizational capacity and provide the resources necessary for the procurement, management, and administration of engineering and design related consultant services, reimbursed in whole or in part with FAHP funding, as specified in 23 U.S.C. 302(a). Responsibilities shall include the following:

(1) Preparing and maintaining written policies and procedures for the procurement, management, and administration of engineering and design related consultant services in accordance with paragraph (c) of this section;

(2) Establishing a procedure for estimating the level of effort, schedule, and costs of needed consultant services and associated agency staffing and resources for management and oversight in support of project authorization requests submitted to FHWA for approval, as specified in 23 CFR 630.106;

(3) Procuring, managing, and administering engineering and design related consultant services in accordance with applicable Federal and State laws, regulations, and approved policies and procedures, as specified in 23 CFR 1.9(a); and

(4) Administering subawards in accordance with State laws and procedures as specified in 2 CFR part 1201, and the requirements of 23 U.S.C. 106(g)(4), and 2 CFR 200.331. Administering subawards includes providing oversight of the procurement, management, and administration of engineering and design related consultant services by subrecipients to ensure compliance with applicable Federal and State laws and regulations. Nothing in this part shall be taken as relieving the STA (or other recipient) of its responsibility under laws and regulations applicable to the FAHP for the work performed under any consultant agreement or contract entered into by a subrecipient.

(b) *Subrecipient responsibilities.* Subrecipients shall develop and sustain organizational capacity and provide the resources necessary for the procurement, management, and administration of engineering and design related consultant services, reimbursed in whole or in part with FAHP funding as specified in 23 U.S.C. 106(g)(4)(A). Responsibilities shall include the following:

(1) Adopting written policies and procedures prescribed by the awarding STA or other recipient for the procurement, management, and administration of engineering and design related consultant services in accordance with applicable Federal and State laws and regulations; or when not prescribed, shall include:

(i) Preparing and maintaining its own written policies and procedures in accordance with paragraph (c) of this section; or

(ii) Submitting documentation associated with each procurement and subsequent contract to the awarding STA or other grantee for review to assess compliance with applicable Federal and State laws, regulations, and the requirements of this part;

(2) Procuring, managing, and administering engineering and design related consultant services in accordance with applicable Federal and State laws, regulations, and approved policies and procedures, as specified in 23 CFR 1.9(a).

(c) *Written policies and procedures.* The contracting agency shall prepare and maintain written policies and procedures for the procurement, management, and administration of engineering and design related consultant services. The FHWA shall approve the written policies and procedures, including all revisions to such policies and procedures, of the STA or recipient to assess compliance with applicable requirements. The STA or other recipient shall approve the written policies and procedures, including all revisions to such policies and procedures, of a subrecipient to assess compliance with applicable requirements. These policies and procedures shall address, as appropriate for each method of procurement a contracting agency proposes to use, the following items to ensure compliance with Federal and State laws, regulations, and the requirements of this part:

- (1) Preparing a scope of work and evaluation factors for the ranking/selection of a consultant;
- (2) Soliciting interests, qualifications, or proposals from prospective consultants;
- (3) Preventing, identifying, and mitigating conflicts of interest for employees of both the contracting agency and consultants and promptly disclosing in writing any potential conflict to the STA and FHWA, as specified in 2 CFR 200.112 and 23 CFR 1.33, and the requirements of this part.
- (4) Verifying suspension and debarment actions and eligibility of consultants, as specified in 2 CFR part 1200 and 2 CFR part 180;
- (5) Evaluating interests, qualifications, or proposals and the ranking/selection of a consultant;
- (6) Determining, based upon State procedures and the size and complexity of a project, the need for additional discussions following RFP submission and evaluation;
- (7) Preparing an independent agency estimate for use in negotiation with the selected consultant;
- (8) Selecting appropriate contract type, payment method, and terms and incorporating required contract provisions, assurances, and certifications in accordance with §172.9;
- (9) Negotiating a contract with the selected consultant including instructions for proper disposal of concealed cost proposals of unsuccessful bidders;
- (10) Establishing elements of contract costs, accepting indirect cost rate(s) for application to contracts, and assuring consultant compliance with the Federal cost principles in accordance with §172.11;
- (11) Ensuring consultant costs billed are allowable in accordance with the Federal cost principles and consistent with the contract terms as well as the acceptability and progress of the consultant's work;
- (12) Monitoring the consultant's work and compliance with the terms, conditions, and specifications of the contract;
- (13) Preparing a consultant's performance evaluation when services are completed and using such performance data in future evaluation and ranking of consultant to provide similar services;
- (14) Closing-out a contract;
- (15) Retaining supporting programmatic and contract records, as specified in 2 CFR 200.333 and the requirements of this part;

(16) Determining the extent to which the consultant, which is responsible for the professional quality, technical accuracy, and coordination of services, may be reasonably liable for costs resulting from errors and omissions in the work furnished under its contract;

(17) Assessing administrative, contractual, or legal remedies in instances where consultants violate or breach contract terms and conditions, and providing for such sanctions and penalties as may be appropriate; and

(18) Resolving disputes in the procurement, management, and administration of engineering and design related consultant services.

(d) A contracting agency may formally adopt, by statute or within approved written policies and procedures as specified in paragraph (c) of this section, any direct Federal Government or other contracting regulation, standard, or procedure provided its application does not conflict with the provisions of 23 U.S.C. 112, the requirements of this part, and other laws and regulations applicable to the FAHP.

(e) Notwithstanding paragraph (d) of this section, a contracting agency shall have a reasonable period of time, not to exceed 12 months from the effective date of this rule unless an extension is granted for unique or extenuating circumstances, to issue or update current written policies and procedures for review and approval in accordance with paragraph (c) of this section and consistent with the requirements of this part.

§172.7 Procurement methods and procedures.

(a) *Procurement methods.* The procurement of engineering and design related services funded by FAHP funds and related to a highway construction project subject to the provisions of 23 U.S.C. 112(a) shall be conducted in accordance with one of three methods: Competitive negotiation (qualifications-based selection) procurement, small purchases procurement for small dollar value contracts, and noncompetitive procurement where specific conditions exist allowing solicitation and negotiation to take place with a single consultant.

(1) *Competitive negotiation (qualifications-based selection).* Except as provided in paragraphs (a)(2) and (3) of this section, contracting agencies shall use the competitive negotiation method for the procurement of engineering and design related services when FAHP funds are involved in the contract, as specified in 23 U.S.C. 112(b)(2)(A). The solicitation, evaluation, ranking, selection, and negotiation shall comply with the qualifications-based selection procurement procedures for architectural and engineering services codified under 40 U.S.C. 1101-1104, commonly referred to as the Brooks Act. In accordance with the requirements of the Brooks Act, the following procedures shall apply to the competitive negotiation procurement method:

(i) *Solicitation.* The solicitation process shall be by public announcement, public advertisement, or any other public forum or method that assures qualified in-State and out-of-State consultants are given a fair opportunity to be considered for award of the contract. Procurement procedures may involve a single step process with issuance of a request for proposal (RFP) to all interested consultants or a multiphase process with issuance of a request for statements or letters of interest or qualifications (RFQ) whereby responding consultants are ranked based on qualifications and a RFP is then provided to three or more of the most highly qualified consultants. Minimum qualifications of consultants to perform services under general work categories or areas of expertise may also be assessed through a prequalification process whereby annual statements of qualifications and performance data are encouraged. Regardless of any process utilized for prequalification of consultants or for an initial assessment of a consultant's qualifications under a RFQ, a RFP specific to the project, task, or service is required for evaluation of a consultant's specific technical approach and qualifications.

(ii) *Request for proposal (RFP)*. The RFP shall provide all information and requirements necessary for interested consultants to provide a response to the RFP and compete for the solicited services. The RFP shall:

(A) Provide a clear, accurate, and detailed description of the scope of work, technical requirements, and qualifications of consultants necessary for the services to be rendered. To the extent practicable, the scope of work should detail the purpose and description of the project, services to be performed, deliverables to be provided, estimated schedule for performance of the work, and applicable standards, specifications, and policies;

(B) Identify the requirements for any discussions that may be conducted with three or more of the most highly qualified consultants following submission and evaluation of proposals;

(C) Identify evaluation factors including their relative weight of importance in accordance with paragraph (a)(1)(iii) of this section;

(D) Specify the contract type and method(s) of payment anticipated to contract for the solicited services in accordance with §172.9;

(E) Identify any special provisions or contract requirements associated with the solicited services;

(F) Require that submission of any requested cost proposals or elements of cost be in a concealed format and separate from technical/qualifications proposals, since these shall not be considered in the evaluation, ranking, and selection phase; and

(G) Provide an estimated schedule for the procurement process and establish a submittal deadline for responses to the RFP that provides sufficient time for interested consultants to receive notice, prepare, and submit a proposal, which except in unusual circumstances shall be not less than 14 calendar days from the date of issuance of the RFP.

(iii) *Evaluation factors*. (A) Criteria used for evaluation, ranking, and selection of consultants to perform engineering and design related services must assess the demonstrated competence and qualifications for the type of professional services solicited. These qualifications-based factors may include, but are not limited to, technical approach (e.g., project understanding, innovative concepts or alternatives, quality control procedures), work experience, specialized expertise, professional licensure, staff capabilities, workload capacity, and past performance.

(B) Price shall not be used as a factor in the evaluation, ranking, and selection phase. All price or cost related items which include, but are not limited to, cost proposals, direct salaries/wage rates, indirect cost rates, and other direct costs are prohibited from being used as evaluation criteria.

(C) In-State or local preference shall not be used as a factor in the evaluation, ranking, and selection phase. State licensing laws are not preempted by this provision and professional licensure within a jurisdiction may be established as a requirement for the minimum qualifications and competence of a consultant to perform the solicited services.

(D) The following nonqualifications-based evaluation criteria are permitted under the specified conditions and provided the combined total of these criteria do not exceed a nominal value of 10 percent of the total evaluation criteria to maintain the integrity of a qualifications-based selection:

(1) A local presence may be used as a nominal evaluation factor where appropriate. This criteria shall not be based on political or jurisdictional boundaries and may be applied on a project-by-project basis for contracts where a need has been established for a consultant to provide a local presence, a local presence will add value to the quality and efficiency of the project, and application of this criteria leaves an appropriate number of qualified consultants, given the nature and size of the project. If a

consultant from outside of the locality area indicates as part of a proposal that it will satisfy the criteria in some manner, such as establishing a local project office, that commitment shall be considered to have satisfied the local presence criteria.

(2) The participation of qualified and certified Disadvantaged Business Enterprise (DBE) subconsultants may be used as a nominal evaluation criterion where appropriate in accordance with 49 CFR part 26 and a contracting agency's FHWA-approved DBE program.

(iv) *Evaluation, ranking, and selection.* (A) The contracting agency shall evaluate consultant proposals based on the criteria established and published within the public solicitation.

(B) Although the contract will be with the consultant, proposal evaluations shall consider the qualifications of the consultant and any subconsultants identified within the proposal with respect to the scope of work and established criteria.

(C) The contracting agency shall specify in the RFP discussion requirements that shall follow submission and evaluation of proposals and based on the size and complexity of the project or as defined in contracting agency written policies and procedures, as specified in §172.5(c). Discussions, as required by the RFP, may be written, by telephone, video conference, or by oral presentation/interview and shall be with at least three of the most highly qualified consultants to clarify the technical approach, qualifications, and capabilities provided in response to the RFP.

(D) From the proposal evaluation and any subsequent discussions which may have been conducted, the contracting agency shall rank, in order of preference, at least three consultants determined most highly qualified to perform the solicited services based on the established and published criteria. In instances where only two qualified consultants respond to the solicitation, the contracting agency may proceed with evaluation and selection if it is determined that the solicitation did not contain conditions or requirements that arbitrarily limited competition. Alternatively, a contracting agency may pursue procurement following the noncompetitive method when competition is determined to be inadequate and it is determined to not be feasible or practical to re-compete under a new solicitation as specified in paragraph (a)(3)(iii)(C) of this section.

(E) Notification must be provided to responding consultants of the final ranking of the three most highly qualified consultants.

(F) The contracting agency shall retain supporting documentation of the solicitation, proposal, evaluation, and selection of the consultant in accordance with this section and the provisions of 2 CFR 200.333.

(v) *Negotiation.* (A) The process for negotiation of the contract shall comply with the requirements codified in 40 U.S.C. 1104(b) for the order of negotiation.

(B) *Independent estimate.* Prior to receipt or review of the most highly qualified consultant's cost proposal, the contracting agency shall prepare a detailed independent estimate with an appropriate breakdown of the work or labor hours, types or classifications of labor required, other direct costs, and consultant's fixed fee for the defined scope of work. The independent estimate shall serve as the basis for negotiation.

(C) The contracting agency shall establish elements of contract costs (e.g., indirect cost rates, direct salary or wage rates, fixed fee, and other direct costs) separately in accordance with §172.11. The use of the independent estimate and determination of cost allowance in accordance with §172.11 shall ensure contracts for the consultant services are obtained at a fair and reasonable cost, as specified in 40 U.S.C. 1104(a).

(D) If concealed cost proposals were submitted in conjunction with technical/qualifications proposals, the contracting agency may consider only the cost proposal of the consultant with which negotiations are initiated. Due to the confidential nature of this data, as specified in 23 U.S.C. 112(b)(2)(E), concealed cost proposals of unsuccessful consultants may be disposed of in accordance with written policies and procedures established under §172.5(c).

(E) The contracting agency shall retain documentation of negotiation activities and resources used in the analysis of costs to establish elements of the contract in accordance with the provisions of 2 CFR 200.333. This documentation shall include the consultant cost certification and documentation supporting the acceptance of the indirect cost rate to be applied to the contract, as specified in §172.11(c).

(2) *Small purchases.* The contracting agency may use the State's small purchase procedures that reflect applicable State laws and regulations for the procurement of engineering and design related services provided the total contract costs do not exceed the Federal simplified acquisition threshold (as defined in 48 CFR 2.101). When a lower threshold for use of small purchase procedures is established in State law, regulation, or policy, the lower threshold shall apply to the use of FAHP funds. The following additional requirements shall apply to the small purchase procurement method:

(i) The scope of work, project phases, and contract requirements shall not be broken down into smaller components merely to permit the use of small purchase procedures.

(ii) A minimum of three consultants are required to satisfy the adequate number of qualified sources reviewed. In instances where only two qualified consultants respond to the solicitation, the contracting agency may proceed with evaluation and selection if it is determined that the solicitation did not contain conditions or requirements which arbitrarily limited competition. Alternatively, a contracting agency may pursue procurement following the noncompetitive method when competition is determined to be inadequate and it is determined to not be feasible or practical to re compete under a new solicitation as specified in §172.7(a)(3)(iii)(C).

(iii) Contract costs may be negotiated in accordance with State small purchase procedures; however, the allowability of costs shall be determined in accordance with the Federal cost principles.

(iv) The full amount of any contract modification or amendment that would cause the total contract amount to exceed the established simplified acquisition threshold is ineligible for Federal-aid funding. The FHWA may withdraw all Federal-aid from a contract if it is modified or amended above the applicable established simplified acquisition threshold.

(3) *Noncompetitive.* The following requirements shall apply to the noncompetitive procurement method:

(i) A contracting agency may use its own noncompetitive procedures that reflect applicable State and local laws and regulations and conform to applicable Federal requirements.

(ii) A contracting agency shall establish a process to determine when noncompetitive procedures will be used and shall submit justification to, and receive approval from FHWA before using this form of contracting.

(iii) A contracting agency may award a contract by noncompetitive procedures under the following limited circumstances:

(A) The service is available only from a single source;

(B) There is an emergency which will not permit the time necessary to conduct competitive negotiations; or

(C) After solicitation of a number of sources, competition is determined to be inadequate.

(iv) Contract costs may be negotiated in accordance with contracting agency noncompetitive procedures; however, the allowability of costs shall be determined in accordance with the Federal cost principles.

(b) *Additional procurement requirements*—(1) *Uniform administrative requirements, cost principles and audit requirements for Federal awards.* (i) STAs or other recipients and their subrecipients shall comply with procurement requirements established in State and local laws, regulations, policies, and procedures that are not addressed by or are not in conflict with applicable Federal laws and regulations, as specified in 2 CFR part 1201.

(ii) When State and local procurement laws, regulations, policies, or procedures are in conflict with applicable Federal laws and regulations, a contracting agency shall comply with Federal requirements to be eligible for Federal-aid reimbursement of the associated costs of the services incurred following FHWA authorization, as specified in 2 CFR 200.102(c).

(2) *Disadvantaged Business Enterprise (DBE) program.* (i) A contracting agency shall give consideration to DBE consultants in the procurement of engineering and design related service contracts subject to 23 U.S.C. 112(b)(2) in accordance with 49 CFR part 26. When DBE program participation goals cannot be met through race-neutral measures, additional DBE participation on engineering and design related services contracts may be achieved in accordance with a contracting agency's FHWA approved DBE program through either:

(A) Use of an evaluation criterion in the qualifications-based selection of consultants, as specified in §172.7(a)(1)(iii)(D); or

(B) Establishment of a contract participation goal.

(ii) The use of quotas or exclusive set-asides for DBE consultants is prohibited, as specified in 49 CFR 26.43.

(3) *Suspension and debarment.* A contracting agency shall verify suspension and debarment actions and eligibility status of consultants and subconsultants prior to entering into an agreement or contract in accordance with 2 CFR part 1200 and 2 CFR part 180.

(4) *Conflicts of interest.* (i) A contracting agency shall maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of engineering and design related services contracts under this part and governing the conduct and roles of consultants in the performance of services under such contracts to prevent, identify, and mitigate conflicts of interest in accordance with 2 CFR 200.112, 23 CFR 1.33 and the provisions of this paragraph (b)(4).

(ii) No employee, officer, or agent of the contracting agency shall participate in selection, or in the award or administration of a contract supported by Federal-aid funds if a conflict of interest, real or apparent, would be involved. Such a conflict arises when there is a financial or other interest in the consultant selected for award by:

(A) The employee, officer, or agent;

(B) Any member of his or her immediate family;

(C) His or her partner; or

(D) An organization that employs or is about to employ any of the above.

(iii) The contracting agency's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from consultants, potential consultants, or parties to subagreements. A contracting agency may establish dollar thresholds where the financial interest is not substantial or the gift is an unsolicited item of nominal value.

(iv) A contracting agency may provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(v) To the extent permitted by State or local law or regulations, the standards of conduct required by this paragraph shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the contracting agency's officers, employees, or agents, or by consultants or their agents.

(vi) A contracting agency shall promptly disclose in writing any potential conflict of interest to FHWA.

(5) *Consultant services in management support roles.* (i) When FAHP funds participate in a consultant services contract, the contracting agency shall receive approval from FHWA, or the recipient as appropriate, before utilizing a consultant to act in a management support role for the contracting agency; unless an alternate approval procedure has been approved. Use of consultants in management support roles does not relieve the contracting agency of responsibilities associated with the use of FAHP funds, as specified in 23 U.S.C. 302(a) and 23 U.S.C. 106(g)(4) and should be limited to large projects or circumstances where unusual cost or time constraints exist, unique technical or managerial expertise is required, and/or an increase in contracting agency staff is not a viable option.

(ii) Management support roles may include, but are not limited to, providing oversight of an element of a highway program, function, or service on behalf of the contracting agency or may involve managing or providing oversight of a project, series of projects, or the work of other consultants and contractors on behalf of the contracting agency. Contracting agency written policies and procedures as specified in §172.5(c) may further define allowable management roles and services a consultant may provide, specific approval responsibilities, and associated controls necessary to ensure compliance with Federal requirements.

(iii) Use of consultants or subconsultants in management support roles requires appropriate conflicts of interest standards as specified in paragraph (b)(4) of this section and adequate contracting agency staffing to administer and monitor the management consultant contract, as specified in §172.9(d). A consultant serving in a management support role may be precluded from providing additional services on projects, activities, or contracts under its oversight due to potential conflicts of interest.

(iv) FAHP funds shall not participate in the costs of a consultant serving in a management support role where the consultant was not procured in accordance with Federal and State requirements, as specified in 23 CFR 1.9(a).

(v) Where benefiting more than a single Federal-aid project, allocability of consultant contract costs for services related to a management support role shall be distributed consistent with the cost principles applicable to the contracting agency, as specified in 2 CFR part 200, subpart E—Cost Principles.

§172.9 Contracts and administration.

(a) *Contract types.* The contracting agency shall use the following types of contracts:

(1) *Project-specific.* A contract between the contracting agency and consultant for the performance of services and defined scope of work related to a specific project or projects.

(2) *Multiphase.* A project-specific contract where the solicited services are divided into phases whereby the specific scope of work and associated costs may be negotiated and authorized by phase as the project progresses.

(3) *On-call or indefinite delivery/indefinite quantity (IDIQ)*. A contract for the performance of services for a number of projects, under task or work orders issued on an as-needed or on-call basis, for an established contract period. The procurement of services to be performed under on-call or IDIQ contracts shall follow either competitive negotiation or small purchase procurement procedures, as specified in §172.7. The solicitation and contract provisions shall address the following requirements:

(i) Specify a reasonable maximum length of contract period, including the number and period of any allowable contract extensions, which shall not exceed 5 years;

(ii) Specify a maximum total contract dollar amount that may be awarded under a contract;

(iii) Include a statement of work, requirements, specifications, or other description to define the general scope, complexity, and professional nature of the services; and

(iv) If multiple consultants are to be selected and multiple on-call or IDIQ contracts awarded through a single solicitation for specific services:

(A) Identify the number of consultants that may be selected or contracts that may be awarded from the solicitation; and

(B) Specify the procedures the contracting agency will use in competing and awarding task or work orders among the selected, qualified consultants. Task or work orders shall not be competed and awarded among the selected, qualified consultants on the basis of costs under on-call or IDIQ contracts for services procured with competitive negotiation procedures. Under competitive negotiation procurement, each specific task or work order shall be awarded to the selected, qualified consultants:

(1) Through an additional qualifications-based selection procedure, which may include, but does not require, a formal RFP in accordance with §172.5(a)(1)(ii); or

(2) On a regional basis whereby the State is divided into regions and consultants are selected to provide on-call or IDIQ services for an assigned region(s) identified within the solicitation.

(b) *Payment methods*. (1) The method of payment to the consultant shall be set forth in the original solicitation, contract, and in any contract modification thereto. The methods of payment shall be: Lump sum, cost plus fixed fee, cost per unit of work, or specific rates of compensation. A single contract may contain different payment methods as appropriate for compensation of different elements of work.

(2) The cost plus a percentage of cost and percentage of construction cost methods of payment shall not be used.

(3) The lump sum payment method shall only be used when the contracting agency has established the extent, scope, complexity, character, and duration of the work to be required to a degree that fair and reasonable compensation, including a fixed fee, can be determined at the time of negotiation.

(4) When the method of payment is other than lump sum, the contract shall specify a maximum amount payable which shall not be exceeded unless adjusted by a contract modification.

(5) The specific rates of compensation payment method provides for reimbursement on the basis of direct labor hours at specified fixed hourly rates, including direct labor costs, indirect costs, and fee or profit, plus any other direct expenses or costs, subject to an agreement maximum amount. This payment method shall only be used when it is not possible at the time of procurement to estimate the extent or duration of the work or to estimate costs with any reasonable degree of accuracy. This specific rates of compensation payment method should be limited to contracts or components of contracts for specialized or support type services where the consultant is not in direct control of the number of hours worked, such as construction engineering and inspection. When using this payment method, the contracting agency

shall manage and monitor the consultant's level of effort and classification of employees used to perform the contracted services.

(6) A contracting agency may withhold retainage from payments in accordance with prompt pay requirements, as specified in 49 CFR 26.29. When retainage is used, the terms and conditions of the contract shall clearly define agency requirements, including periodic reduction in retention and the conditions for release of retention.

(c) *Contract provisions.* (1) All contracts and subcontracts shall include the following provisions, either by reference or by physical incorporation into the language of each contract or subcontract, as applicable:

(i) Administrative, contractual, or legal remedies in instances where consultants violate or breach contract terms and conditions, and provide for such sanctions and penalties as may be appropriate;

(ii) Notice of contracting agency requirements and regulations pertaining to reporting;

(iii) Contracting agency requirements and regulations pertaining to copyrights and rights in data;

(iv) Access by recipient, the subrecipient, FHWA, the U.S. Department of Transportation's Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the consultant which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions;

(v) Retention of all required records for not less than 3 years after the contracting agency makes final payment and all other pending matters are closed;

(vi) Standard DOT Title VI Assurances (DOT Order 1050.2);

(vii) Disadvantaged Business Enterprise (DBE) assurance, as specified in 49 CFR 26.13(b);

(viii) Prompt pay requirements, as specified in 49 CFR 26.29;

(ix) Determination of allowable costs in accordance with the Federal cost principles;

(x) Contracting agency requirements pertaining to consultant errors and omissions;

(xi) Contracting agency requirements pertaining to conflicts of interest, as specified in 23 CFR 1.33 and the requirements of this part; and

(xii) A provision for termination for cause and termination for convenience by the contracting agency including the manner by which it will be effected and the basis for settlement.

(2) All contracts and subcontracts exceeding \$100,000 shall contain, either by reference or by physical incorporation into the language of each contract, a provision for lobbying certification and disclosure, as specified in 49 CFR Part 20.

(d) *Contract administration and monitoring—(1) Responsible charge.* A full-time, public employee of the contracting agency qualified to ensure that the work delivered under contract is complete, accurate, and consistent with the terms, conditions, and specifications of the contract shall be in responsible charge of each contract or project. While an independent consultant may be procured to serve in a program or project management support role, as specified in §172.7(b)(5), or to provide technical assistance in review and acceptance of engineering and design related services performed and products developed by other consultants, the contracting agency shall designate a public employee as being in responsible

charge. A public employee may serve in responsible charge of multiple projects and contracting agencies may use multiple public employees to fulfill monitoring responsibilities. The term responsible charge is intended to be applied only in the context defined within this regulation. It may or may not correspond to its usage in State laws regulating the licensure and/or conduct of professional engineers. The public employee's responsibilities shall include:

(i) Administering inherently governmental activities including, but not limited to, contract negotiation, contract payment, and evaluation of compliance, performance, and quality of services provided by consultant;

(ii) Being familiar with the contract requirements, scope of services to be performed, and products to be produced by the consultant;

(iii) Being familiar with the qualifications and responsibilities of the consultant's staff and evaluating any requested changes in key personnel;

(iv) Scheduling and attending progress and project review meetings, commensurate with the magnitude, complexity, and type of work, to ensure the work is progressing in accordance with established scope of work and schedule milestones;

(v) Ensuring consultant costs billed are allowable in accordance with the Federal cost principles and consistent with the contract terms as well as the acceptability and progress of the consultant's work;

(vi) Evaluating and participating in decisions for contract modifications; and

(vii) Documenting contract monitoring activities and maintaining supporting contract records, as specified in 2 CFR 200.333.

(2) *Performance evaluation.* The contracting agency shall prepare an evaluation summarizing the consultant's performance on a contract. The performance evaluation should include, but not be limited to, an assessment of the timely completion of work, adherence to contract scope and budget, and quality of the work conducted. The contracting agency shall provide the consultant a copy of the performance evaluation and an opportunity to provide written comments to be attached to the evaluation. The contracting agency should prepare additional interim performance evaluations based on the scope, complexity, and size of the contract as a means to provide feedback, foster communication, and achieve desired changes or improvements. Completed performance evaluations should be archived for consideration as an element of past performance in the future evaluation of the consultant to provide similar services.

(e) *Contract modification.* (1) Contract modifications are required for any amendments to the terms of the existing contract that change the cost of the contract; significantly change the character, scope, complexity, or duration of the work; or significantly change the conditions under which the work is required to be performed.

(2) A contract modification shall clearly define and document the changes made to the contract, establish the method of payment for any adjustments in contract costs, and be in compliance with the terms and conditions of the contract and original procurement.

(3) A contracting agency shall negotiate contract modifications following the same procedures as the negotiation of the original contract.

(4) A contracting agency may add to a contract only the type of services and work included within the scope of services of the original solicitation from which a qualifications-based selection was made.

(5) For any additional engineering and design related services outside of the scope of work established in the original request for proposal, a contracting agency shall:

- (i) Procure the services under a new solicitation;
- (ii) Perform the work itself using contracting agency staff; or
- (iii) Use a different, existing contract under which the services would be within the scope of work.

(6) Overruns in the costs of the work shall not automatically warrant an increase in the fixed fee portion of a cost plus fixed fee reimbursed contract. Permitted changes to the scope of work or duration may warrant consideration for adjustment of the fixed fee portion of cost plus fixed fee or lump sum reimbursed contracts.

§172.11 Allowable costs and oversight.

(a) *Allowable costs.* (1) Costs or prices based on estimated costs for contracts shall be eligible for Federal-aid reimbursement only to the extent that costs incurred or cost estimates included in negotiated prices are allowable in accordance with the Federal cost principles.

(2) Consultants shall be responsible for accounting for costs appropriately and for maintaining records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, are allocable to the contract, and comply with Federal cost principles.

(b) *Elements of contract costs.* The following requirements shall apply to the establishment of the specified elements of contract costs:

(1) *Indirect cost rates.* (i) Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and in compliance with the Federal cost principles.

(ii) Contracting agencies shall accept a consultant's or subconsultant's indirect cost rate(s) established for a 1-year applicable accounting period by a cognizant agency that has:

(A) Performed an audit in accordance with generally accepted government auditing standards to test compliance with the requirements of the Federal cost principles and issued an audit report of the consultant's indirect cost rate(s); or

(B) Conducted a review of an audit report and related workpapers prepared by a certified public accountant and issued a letter of concurrence with the related audited indirect cost rate(s).

(iii) When the indirect cost rate has not been established by a cognizant agency in accordance with paragraph (b)(1)(ii) of this section, a STA or other recipient shall perform an evaluation of a consultant's or subconsultant's indirect cost rate prior to acceptance and application of the rate to contracts administered by the recipient or its subrecipients. The evaluation performed by STAs or other recipients to establish or accept an indirect cost rate shall provide assurance of compliance with the Federal cost principles and may consist of one or more of the following:

(A) Performing an audit in accordance with generally accepted government auditing standards and issuing an audit report;

(B) Reviewing and accepting an audit report and related workpapers prepared by a certified public accountant or another STA;

(C) Establishing a provisional indirect cost rate for the specific contract and adjusting contract costs based upon an audited final rate at the completion of the contract; or

(D) Conducting other evaluations in accordance with a risk-based oversight process as specified in paragraph (c)(2) of this section and within the agency's approved written policies and procedures, as specified in §172.5(c).

(iv) A lower indirect cost rate may be accepted for use on a contract if submitted voluntarily by a consultant; however, the consultant's offer of a lower indirect cost rate shall not be a condition or qualification to be considered for the work or contract award.

(v) Once accepted in accordance with paragraphs (b)(1)(ii) through (iv) of this section, contracting agencies shall apply such indirect cost rate for the purposes of contract estimation, negotiation, administration, reporting, and contract payment and the indirect cost rate shall not be limited by administrative or de facto ceilings of any kind.

(vi) A consultant's accepted indirect cost rate for its 1-year applicable accounting period shall be applied to contracts; however, once an indirect cost rate is established for a contract, it may be extended beyond the 1-year applicable period, through the duration of the specific contract, provided all concerned parties agree. Agreement to the extension of the 1-year applicable period shall not be a condition or qualification to be considered for the work or contract award.

(vii) *Disputed rates.* If an indirect cost rate established by a cognizant agency in paragraph (b)(1)(ii) of this section is in dispute, the contracting agency does not have to accept the rate. A contracting agency may perform its own audit or other evaluation of the consultant's indirect cost rate for application to the specific contract, until or unless the dispute is resolved. A contracting agency may alternatively negotiate a provisional indirect cost rate for the specific contract and adjust contract costs based upon an audited final rate. Only the consultant and the parties involved in performing the indirect cost audit may dispute the established indirect cost rate. If an error is discovered in the established indirect cost rate, the rate may be disputed by any prospective contracting agency.

(2) *Direct salary or wage rates.* (i) Compensation for each employee or classification of employee must be reasonable for the work performed in accordance with the Federal cost principles.

(ii) To provide for fair and reasonable compensation, considering the classification, experience, and responsibility of employees necessary to provide the desired engineering and design related services, contracting agencies may establish consultant direct salary or wage rate limitations or "benchmarks" based upon an objective assessment of the reasonableness of proposed rates performed in accordance with the reasonableness provisions of the Federal cost principles.

(iii) When an assessment of reasonableness in accordance with the Federal cost principles has not been performed, contracting agencies shall use and apply the consultant's actual direct salary or wage rates for estimation, negotiation, administration, and payment of contracts and contract modifications.

(3) *Fixed fee.* (i) The determination of the amount of fixed fee shall consider the scope, complexity, contract duration, degree of risk borne by the consultant, amount of subcontracting, and professional nature of the services as well as the size and type of contract.

(ii) The establishment of fixed fee shall be contract or task order specific.

(iii) Fixed fees in excess of 15 percent of the total direct labor and indirect costs of the contract may be justified only when exceptional circumstances exist.

(4) *Other direct costs.* A contracting agency shall use the Federal cost principles in determining the reasonableness, allowability, and allocability of other direct contract costs.

(c) *Oversight*—(1) *Agency controls*. Contracting agencies shall provide reasonable assurance that consultant costs on contracts reimbursed in whole or in part with FAHP funding are allowable in accordance with the Federal cost principles and consistent with the contract terms considering the contract type and payment method. Contracting agency written policies, procedures, contract documents, and other controls, as specified in §§172.5(c) and 172.9 shall address the establishment, acceptance, and administration of contract costs to assure compliance with the Federal cost principles and requirements of this section.

(2) *Risk-based analysis*. The STAs or other recipient may employ a risk-based oversight process to provide reasonable assurance of consultant compliance with Federal cost principles on FAHP funded contracts administered by the recipient or its subrecipients. If employed, this risk-based oversight process shall be incorporated into STA or other recipient written policies and procedures, as specified in §172.5(c). In addition to ensuring allowability of direct contract costs, the risk-based oversight process shall address the evaluation and acceptance of consultant and subconsultant indirect cost rates for application to contracts. A risk-based oversight process shall consist of the following:

(i) *Risk assessments*. Conducting and documenting an annual assessment of risks of noncompliance with the Federal cost principles per consultant doing business with the agency, considering the following factors:

- (A) Consultant's contract volume within the State;
- (B) Number of States in which the consultant operates;
- (C) Experience of consultant with FAHP contracts;
- (D) History and professional reputation of consultant;
- (E) Audit history of consultant;
- (F) Type and complexity of consultant accounting system;
- (G) Size (number of employees or annual revenues) of consultant;
- (H) Relevant experience of certified public accountant performing audit of consultant;
- (I) Assessment of consultant's internal controls;
- (J) Changes in consultant organizational structure; and
- (K) Other factors as appropriate.

(ii) *Risk mitigation and evaluation procedures*. Allocating resources, as considered necessary based on the results of the annual risk assessment, to provide reasonable assurance of compliance with the Federal cost principles through application of the following types of risk mitigation and evaluation procedures appropriate to the consultant and circumstances:

- (A) Audits performed in accordance with generally accepted government audit standards to test compliance with the requirements of the Federal cost principles;
- (B) Certified public accountant or other STA workpaper reviews;
- (C) Other analytical procedures;

(D) Consultant cost certifications in accordance with paragraph (c)(3) of this section; and

(E) Consultant and certified public accountant training on the Federal cost principles.

(iii) *Documentation.* Maintaining supporting documentation of the risk-based analysis procedures performed to support the allowability and acceptance of consultant costs on FAHP funded contracts.

(3) *Consultant cost certification.* (i) Indirect cost rate proposals for the consultant's 1-year applicable accounting period shall not be accepted and no agreement shall be made by a contracting agency to establish final indirect cost rates, unless the costs have been certified by an official of the consultant as being allowable in accordance with the Federal cost principles. The certification requirement shall apply to all indirect cost rate proposals submitted by consultants and subconsultants for acceptance by a STA or other recipient. Each consultant or subconsultant is responsible for certification of its own indirect cost rate and may not certify the rate of another firm.

(ii) The certifying official shall be an individual executive or financial officer of the consultant's organization at a level no lower than a Vice President or Chief Financial Officer, or equivalent, who has the authority to represent the financial information utilized to establish the indirect cost rate proposal submitted for acceptance.

(iii) The certification of final indirect costs shall read as follows:

Certificate of Final Indirect Costs

This is to certify that I have reviewed this proposal to establish final indirect cost rates and to the best of my knowledge and belief:

1. All costs included in this proposal (identify proposal and date) to establish final indirect cost rates for (identify period covered by rate) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) of title 48, Code of Federal Regulations (CFR), part 31; and

2. This proposal does not include any costs which are expressly unallowable under applicable cost principles of the FAR of 48 CFR part 31.

Firm:

Signature:

Name of Certifying Official:

Title:

Date of Execution:

(4) *Sanctions and penalties.* Contracting agency written policies, procedures, and contract documents, as specified in §§172.5(c) and 172.9(c), shall address the range of administrative, contractual, or legal remedies that may be assessed in accordance with Federal and State laws and regulations where consultants violate or breach contract terms and conditions. Where consultants knowingly charge unallowable costs to a FAHP funded contract:

(i) Contracting agencies shall pursue administrative, contractual, or legal remedies and provide for such sanctions and penalties as may be appropriate; and

(ii) Consultants are subject to suspension and debarment actions as specified in 2 CFR part 1200 and 2 CFR part 180, potential cause of action under the False Claims Act as specified in 32 U.S.C. 3729-3733, and prosecution for making a false statement as specified in 18 U.S.C. 1020.

(d) *Prenotification; confidentiality of data.* FHWA, recipients, and subrecipients of FAHP funds may share audit information in complying with the recipient's or subrecipient's acceptance of a consultant's indirect cost rates pursuant to 23 U.S.C. 112 and this part provided that the consultant is given notice of

each use and transfer. Audit information shall not be provided to other consultants or any other government agency not sharing the cost data, or to any firm or government agency for purposes other than complying with the recipient's or subrecipient's acceptance of a consultant's indirect cost rates pursuant to 23 U.S.C. 112 and this part without the written permission of the affected consultants. If prohibited by law, such cost and rate data shall not be disclosed under any circumstance; however, should a release be required by law or court order, such release shall make note of the confidential nature of the data.

APPENDIX C

SWaM/DBE
POLICY



DBE/SWaM PROCEDURES FOR CONSULTANT PROCUREMENT

RFP Requirements Matrix:

Preliminary Engineering Funding Source	STATE FUNDED PE	FEDERAL FUNDED PE
Procurement Procedure	Same on all state funded projects.	Start as race neutral and switch to race conscious if goal not being met. Each division will track DBE utilization separately and make own decision as to whether to use race neutral or race conscious goals. The number of contracts to be advertised may be considered when deciding which method to use.
DBE/SWaM Goal	Coordinate SWaM goal CRD.	Coordinate participation with CRD
Good Faith Efforts	Not applicable.	Reviewed if/when DBE goal not met
Encourage Use of DBE/SWaMs	RFP wording encourages use of SWaMs on state contracts and DBEs on federal contracts.	RFP wording encourages use of DBEs on federal contracts.
Consultant Performance Reports	Consultants failing to utilize DBE/SWaM subconsultants for the amount of work established in the fee proposal, shall receive a low score in Management Rating. Low scores in this area shall be considered on future consultant selections.	
Consultant Data included in EOI. (A count of all firms participating or attempting to participate on contracts)	Data will be collected on a Firm Data Sheet on all firms, both primes and subs, submitting EOIs. Firm name, location, DBE/SWaM status, age, and annual gross receipts will be included in the Firm Data Sheet. A copy of the sheets from all advertisements will be sent to the Chairperson, Consultant Coordinating Committee.	
Additional DBE/SWaM Data Required to be in EOI. Requested in RFP.	<ul style="list-style-type: none"> • Names and addresses of /SWaM firms that will participate in the contract. • Description of the work that each SWaM will perform. • Percentage amount of the participation of each SWaM firm. • Written documentation of the prime's commitment to use SWaMs. • Written confirmation from the SWaM that it is participating. • Firm's age and annual gross receipts. 	<ul style="list-style-type: none"> • Names and addresses of DBE firms that will participate in the contract. • Description of the work that each DBE will perform. • Percentage amount of the participation of each DBE firm. • Written documentation of the prime's commitment to use DBEs. • Written confirmation from the DBE that it is participating. • If the contract goal is not met, evidence of good faith effort. • Firm's age and annual gross receipts.

ATTACHMENT C

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

Use of Disadvantaged Business Enterprises (DBEs) for Project Specific 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 Department as set out within the requirements of this Special Provision.

7. Once awarded the contract, the Consultant shall designate and make known to the Department a liaison officer who is assigned the responsibility of administering and promoting an active and inclusive DBE program as required by 49 CFR Part 26 for DBE firms. The designation and identity of this officer needs to be submitted only once by the Consultant during any 12 month period.
8. Once awarded the contract, the Consultant shall comply fully with all regulatory and contractual requirements of the USDOT DBE Program, and that each DBE firm participating in the contract shall fully perform the designated work with the DBE firm's own forces and equipment under the DBE firm's direct supervision, control, and management. Where a contract exists and where the Consultant, DBE firm, or any other firm retained by the Consultant has failed to comply with federal or Department DBE Program requirements, the Department has the authority and discretion to determine the extent to which the DBE contract regulations have not been met, and will assess against the Consultant any remedies available at law or provided in the contract.
9. In the event a bond surety assumes the completion of work, if for any reason VDOT 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, the Department 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 subconsulting; 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 SBSD; 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 reconsider 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 enjoinder from responding or participating on Department procurement opportunities for a period of 180 days.

F. DBE Participation for Contract Goal Credit

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

1. The applicable percentage of the total dollar value of the contract or subcontract awarded to the DBE firm will be counted toward meeting the DBE goal in accordance with the **DBE Program-Related Certifications Made by Offerors/Consultant's** section of this Special Provision for the value of the work, goods, or services that are actually performed or provided by the DBE firm itself.

2. When a DBE performs work as a participant in a joint venture with a non-DBE firm, the Consultant may count toward the DBE goal only that portion of the total dollar value of the subcontract equal to the distinctly defined portion of the work that the DBE firm has performed with the DBE firm's own forces or in accordance with the provisions of this Section. The Department shall be contacted in advance regarding any joint venture involving both a DBE firm and a non-DBE firm to coordinate Department review and approval of the joint venture's organizational structure and proposed operation where the Consultant seeks to claim the goal credit.
3. When a DBE firm subcontracts part of the work to another firm, the value of that subcontracted work may be counted toward the DBE contract goal only if the DBE firm's subconsultant is a DBE firm. Work that a DBE firm subcontracts to a non-DBE firm, or to a firm that may be eligible to be a DBE firm, but has not yet been certified as a DBE firm, will not count toward the DBE. The cost of supplies and equipment a DBE subconsultant purchases or leases from the Consultant or prime contractual affiliates, as in the case of a joint venture, will not count toward the DBE goal.
4. The Consultant may count expenditures to a DBE subconsultant toward the DBE goal only if the DBE performs a Commercially Useful Function (CUF) on that subcontract, as such term is defined in subparagraph G below.

G. Performing a Commercially Useful Function (CUF)

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

Monitoring CUF Performance: It shall be the Consultant's responsibility to confirm that all DBE firms selected for subcontract work on the contract, for which it 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 SBSD'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.

APPENDIX D

GUIDELINES FOR THE USE OF CONSULTANT PERFORMANCE REPORTS IN THE SELECTION PROCESS



**GUIDELINES FOR THE USE OF
CONSULTANT PERFORMANCE REPORTS
IN THE SELECTION PROCESS**

5-5-99

BACKGROUND

Performance evaluations on firms under contract with VDOT are collected and entered into a database. These reports will be considered as you proceed through the short list process.

PROCESS

The following outlines the Selection Committee members' responsibility at the short list meeting. The Guidelines for the Procurement & Management of Professional Services should be referred to for the complete process:

1. The Procurement Officer will begin the short list meeting by outlining the process to be used during the meeting.
2. The individual committee members will read their scores. Their scores will be consolidated into one score sheet by the Procurement Officer.
3. Each committee member will verify their score has been accurately recorded. The math will be performed and checked, establishing a tentative short list.
4. The committee will next verify the current workload and the debarment status of the apparent short listed firms. (The committee may elect to do this after reviewing the Consultant Performance Reports)
5. The committee will then access the Consultant Performance Report Library and review the reports for all prime consultants and subconsultants that are in the tentative short list. Past performance ratings for the last five years will be considered. If a firm is new to VDOT or has no performance reports on file, the committee will check some of the references shown in the EOI and document their finding as part of the file.
6. If ratings less than 3 are discovered, the committee will review the actual performance reports for that firm. Ratings below 3 that are not supported with written comments must be discussed with the rater before they may be used to adjust the score. After this review, all committee members will have the opportunity to adjust their scores, if they find sufficient justification exists to do so. All changes on the score sheet will be made in ink and include the reason for making the change. A copy of the Consultant Performance Report with low ratings that justified the change in score will be attached to the score sheet.

7. If changes in scores result in a firm being removed from the short list, the next ranked firm will be added to the short list, the workload and debarment status verified, and the performance reports reviewed.
8. The Procurement Officer is not a member of the Selection Committee and will at no time in the process attempt to influence the committee's decision. However, if after observing the selection proceedings and reviewing the performance reports with the committee, the Procurement Officer, in his/her opinion, finds the committee has not made a decision in accordance with these guidelines or they have not properly documented their decision, the Procurement Officer will submit the documentation and reasons for not approving the short list to the Lead Division Administrator for review. In most cases, it is expected that the concerns will be resolved with the Lead Division Administrator. However, if after review by the Lead Division Administrator, the Procurement Officer still feels the decision is not in accordance with the guidelines or has not been properly documented, the Procurement Officer will ask for a review by the Chief Engineer. The Chief Engineer's decision will be final. The reason for the decision made by the Lead Division Administrator or the Chief Engineer will be included in the selection documentation.

CONSIDERATIONS

As the Selection Committee goes through the process of reviewing the Consultant Performance Report data, the following should be considered:

1. It is not the intent of the process for a single rating less than 3 to remove a firm from consideration to provide services for VDOT. A firm's total work performance history will be taken into consideration prior to any score being changed. It is important that we remain mindful that it is the Chief Engineer's desire that we should not be using firms that perform poorly.
2. There is no set rule for the number of low ratings that requires a firm's short list scores to be changed. This is an individual decision of each Selection Committee member.
3. Low ratings may exist in areas on other projects which are not relative to your project and the committee may choose to rate this information accordingly. The consultant may also be using different personnel on your project. However, the general guidance is the Chief Engineer wants firms to consistently perform well in all areas.
4. The Selection Committee need only review the performance reports in the same disciplines of work being procured. If a procurement is solely for bridge design, only the Structure and Bridge Division performance reports need to

be reviewed. When surveying work is included as part of a road design contract, the term surveying and Location and Design Division reports will be reviewed. When a bridge design consultant is required to provide construction inspectors on unique types of construction, both the Structure and Bridge Division and construction inspection reports will be reviewed. A consultant's performance with other divisions within the same category may be considered if determined to be relevant to the current procurement. If a firm has no performance reports on file related to the requested services, the committee will check some of the references shown in the EOI and document their findings as part of the file.

5. A rating of 3 indicates the consultant met the terms and conditions of their contract and is not considered to be a bad rating. Fractional ratings less than three may be given to indicate that a firm did not totally meet expectations, but their work was not of such poor quality for them not to be considered for future work. Committee members need to refer to the rater's comments. Any rebuttal comments by the consultant should also be considered.
6. The quality of the final product is of utmost importance; however, the amount of time and effort spent by the Department's staff in the management and supervision of the consultant during the project life must be considered. A consultant may submit a good final product, but it required a tremendous effort by Department personnel to make the consultant achieve the end results. This should be reflected in the performance reports and considered by the committee.
7. Low ratings of subconsultants should be weighed according to their scope and value to the effort, keeping in mind the Chief Engineer expects subconsultants to perform consistently well.
8. The short list scores may be adjusted as the Selection Committee deems appropriate based on the numerical ratings and significance of the rated category to the project being considered. If a firm's score is adjusted and the firm remains in the short list, the performance reports may be cited in the narrative prepared to document the selection recommendation as a reason for not ranking as high as the other firms.
9. Sometimes, it may be necessary for the Selection Committee to communicate with the rater that completed a Consultant Performance Report. This may occur from the rater not giving clear enough comments to appropriately support a low score or from the consultant's rebuttal to the rating in their comment section.

APPENDIX E

COMPUTATION

OF

COST

PLUS

NET

FEE



COST PLUS NET FEE CONTRACT
Computation of Fee *

A. Direct Labor, Estimated Est. Man-hrs X Current Hourly Rates	\$1,000,000.00
B. Escalation Approved Escalation Rate X A	\$60,000.00
C. Total Direct Labor (A + B)	\$1,060,000.00
D. Overhead (Payroll Burden + Overhead, G&A) Audited Overhead Rate (180%) X C	\$1,908,000.00
E. Total Direct Labor Plus Overhead (C + D)	\$2,968,000.00
F. Direct Labor Plus Overhead Contingency ** Contingency Rate X E	\$148,400.00
G. Negotiated Net Fee *** Based on (E + F) with Overhead Limit of 156%	\$284,928.00
H. Cost of Facilities Capital Audited Rate X C	\$11,660.00
I. Nonsalary Direct Cost, Estimated	\$50,000.00
J. Nonsalary Contingency ** Contingency Rate X (H + I)	\$3,083.00
K. Sub-consultant Cost, Estimated	\$200,000.00
L. Maximum Total Compensation Payable (E + F + G + H + I + J + K)	\$3,666,071.00
M. Amount Not To Exceed Without Written VDOT Approval (L-F-J)	\$3,514,588.00

* - Round to the nearest dollar with no cents.

** - Contingency is generally 5%, but may vary depending on the difficulty of determining the exact scope of the services. Contingency provides for minor work elements which could not be precisely determined when the contract was written. The contingency may not be used without written permission from the Department.

*** - Overhead rate is limited to 156% in determining net fee.

