

COMMONWEALTH OF VIRGINIA



CONTRACT

FOR APPRAISAL REVIEW SERVICES

PROJECT NO. Harry W. Nice Memorial Bridge

Spanning the Potomac River and between Charles County, Maryland

and King George County, Virginia

Maryland Project NB543-000-006

PARCEL NUMBERS 10-13A, 10-13B and 10-13C

NAME OF CONSULTANT: _____

Proposals Due by **4:00 p.m. March 8, 2018**

APPRAISAL REVIEW SERVICES CONTRACT

This Agreement, dated as of the ____ day of _____, 20____, by and between the Commonwealth of Virginia, Department of Transportation, whose office is in the City of Richmond in the Commonwealth of Virginia, hereafter referred to as the “Department” or “VDOT,” acting by and through its duly authorized Commissioner, party of the first part, and _____ with offices at _____ hereinafter referred to as the “Consultant,” party of the second part,

WITNESSETH: that the Consultant does hereby agree to perform the services required of it herein in exchange for the consideration to be provided by the Department as stated herein, all in connection with the work as hereinafter defined and described for the “Project” (defined below). When used herein, the term “Contract” shall mean this Agreement together with all documents attached hereto or incorporated by reference herein.

1.00 - DESCRIPTION AND LIMITS OF PROJECT

The Maryland Department of Transportation (MDTA) and the Virginia Department of Transportation agrees to undertake joint efforts to explore the replacement of the Governor Harry W. Nice Memorial Bridge spanning the Potomac River between Charles County, Maryland and King George County, Virginia (the “Bridge”). MDTA proposes to have appraisals performed on each parcel located in King George County, Virginia, as part of a joint project with VDOT to replace the Bridge, which is identified as MDTA Project NB543-000-006. This will necessitate the review of **three (3)** appraisals of real estate situated therein, identified as Parcel(s) 10-13A, 10-13B, 10-13C (each parcel so identified, a “Parcel”) on the attached sketches.

2.00 – SCOPE OF WORK

2.01

The Consultant agrees to perform the services as set forth herein and furnish and deliver to the Department a review report of appraisals of the real property interests to be acquired by the Department for each Parcel, under the following terms and conditions:

The Consultant shall be responsible for completing and providing appraisal review reports for the Parcels in accordance with the provisions of Chapter 4 of the Manual of Instructions, Right of Way and Utilities Division, Virginia Department of Transportation (“VDOT ROW Manual”)

(A) The Consultant shall review the analysis contained in each appraisal report to determine whether such analysis is complete and the conclusions supported by the data contained in the report. Such review shall include but not be limited to:

1. Review of computations to determine accuracy.

2. Determination of the validity of the principal approach to value.
3. Review of adjustments to comparable sales to determine validity and support for such adjustments.

The Consultant shall provide coordination with the preparer of each appraisal report to effectuate any required changes and/or revisions to the report so that the final product is in compliance with the Department's appraisal requirements and current policies and procedures, as set forth in Chapter 4 of the VDOT ROW Manual

- (B) The Consultant shall complete the review process and deliver its reports to Consultant within thirty (30) business days after receipt of the appraisal reports. The appraisal reports will be delivered to the Consultant in units of ten (10) or less. Should the Consultant return an appraisal report to an appraiser of record for correction or further justification, the time for review shall be suspended until the appraiser returns the revised appraisal report to the Consultant.
- (C) The Consultant warrants that it will perform its work under the Contract in a professional manner consistent with the standards of skill and care employed by similarly situated consultants in the area in which the work under the Contract is to be performed.

3.00 - COMMENCEMENT OF WORK AND TIME OF COMPLETION

3.01

No work shall be performed by the Consultant under the Contract until the Consultant has been given written notice to proceed ("NTP") by the Department.

3.02

Time being of the essence, the Consultant shall proceed with the review of appraisal reports for each Parcel described above in such sequence and order as the Department may in writing direct and shall deliver the appraisal review reports on each Parcel by hand or by U. S. mail to the Department as soon as completed and no later than the dates outlined below and only after NTP is issued by the Department.

The appraisal reviews will be due in accordance with the following schedule:

Parcel Number
number of days)

Appraisal Review Due Date (expressed as Contract NTP plus a

10-13B

Receipt of Appraisal plus 10 business days

10-13A

Receipt of Appraisal plus 10 business days

10-13C

Receipt of Appraisal plus 10 business days

3.03

If the work provided for under the Contract should be delayed by conditions beyond the control of the Consultant, and through no fault or negligence on its part, the Consultant may apply in writing for an extension of time because of such delay. If, in the opinion of the Commissioner or his duly authorized representative, a delay due to such cause is justified, the Consultant will be granted an extension of time, reasonably sufficient under relevant circumstances, to enable the Consultant to make up the progress lost as a result of the delay so caused.

4.00 - ERRORS

The performance of services or acceptance of the appraisal review report required hereunder shall not relieve the Consultant from obligation to correct any defective work subsequently discovered by the Department, and all incomplete, inaccurate or defective work shall be remedied by the Consultant on demand by, and without cost to, the Department.

5.00 - PAYMENT

The Consultant shall be paid the sum of \$_____, which shall constitute full compensation to the Consultant. Such payment shall include costs of all supplies, material, equipment, clerical and stenographic assistance, and all other expenses incurred by the Consultant in performing work hereunder. Partial payments may be made on a pro rata basis according to the number of appraisal review reports completed and delivered to the Department each month. Statements for partial payment may be sent to the Department once every thirty (30) calendar days after NTP has been issued. Such statements or invoices shall be sent to the Department at the following address: 1401 E. Broad Street, Richmond, Virginia, Attn: Vicki Patrick.

6.00 – PARTICIPATION IN EMINENT DOMAIN LITIGATION

In the event that the testimony of the Consultant is required in any legal proceedings in connection with the acquisition by the Department of any of the properties, the Consultant agrees to appear as a witness on behalf of the Department based on a per diem fee approved by the Chief Appraiser of for each eight-hour day's preparation for or attendance in court and one-

fourth of this sum for each two hours or fraction thereof. The Consultant shall keep such records with respect to each appraisal as may be required in connection with such preparation or testimony. The said per diem rate is also applicable when the Department requires revisions, updates and/or modifications of any appraisal review report.

7.00 - TERMINATION

7.01 - TERMINATION WITHOUT CAUSE

The Department reserves the right to terminate the Contract, in whole or in part, at any time upon fifteen (15) days advance written notice to the Consultant, by the end of which period the Consultant shall, unless the notice directs otherwise, discontinue all work and services.

If the Contract is so terminated, the Consultant shall be paid for the actual cost of work and services performed up to the date of termination and all work completed or partially completed by the Consultant at the date of termination shall be delivered to the Department.

7.02 - TERMINATION FOR CAUSE

Without advance written notice, the Department may terminate the Contract due to the failure of the Consultant to fulfil its obligations under the Contract, and the Department may take over the work and services and prosecute the same to completion by further agreement or otherwise, and the Consultant shall be liable to the Department for any excess cost occasioned to the Department thereby.

8.00 – MINIMUM REQUIREMENTS FOR CONSULTANT REVIEWERS

All persons employed by the Consultant to perform reviews under the Contract:

- (A) Must hold a current Certified General Real Estate Appraiser Classification, as issued by the Virginia Real Estate Appraisers Board, or out-of-state reviewers must have a reciprocal Certified General License;
- (B) Must have at least five (5) years of partial acquisition appraisal experience on state or federal aid right of way projects requiring eminent domain real estate appraisal reports, including uncomplicated form reports, as well as complex narrative reports. Such experience must have been in conformance with standards and guidelines of VDOT and the Federal Highway Administration (“FHWA”);
- (C) Must have thorough knowledge of VDOT and FHWA policies and procedures pertaining to rights of way acquisition; of the methods and techniques of real estate appraisals for rights of way purposes to include sales comparison, income capitalization, and cost approaches to value and their different applications for

residential, industrial, agricultural, commercial, and special purpose and multipurpose properties;

- (D) Must have thorough knowledge of federal and state laws, policy and procedures pertaining to the transfer of real property and the release and transfer of leases, mortgages, and other encumbrances; of documentation and requirements; of guidelines and procedures relative to rights of way acquisition by VDOT and FHWA; of legal terms and descriptions used in defining real property transactions; of sources of information from which to obtain property information; and
- (E) Must have comprehensive skill in meeting, dealing with, and communicating orally or in writing with property owners, fee and staff appraisers, attorneys, technical personnel, state and local officials, and interested parties.

9.00 - EMPLOYMENT OF DEPARTMENT PERSONNEL

The Consultant shall not engage the services of any person or persons in the employment of the Department on any work covered by the Contract without written permission of the Department. In no event shall any person employed by the Department receive any remuneration for any work covered by the Contract.

10.00 - MISCELLANEOUS

The Contract shall inure to the benefit of and shall be binding upon the personal representatives and legal successors of the respective parties hereto. Nothing in the Contract shall inure to the benefit of any third party that is not a signatory, or a successor in interest to a signatory, to the Contract.

11.00 – CONTRACT DOCUMENTS

The “Contract Documents” shall consist of:

- (1) This Agreement
- (2) Certification of Consultant (attached)
- (3) General Terms and Conditions (Attachment A)
- (4) Small Business Subcontracting Plan (Attachment B)
- (5) SWaM Compliance Report (Attachment C)
- (6) State Corporation Commission Form (Attachment D)
- (7) Proprietary/Confidential Information Summary Form (Attachment E)
- (8) Subcontractor Approval Request (Attachment F)
- (9) Firm Data Sheet (Attachment G)

(11) Special Terms and Conditions (Attachment H)

The Contract Documents are hereby incorporated into this Contract as if fully set forth herein.

IN WITNESS WHEREOF the parties have hereunto set their hands as of the day and year first above written.

Department:

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION

By: _____
Lori A. Snider
Director, Right of Way & Utilities Division

Date: _____

Consultant:

Name of Company

By: _____

Name: _____

Title: _____

Date: _____

CERTIFICATION OF CONSULTANT

I hereby certify that I am the _____ and duly authorized representative of the firm of _____, whose address is _____, and that neither I nor the above firm I here represent has

- a. employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this contract;
- b. agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract;
- c. paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract, except as here expressly stated (if any);
- d. paid, or agreed to pay, federally appropriated funds to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the firm shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," according to its instructions. The firm shall require that the language of this certification be included in the award documents for

all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

I acknowledge that this certification is to be furnished to the Commonwealth of Virginia Department of Transportation, in connection with this contract involving participation of Federal-Aid highway funds, and is subject to applicable state and federal laws, both criminal and civil.

Signature	Title	Date
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**CERTIFICATION OF THE VIRGINIA
DEPARTMENT OF TRANSPORTATION**

I hereby certify that I am the **State Right of Way & Utilities Director of the Right of Way and Utilities Division** of the Virginia Department of Transportation of the Commonwealth of Virginia, and that the above consulting firm or his representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract, to

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

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

(DATE)

State Right of Way & Utilities Director

ATTACHMENT A

GENERAL TERMS AND CONDITIONS:

- A. **VENDORS MANUAL:** This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.eva.virginia.gov under “Vendors Manual” on the vendors tab.
- B. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Department and the Consultant are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The Consultant shall comply with all applicable federal, state and local laws, rules and regulations.
- C. **ANTI-DISCRIMINATION:** By submitting their proposals, offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).
1. During the performance of this contract, the Consultant agrees as follows:

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

2. The Consultant will include the provisions of Section C.1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

D. **ETHICS IN PUBLIC CONTRACTING:** By submitting their proposals, offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By entering into a written contract with the Commonwealth of Virginia, the Consultant certifies that the Consultant does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

F. **DEBARMENT STATUS:** By participating in this procurement, the Consultant certifies that it is not currently debarred by the Commonwealth of Virginia from submitting a response for the type of goods and/or services covered by this solicitation. The Consultant further certifies that it is not debarred from

filling any order or accepting any resulting order, or that it is an agent of any person or entity that is currently debarred by the Commonwealth of Virginia.

G. **ANTITRUST:** By entering into a contract, the Consultant conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.

H. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR RFPs:**

Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.

I. **CLARIFICATION OF TERMS:** If any prospective offeror has questions about the specifications or other solicitation documents, the prospective offeror should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.

J. **PAYMENT:**

1. **To Consultant:**

a. Invoices for work product ordered, delivered and accepted shall be submitted by the Consultant directly to the payment address shown on the Contract. All invoices shall show the state contract number and purchase order number, if any; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations); itemized quantities, unit prices and extended costs based on the contract sum stated in Section 5.00 of the Contract divided by the number of appraisal review reports assigned. No payment will be made for unsatisfactory work or for work in progress on the prescribed payment dates.

b. Any payment terms requiring payment in less than 30 days will be regarded as requiring

payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.

- c. Monthly Partial Billings. Monthly partial billings will be submitted as established in the Contract. When the net receivable amount is less than \$500.00, no partial payment will be made and the value of such work shall be carried over to the next monthly billing. Monthly partial payments will be made for the services outlined based on the sum of the Consultant's statement of actual costs incurred. Billings shall be submitted no more frequently than once every 30 calendar days.
- d. All services provided under the Contract or a purchase order hereunder, that are to be paid for with public funds, shall be billed by the Consultant at the contract price, regardless of which public agency is being billed.
- e. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- f. Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, the Consultant should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the Consultant, in writing, as to those charges which it considers unreasonable and the basis for the determination. The Consultant may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).

2. To Subcontractors:

- a. An offeror awarded a contract under this solicitation is hereby obligated:
 - (1) To pay the subcontractor(s) within seven (7) days of the Consultant's receipt of payment from

the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the Contract; or

(2) To notify VDOT and the subcontractor(s), in writing, of the Consultant's intention to withhold payment and the reason.

b. The Consultant is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the Consultant that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. The Consultant's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

3. Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.

4. The Commonwealth of Virginia encourages the Consultant and its subcontractors to accept electronic and credit card payments.

K. **PRECEDENCE OF TERMS:** The following General Terms and Conditions *VENDORS MANUAL*, *APPLICABLE LAWS AND COURTS*, *ANTI-DISCRIMINATION*, *ETHICS IN PUBLIC CONTRACTING*, *IMMIGRATION REFORM AND CONTROL ACT OF 1986*, *DEBARMENT STATUS*, *ANTITRUST*, *MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS*, *CLARIFICATION OF TERMS*, *PAYMENT* shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

- L. **QUALIFICATIONS OF OFFERORS**: The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the services and the offeror shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Commonwealth that such offeror is properly qualified to carry out the obligations of the Contract and to provide the services contemplated therein.
- M. **TESTING AND INSPECTION**: The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- N. **ASSIGNMENT OF CONTRACT**: The Contract shall not be assignable by the Consultant in whole or in part without the written consent of the Commonwealth.
- O. **CHANGES TO THE CONTRACT**: Changes can be made to the Contract in any of the following ways:
1. The parties may agree in writing to modify the terms, conditions, or scope of the Contract. Any additional goods or services to be provided shall be of a sort that is ancillary to the contract goods or services, or within the same broad product or service categories as were included in the Contract award. Any increase or decrease in the price of the Contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the Contract.
 2. The Department may order changes within the general scope of the Contract at any time by written notice to the Consultant. Changes within the scope of the Contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Consultant shall comply with the notice upon receipt, unless the Consultant intends to claim an adjustment to compensation, schedule, or other contractual impact that would be caused by complying with such notice, in which case the Consultant shall, in writing, promptly notify the Department of the adjustment to be sought, and before proceeding to comply with the notice, shall await the Department's written decision affirming, modifying, or revoking the

prior written notice. If the Department decides to issue a notice that requires an adjustment to compensation, the Consultant shall be compensated for any additional costs incurred as the result of such order and shall give the Department a credit for any savings. Said compensation shall be determined by one of the following methods:

- a. By mutual agreement between the parties in writing; or
- b. By agreeing upon a unit price or using a unit price set forth in the Contract, if the work to be done can be expressed in units, and the Consultant accounts for the number of units of work performed, subject to the Department's right to audit the Consultant's records and/or to determine the correct number of units independently; or
- c. By ordering the Consultant to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the Contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Consultant shall present the Department with all vouchers and records of expenses incurred and savings realized. The Department shall have the right to audit the records of the Consultant as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Department within thirty (30) days from the date of receipt of the written order from the Department. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of the Contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of the Contract shall excuse the Consultant from promptly complying with the changes ordered by the Department or with the performance of the Contract generally.

P. **DEFAULT:** In case of failure to deliver services in accordance with the Contract, the Department, after due oral or written notice, may procure them from other sources and hold the Consultant responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Department may have.

Q. **INSURANCE:** By signing and submitting a bid or proposal under this solicitation, the offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. The offeror further certifies that the contractor and any subcontractors will maintain these insurance coverages during the entire term of the Contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. If the Consultant fails to notify the Commonwealth of an increase in the number of employees that change its workers' compensation requirements under the *Code of Virginia* during the course of the Contract, the Consultant shall be in noncompliance with the Contract.
2. Employer's Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
4. Automobile Liability - \$1,000,000 combined single limit. (Required only if a motor vehicle not owned by the Commonwealth is to be used in the Contract. The Consultant must assure that the required coverage is maintained by the Consultant (or third party owner of such motor vehicle.)

R. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA VBO (www.eva.virginia.gov) for a minimum of 10 days.

S. **DRUG-FREE WORKPLACE:** During the performance of this Contract, the Consultant agrees to (i) provide a drug-free workplace for the Consultant's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful

manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Consultant's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Consultant that the Consultant maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

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

T. **NONDISCRIMINATION OF CONTRACTORS:** An offeror shall not be discriminated against in the solicitation or award of the Contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the offeror employs ex-offenders unless the Department has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of the Contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to the Contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the Department shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

U. **eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION, CONTRACTS, AND ORDERS:** The eVA Internet electronic procurement solution, website portal www.eVA.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution by completing the free eVA Vendor Registration. All offerors must register in eVA and pay the Vendor Transaction Fees specified below; failure to register will result in the proposal being rejected.

Vendor transaction fees are determined by the date the original purchase order is issued and the current fees are as follows:

- a. For orders issued July 1, 2014 and after, the Vendor Transaction Fee is:
 - (i) SBSB-certified Small Businesses: 1%, capped at \$500 per order.
 - (ii) Businesses that are not SBSB-certified Small Businesses: 1%, capped at \$1,500 per order.

For orders issued prior to July 1, 2014 the vendor transaction fees can be found at www.eVA.virginia.gov.

The specified vendor transaction fee will be invoiced, by the Commonwealth of Virginia Department of General Services, approximately 60 days after the corresponding purchase order is issued and payable 30 days after the invoice date. Any adjustments (increases/decreases) will be handled through purchase order changes.

- V. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the Department shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of the Contract.

- W. **SET-ASIDES.** This solicitation is set-aside for award priority to SBSB-certified micro businesses or small businesses when designated “Micro Business Set-Aside Award Priority” or “Small Business Set-Aside Award Priority” accordingly in the solicitation. SBSB-certified micro business or small businesses this include SBSB-certified women-owned and minority-owned businesses when they have received the SBSB small business certification. For purposes of award, offerors shall be deemed micro businesses or small businesses if and only if they are certified as such by SBSB on the due date for receipt of proposals.

- X. **BID PRICE CURRENCY:** Unless stated otherwise in the solicitation, offerors shall state offer prices in US dollars.

- Y. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or

Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the *Virginia Public Procurement Act* shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

ATTACHMENT B

SMALL BUSINESS SUBCONTRACTING PLAN

This Attachment must be completed by all offerors.

All small businesses must be certified by the Commonwealth of Virginia, Department of Small Business and Supplier Diversity (SBSD) by the due date of the solicitation to participate in the SWAM program. Certification applications are available through SBSB online at <http://sbsd.virginia.gov/> (Customer Service).

It is the goal of the Commonwealth that more than 42% of its purchases be made from small businesses. All potential bidders are required to submit a Small Business Subcontracting Plan.

Small Business: "Small business (including micro)" means a business which holds a certification as such by the Virginia Department of Small Business and Supplier Diversity (SBSD) on the due date for proposals. This shall also include SBSB-certified women- and minority-owned businesses when they also hold a SBSB certification as a small business on the proposal due date. Currently, SBSB offers small business certification and micro business designation to firms that qualify under the definitions below.

Certification applications are available through SBSB online at www.sbsd.virginia.gov (Customer Service).

Offeror Name: _____

Preparer Name: _____ **Date:** _____

Instructions

- A. If you are certified by the SBSB as a micro/small business, complete only Section A of this form. This includes but is not limited to SBSB-certified women-owned and minority-owned businesses when they have also received SBSB small business certification.
- B. If you are not a SBSB-certified small business, complete Section B of this form. For the offeror to receive credit for the small business subcontracting plan evaluation criteria, the offeror shall identify the portions of the contract that will be subcontracted to SBSB-certified small business for the initial contract period in

Section B.

Offerors which are small businesses themselves will receive the maximum available points for the small business participation plan evaluation criterion, and do not have any further subcontracting requirements.

Offerors which are not certified small businesses will be assigned points based on proposed expenditures with SBSD-certified small businesses for the initial contract period in relation to the offeror's total price for the initial contract period.

Points will be assigned based on each offeror's proposed subcontracting expenditures with SBSD certified small businesses for the initial contract period as indicated in Section B in relation to the offeror's total price.

Section A

If your firm is certified by the Department of Small Business and Supplier Diversity (SBSD), provide your certification number and the date of certification):

Certification Number: _____ Expiration Date: _____

ATTACHMENT B

SMALL BUSINESS SUBCONTRACTING PLAN

Section B

Populate the table below to show your firm's plans for utilization of SBSD-certified small businesses in the performance of the Contract for the initial contract period in relation to the bidder's total price for the initial contract period. Certified small businesses include but are not limited to SBSD-certified women-owned and minority-owned businesses that have also received the SBSD small business certification. Include plans to utilize small businesses as part of joint ventures, partnerships, subcontractors, suppliers, etc. It is important to note that these proposed participation will be incorporated into the subsequent contract and will be a requirement of the Contract. Failure to obtain the proposed participation percentages may result in breach of the Contract.

B. Plans for Utilization of SBSD-Certified Small Businesses for this Procurement

Micro/Small Business Name & Address SWaM Certificate # and Expiration Date	Status if Micro/Small Business is also: Women (W), Minority (M)	Contact Person, Telephone & Email	Type of Goods and/or Services	Planned Contract Dollars During Initial Period of the Contract (\$ or %)
Totals \$				

ATTACHMENT C
DEPARTMENT OF TRANSPORTATION
INSTRUCTIONS FOR
SWAM COMPLIANCE REPORT (ASD-63)

The Consultant is required to submit a SWaM Compliance Report to the VDOT Project Manager on payments made to all subcontractors as specified in Small Business Subcontracting Plan in the Special Terms & Condition to include Small, Women-owned and Minority-owned Business Enterprises (SWaM) certified by Virginia Department of Small Business and Supplier Diversity (SBSD) and non- SWaM businesses for the designated quarterly reporting period if required. All amounts paid to certified SWaM businesses are subject to monitoring and enforcement mechanisms. It is the responsibility of the Consultant to provide evidence of SWaM payments in response to the small business plan provided in the solicitation for the Contract.

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

1. **Contractor/ Tax I.D. No.** enter the complete name of the prime contractor and their federal tax identification number.
 - 1a. **Contract Name** indicate the name of the contract as it appears on contract documents
 - 1b. **District** indicate the VDOT responsible district where the contract is being performed. See list of districts in these instructions
 - 1c. **Contract No.** provide contract number
2. **Period Ending** indicate the reporting period based on the Reporting Schedule listed in these instructions
3. **Subcontractor/Vendor Telephone Number and Certification Number** enter the names of all subcontractors and suppliers that participate on this contract whether SWaM or not if required. For SWaM vendors please provide the certification number provided by the Virginia Department of Small Business and Supplier Diversity (SBSD)
4. **Tax I.D. No.** insert the tax identification number of the vendor that appears in the preceding column

5. **SWaM Category S,W,M, None** indicate the SWaM status of each vendor identified as a subcontractor or vendor. This number is issued by SBSB and can be located on their website at www.SBSB.virginia.gov.
6. **Subcontract Amount** indicate the subcontract amount for any vendor listed on this form.
7. **Subcontractor Payment** this section identifies the prime expenditures to vendors listed on this form for SWaM vendors on contracts valued at or above \$100,000 and non-SWaM vendors for contracts valued at or above \$200,000.
 - 7a. **This Quarter** indicate the amount paid to each subcontractor per reporting period. If no payments were made during this period enter \$0.
 - 7b. **Year to Date** summarizes all payments made to the vendor to date.
8. **Type of Work or Commodity** indicate scope of work or commodity acquired from the subcontractor

Effective October 5, 2007 all Form ASD-63's for a particular reporting period shall be submitted preferably in an electronic format to the contract officer or responsible district personnel by the dates of each calendar year.

REPORTING SCHEDULE

QUARTER	REPORTING PERIOD	DATE DUE TO CONTRACT OFFICER
1 st	July 1 – September 30	Five(5) working days after the reporting period
2 nd	October 1 – December 31	Five(5) working days after the reporting period
3 rd	January 1 - March 31	Five(5) working days after the reporting period
4 th	April 1 – June 30	Five(5) working days after the reporting period

If the submittal date falls on a weekend/holiday, the forms shall be submitted to the VDOT contract officer or responsible district personnel on the following business day.

ATTACHMENT C

SWaM COMPLIANCE REPORT

(1) Contractor/Tax I.D. No.

Page _____ of _____

(1a) Contract Name

(1c) Contract No. _____

(2) Period Ending

(1b) District

(3) Subcontractor/ Vendor Tele No., Certification No.	(4) Tax I.D. No.	(5) SWaM Category S, W, M, None	(6) Sub- Contract Amount	(7) Subcontractor Payment		(8) Type of Work or Commodity
				(7a) This Quarter	(7b) To Date	

All amounts paid to subcontractors/vendors are to be reported and **submitted by the 5th business day after the end of each quarter** to the Contract Officer. See instructions.

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

Signature and Title of Company Official _____

Date _____

ATTACHMENT D

State Corporation Commission Form

Virginia State Corporation Commission (SCC) registration information. The offeror:

is a corporation or other business entity with the following SCC identification number:

_____ **-OR-**

is not a corporation, limited liability company, limited partnership, registered limited liability partnership, or business trust **-OR-**

is an out-of-state business entity that does not regularly and continuously maintain as part of its ordinary and customary business any employees, agents, offices, facilities, or inventories in Virginia (not counting any employees or agents in Virginia who merely solicit orders that require acceptance outside Virginia before they become contracts, and not counting any incidental presence of the offeror in Virginia that is needed in order to assemble, maintain, and repair goods in accordance with the contracts by which such goods were sold and shipped into Virginia from offeror's out-of-state location) **-OR-**

is an out-of-state business entity that is including with this proposal an opinion of legal counsel which accurately and completely discloses the undersigned offeror's current contacts with Virginia and describes why those contacts do not constitute the transaction of business in Virginia within the meaning of § 13.1-757 or other similar provisions in Titles 13.1 or 50 of the Code of Virginia.

****NOTE**** >> Check the following box if you have not completed any of the foregoing options but currently have pending before the SCC an application for authority to transact business in the Commonwealth of Virginia and wish to be considered for a waiver to allow you to submit the SCC identification number after the due date for proposals (the Commonwealth reserves the right to determine in its sole discretion whether to allow such waiver):

ATTACHMENT E
PROPRIETARY/CONFIDENTIAL INFORMATION
SUMMARY FORM

SECTION/TITLE	PAGE NUMBER(S)	REASON(S) FOR WITHHOLDING FROM DISCLOSURE

*Identify the reason for withholding from disclosure in accordance with the Code of Virginia § 2.2-4342F.

ATTACHMENT F
SUBCONTRACTOR APPROVAL REQUEST

Contractor Name _____

Contract

No. _____

No portion of the work (including equipment) shall be subcontracted to another firm or individual **without prior written consent** of Virginia Department of Transportation (herein referred to as VDOT). In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish VDOT with the names, qualifications, and experience of their proposed subcontractors for agency approval. The primary contractor shall, however, remain fully liable and responsible for the work performed by its subcontractor(s) and shall assure compliance with all requirements of the contract.

List proposed subcontractor(s), including name, address, contact person, and type of work to be performed under this contract below.

FIRM INDIVIDUAL'S NAME & ADDRESS	CONTACT PERSON AND PHONE NUMBER	TYPE OF WORK TO BE PERFORMED
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

1
2
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12

TYPE OF EQUIPMENT PROPOSED SUBCONTRACTOR WILL PROVIDE

QUALIFICATIONS / EXPERIENCE LEVEL OF PROPOSED SUBCONTRACTOR

Indicate below if any of the above proposed subcontractors are SBSB-certified as Small, Small Women-owned or Small Minority-owned Businesses, and if the original proposal response included plan for utilization of small businesses, submit revised Attachment B, Small Business Subcontracting Plan, Section B. Plan for Utilization of DMBE-Certified Small Businesses.

Company Name: _____

Certification Number: _____

FOR DOT USE ONLY:

The proposed subcontractor(s) listed above is/are approved and accepted under the terms and conditions of the contract requirements herein.

Signature of Contract Officer

Date

Telephone Number

ATTACHMENT G – FIRM DATA SHEET

Project No.: _____

Right of Way and Utilities Division

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

Firm's Name and Address	Firm's DBE/SWAM Status *	Firm's Age	Firm's Annual Gross Receipts

* YD = DBE Firm Certified by DMBE N = DBE/SWAM Firm Not Certified by DMBE
 NA = Firm Not Claiming DBE/SWAM Status
 YS = SWAM Firm Certified by DMBE. Indicate whether small, woman-owned, or small business.

ATTACHMENT H

SPECIAL TERMS AND CONDITIONS

1. **RIGHT OF WAY DIVISION TERMS:**

A. Title reports may not be available for certain appraisal assignments and in that situation the appraiser will be responsible for verifying ownership and obtaining relevant data needed to complete the appraisal.

B. The offeror's proposed Project Manager should be an employee that can be assigned to the Contract for the entire period.

C. The Department reserves the right, in its sole discretion, to divide assignments for a given Project among competing appraisal firms.

2. **AUDIT:**

The Consultant shall retain all books, records, and other documents relative to the Contract for five (5) years after final payment. The foregoing document retention requirement may be extended by the Department with respect to documents related to courtroom appearances on its behalf.

3. **CLAIMS:**

The Consultant shall be responsible for the resolution of any and all damage claims resulting from operations provided herein. Within 30 days of VDOT's notification to the Consultant of a claim, the Consultant shall respond in writing to the claimant and copy VDOT. Failure to properly respond to and resolve claims in a timely manner constitutes unsatisfactory performance and may result in cancellation of the Contract and/or removal from the offeror list.

4. **CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION:**

The Consultant assures that information and data contained in an appraisal or obtained as to personal facts and circumstances related to clients will be collected and held confidential, during and following the term of the Contract, and unless disclosure is required pursuant to court order, subpoena or other regulatory authority, will not be divulged without the individual's and VDOT's written consent and only in accordance with federal law or the Code of Virginia. The Consultant and its subcontractors who utilize, access, or store personally identifiable information as part of the performance of the Contract are required to safeguard this information and immediately notify VDOT of any breach or suspected breach in the security of such information. The Consultant and

its subcontractors shall allow VDOT to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. The Consultant and its employees and subcontractors working on a VDOT project may be required to sign a confidentiality statement.

5. **DELAYS IN AWARD:**

Delays in award of a contract beyond the anticipated starting date may result in a change in the contract period indicated in the solicitation. If this situation occurs, VDOT reserves the right to award a contract covering a period of time equal to or less than the initial term indicated in the solicitation.

6. **E-VERIFY PROGRAM:**

Pursuant to *Code of Virginia*, §2.2-4308.2., any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with any agency of the Commonwealth to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract. Any such employer who fails to comply with these provisions shall be debarred from contracting with any agency of the Commonwealth for a period up to one year. Such debarment shall cease upon the employer's registration and participation in the E-Verify program. If requested, the employer shall present a copy of their Maintain Company page from E-Verify to prove that they are enrolled in E-Verify.

7. **IDENTIFICATION OF PROPOSAL ENVELOPE OR PACKAGE:** The signed proposal should be returned in a separate envelope or package, sealed and identified as follows:

From: _____	_____	_____
Name of Offeror	Due Date	Time
_____	_____	
Street or Box Number	RFP No.	
_____	_____	
City, State, Zip Code	RFP Title	

SBSD-certified Small Business No.: _____

Name of Contract Officer: _____

8. **LIMITATION OF LIABILITY:**

To the maximum extent permitted by applicable law, the Consultant will not be liable under the Contract for indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, equipment and/or services delivered under the Contract. This limitation of liability will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the Consultant; or (c) circumstances where the Contract expressly provides a right to damages, indemnification or reimbursement.

9. **LIQUIDATED DAMAGES:**

Delivery is required not later than the dates stated by the Department in its purchase order or other written assignment of parcels to the Consultant. It is understood and agreed by the offeror that time is of the essence in the delivery of products and services of the character and quality specified in the proposal document. In the event these specified products and services are not delivered by the date specified there will be deducted, for each incomplete task on an assigned parcel, not as a penalty but as liquidated damages, the sum of \$300.00 per day for each and every calendar day of delay beyond the time specified, which sum fairly represents an estimate of project delay damages and other expenses to which the Department is exposed as a result of such delay; except that if the delivery be delayed by any act, negligence, or default on the part of the Department, public enemy, war, embargo, fire, or explosion not caused by the negligence or intentional act of the Consultant or his supplier(s), or by riot, sabotage, or labor trouble that results from a cause or causes entirely beyond the control or fault of the Consultant or his supplier(s), a reasonable extension of time as the Department deems appropriate may be granted. Upon receipt of a written request and justification for any extension from the Consultant, the Department may extend the time for performance of the Contract, at the Department's sole discretion, for good cause shown.

10. **MINORS ON WORK SITE:**

No minors, under the age of eighteen, will be allowed on the VDOT work site(s) where the Contract will be performed, except those employed by the Consultant as allowed by the Child Labor Laws of the United States government and the Child Labor Laws of the Commonwealth of Virginia.

11. **CONSULTANT RESPONSIBILITIES:**

The Consultant shall be responsible for completely supervising and directing the work under this Contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under the Contract shall be responsible to the Consultant. The Consultant agrees that he is as fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.

12. **PROPRIETARY INFORMATION:**

All information submitted to VDOT is subject to disclosure under the Freedom of Information Act (2.2-3700 et seq. of the Code of Virginia) unless a specific exclusion applies. To claim an exclusion under the Virginia Public Procurement Act (2.2-4300 et seq. of the Code of Virginia) for data or materials submitted as part of a procurement transaction or prequalification application that the Consultant believes are trade secrets or proprietary information, the Consultant must file:

- 1) a written request, either before or at the time the data or materials are submitted, that:
 - Invokes the protection of 2.2-4342 of the Code of Virginia;
 - Identifies the specific data or other materials the Consultant seeks to exclude and protect by using some distinct method such as highlighting or underlining; and
 - States the reasons why protection is necessary, and

- 2) a redacted copy of your submittal that deletes or blocks all data or material which is identified as a trade secret or proprietary information in the written request.

Only identify the specific words, figures, or paragraphs that are claimed to be trade secrets or proprietary information. VDOT will not accept responsibility for any disclosure of proprietary information that is a result of improper redaction by the Consultant. The classification of an entire proposal document, line item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable and will result in rejection of the proposal. If, after being given reasonable time the offeror refuses to withdraw an entire classification designation, the proposal will be rejected. Offerors must provide with their proposal a summary of any proprietary information using the Attachment E, Proprietary/Confidential Information Summary Form that is attached to this RFP.

13. **QUALIFICATIONS OF OFFERORS:**

VDOT may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the contract. Such investigations may include but are not limited to fingerprint-based criminal history background checks, credit checks, legal residence checks, or proof of US citizenship. The offeror shall furnish to VDOT all such information and data for this purpose as may be requested. VDOT further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy VDOT that such offeror is properly qualified to carry out the obligations of the contract and to complete the work/furnish the item(s) contemplated therein.

14. **RECORDS EXCLUSION FROM PUBLIC DISCLOSURE:**

Pursuant to the provisions of §2.2-3705.6 (22) of the Code of Virginia, trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), including, but not limited to, financial records, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, and revenue and cost projections supplied by a private or nongovernmental entity to the Inspector General of VDOT for the purpose of an audit, special investigation, or any study requested by the Inspector General's Office in accordance with law may, subject to a determination by the Inspector General as described herein, be withheld from public disclosure under the Virginia Freedom of Information Act (FOIA). To enable the Inspector General to identify data or records that may be subject to this exclusion from disclosure under FOIA the private or nongovernmental entity shall, in accord with procedures adopted by the Inspector General, make a written request to the Inspector General; invoking such exclusion upon submission of the data or other materials for which protection is sought; identifying with specificity the data or other materials for which protection is sought; and stating the reasons why protection is necessary.

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

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

15. **SAFETY AND HEALTH STANDARDS:**

It is a condition of the Contract, and shall be made a condition of each subcontract entered into pursuant to the Contract, that the Consultant and any subcontractor shall not require any worker employed in performance of the Contract to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to their health or safety, as determined under construction safety and health standards promulgated by the US Secretary of Labor in accordance with Section 107 of the *Contract Work Hours and Safety Standards Act*. The Consultant shall comply with the Virginia Occupational Safety and Health Standards adopted under Section 40.1-22 of the *Code of Virginia* and the duties imposed under Section 40.1-51.1 of the *Code*. Any violation of the requirements or duties that is brought to the attention of the Consultant shall be immediately abated. Additionally at a minimum, all Consultant personnel shall comply with the following, unless otherwise determined unsafe or inappropriate in accordance with OSHA regulations: Hardhats shall be worn while participating in or observing all types of field work when outside of a building or outside of the cab of a vehicle, and exposed to, participating in or supervising construction. Respiratory protective equipment shall be worn whenever an individual is exposed to any item listed in the OSHA Standards as needing such protection unless it is shown the employee is protected by engineering controls. Adequate eye protection shall be worn in the proximity of the grinding, breaking of rock and/or concrete, while using brush chippers, striking metal against metal or when working in situations where the eyesight may be in jeopardy. Safety vests shall be worn by all exposed to vehicular traffic and construction equipment. Standards and guidelines of the current *Virginia Work Area Protection Manual* shall be used when setting, reviewing and removing traffic controls. Flag persons shall be certified according to the Virginia

Flagger Certification Program. No person shall be permitted to position themselves under any raised load or between hinge points of equipment without first taking steps to support the load by the placing of a safety bar or blocking. Explosives shall be purchased, transported, stored, used and disposed of by a Virginia Certified Blaster in possession of a current criminal history record check and a commercial driver's license with hazardous materials endorsement and a valid medical examiner's certificate. All federal, state and local regulations pertaining to explosives shall be strictly followed. All electrical tools shall be adequately grounded or double-insulated Ground Fault Circuit Interrupter (GFCI) protection.

16. **SECURITY REQUIREMENTS** :

A. All vendors, contractors or other persons accessing VDOT's CII/SSI material in any form shall be required to comply with VDOT's *CII/SSI Policy Guide for Employees, Vendors, Contractors or other Persons Accessing VDOT's CII/SSI*. This guide may be found at <http://www.virginiadot.org/business/const/CII-CriticalStructureInformation.asp>

B. A Criminal History Record Check (CHRC), through VDOT Personnel Security Section (PSS), shall be required of all employees of the Consultant and all subcontractors of the Consultant for work conducted at all other VDOT locations, where VDOT is directly responsible for the day-to-day management of staff, or the individual has unrestricted access to Critical Infrastructure (CI), Critical Infrastructure Information (CII), Sensitive Security Information (SSI), or Personally Identifiable Information (PII).

C. All costs for the CHRC will be the responsibility of the Consultant.

D. All individuals undergoing the CHRC shall be required to complete and sign any VDOT required forms necessary to release personal information or to agree to non-disclosure of VDOT critical, sensitive or personal information.

E. CHRC records search timelines vary depending on records found on file (if any). In the event non-favorable records exist, VDOT reserves the right to approve and deny issuance of any CHRC clearance. Upon denial, there are no available appeals.

F. Upon CHRC clearance and approval, Consultant and subcontractor (if any) personnel shall be required to obtain a VDOT issued access identification badge prior to working on VDOT's premises, unless a written waiver is approved by the PSS.

G. Consultant and subcontractor personnel shall wear VDOT-issued access identification badge at or above waist level on the outermost garment at all times while on VDOT's premises.

H. For safety concerns regarding the badge display requirement, the VDOT Personnel Security Section, Consultant Contracting Manager, Project Manager or designee may waive the above requirement. The Consultant's employees shall possess the VDOT access identification badge at all times to be available for display.

I. The Consultant shall return all VDOT access identification badges on the day any employee is no longer assigned to VDOT's premises and upon contract expiration. The Consultant shall notify the VDOT Consultant Contracting Manager within eight business hours upon discovery of any lost, stolen or damaged access identification badge. Failure to return access identification badges or notify the VDOT Consultant Contracting manager that an access identification badge has been lost, stolen or damaged may be cause for debarment. See: Commonwealth of Virginia, Vendor's Manual Section 7.20.

J. The Consultant shall be responsible for notifying the PSS whenever an employee or subcontractor employee is charged with any criminal violation. Notification shall be made no later than the next regular business day of finding.

K. In the event of loss, suspected loss or compromise of any VDOT CII/SSI material, the Consultant 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.

17. **SMALL BUSINESS SUBCONTRACTING AND EVIDENCE OF COMPLIANCE:**

A. It is the goal of the Commonwealth that 42% of its purchases be made from small businesses. This includes discretionary spending in prime contracts and subcontracts. All offerors are required to submit a Small Business Subcontracting Plan. Unless the offeror is registered as a SBSB-certified small business and where it is not practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to SBSB-certified small businesses. This shall include SBSB-certified women-owned and minority-owned businesses when they have received SBSB small business certification. No offeror or subcontractor shall be considered a small business unless certified as such by the Department of Small Business and Supplier Diversity (SBSB) by the due date for receipt of proposals. If small business subcontractors are used, the prime contractor agrees to report the use of small business subcontractors by providing the purchasing office at a minimum the following information: name of small business with the SBSB certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product/service provided.

B. Each prime contractor who wins an award in which a small business subcontracting plan is a condition of the award shall deliver to VDOT, on a quarterly basis, evidence of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the small business subcontracting plan. Upon completion of the Contract, the Consultant agrees to furnish VDOT at a minimum the following information: name of firm with the SBSB certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product or service provided. Payment(s) may be withheld until compliance with the plan is received and confirmed by VDOT. VDOT reserves the right to pursue other appropriate remedies for non-compliance to include, but not be limited to, termination for default.

C. Each prime contractor who wins an award valued over \$200,000 shall deliver to VDOT, on a quarterly basis, information on use of subcontractors that are not SBSB-certified small businesses. Upon completion of the Contract, the Consultant agrees to furnish VDOT at a minimum the following information: name of firm, phone number, total dollar amount subcontracted, and type of product or service provided.

1. If the Consultant intends to subcontract work as part of its performance under this Contract, the Consultant shall include in the proposal a plan to subcontract to small, women-owned, minority-owned, and service disabled veteran-owned businesses.

18. **STATE CORPORATION COMMISSION IDENTIFICATION NUMBER:**

Pursuant to Code of Virginia, §2.2-4311.2 subsection B, an offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its proposal the identification number issued to it by the State Corporation Commission (SCC). Any offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its bid or proposal a statement describing why the offeror is not required to be so authorized. Indicate the above information on the SCC Form provided. Consultant agrees that the process by which compliance with Titles 13.1 and 50 is checked during the solicitation stage (including without limitation the SCC Form provided) is streamlined and not definitive, and the Commonwealth's use and acceptance of such form, or its acceptance of the Consultant's statement describing why the offeror was not legally required to be authorized to transact business in the Commonwealth, shall not be conclusive of the issue and shall not be relied upon by the Consultant as demonstrating compliance.

19. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of VDOT. In the event that the Consultant desires to subcontract some part of the work specified herein, the Consultant shall furnish VDOT the names, qualifications and experience of its proposed subcontractors using the form attached to the Contract as Attachment F. The Consultant shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the Contract.

20. **TERMINATION OF CONTRACT:**

If the Consultant fails to provide quality goods or services in a professional manner and in accordance with applicable laws, regulations or proposal provisions, solely as determined by VDOT and, upon receipt of notice from VDOT does not correct the deficiency within a reasonable period of time (not to exceed seven (7) calendar days unless otherwise agreed to by VDOT), VDOT reserves the right to terminate the Contract by giving written notice to the Consultant. Upon termination VDOT may procure the services from another contractor in accordance with the Default term within the General Terms and Conditions.

21. **COMPLIANCE WITH LAW:**

The Consultant shall observe and comply with all federal, state, and local laws, regulations, ordinances, orders and decrees applicable to the services to be provided under the Contract, and shall indemnify, defend, and hold harmless the Commonwealth of Virginia, the Department, and all its officers, agents, and employees against any and all claims of liability arising from or based on the violation of any such law, regulation, order or decree, whether by the Consultant, employees of the Consultant, or any independent contractor engaged by the Consultant or associated with the Consultant in the performance of the work to be performed under this Contract, including the nondiscriminatory provisions set forth in Section C of the General Terms and Conditions attached to the Contract as Attachment A.