

REQUEST FOR PROPOSAL

RTE 286 (FAIRFAX COUNTY PARKWAY) WIDENING Fairfax County, Virginia

State Project No. : 0286-029-259, P101, R201, C501
UPC: 107937

RFP No. LD20160720



GENERAL

The Virginia Department of Transportation is seeking expressions of interest from consulting engineering firms who wish to be considered to provide professional engineering services for the widening of Route 286 (Fairfax County Parkway) from four lanes to six lanes, including grade-separated interchange(s) in the vicinity of Popes Head Road intersection and a portion of the Shirley Gate Road extension as a new alignment roadway from Fairfax County Parkway to the future Fairfax County Park Access Road entrance as shown in the FCDOT Shirley Gate Extension study. The typical section has not been finalized, but shall include Shared Use Paths (SUPs) and not to preclude future HOV additions or conversion. The project limits are Route 286:

From: 2000' North of US 29 (Lee Highway)
To: Rte 123 (Ox Road)

This will be a multi-phase contract with the project comprised of two (2) potential phases:

Phase I: Develop the project from alternative analysis through Public Involvement and approval of major design elements.

Phase II: Develop the plans of the preferred alternative through right-of-way to advertisement of a conventional Design-Bid-Build contract procurement, or 2) support for Design-Build procurement to complete project design and construction.

A detailed scope of work for Phase I will be negotiated and defined in the initial Memorandum of Agreement. The detailed scope of work for Phase II may be further developed prior to negotiations for a Supplemental Agreement. A general description of the scope of work required for each phase of the contract is discussed below in the Scope section of the RFP.

The Estimated Contract Cost is \$3.5 Million dollars.

The Department reserves the right to accept or reject any or all proposals received as a result of this request, to negotiate with any qualified firm or to modify or cancel in part or in its entirety the Request for Proposal if it is in the best interest of the Department to do so. This Request does not commit the Department to provide any payment for costs associated with the preparation of proposals submitted in response to this Request for Proposal. 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 this Request for Proposals.

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

Supplemental documents are available for review prior to the RFP closing date and time at the following websites:

- Fairfax County Parkway & Franconia-Springfield Parkway Corridor Study:

http://www.virginiadot.org/projects/northernvirginia/fairfax_county_franconia-springfield_pkwy.asp

- Shirley Gate Road Extended Corridor Study:

http://www.fairfaxcounty.gov/fcdot/shirleygate_extension.htm

- Route 286 Widening Concepts:

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

FUNDING BACKGROUND

The Northern Virginia Transportation Authority (NVTa) has approved Fairfax County's request to fund preliminary engineering studies for this project. NVTa has awarded \$10,000,000 to the County towards delivery of the project. Fairfax County has also submitted applications for HB2 funding.

Fairfax County has requested VDOT to administer the project on their behalf.

PROCUREMENT SCHEDULE

- Expression of Interest Due Date and Time – 8/04/2016 at 3:00 PM
- Short List Posted on the VDOT Website – NLT 8/25/2016
- Interviews/Technical Presentations – 9/06/2016
- Final Consultant Selection – NLT 9/15/2016
- Scoping Meeting with Selected Consultant – 9/21/2016
- Selected Consultant Pre-Award Documents Due – NLT 9/26/2016
- Completed Negotiations Agreement Due – 10/19/2016
- Consultant Contract Signed – NLT 10/27/2016

CONFLICT OF INTEREST:

The change in a project delivery method for this contract may result in a potential conflict of interests for the consultant and any of its team members. As such, the scope of services and their role may be revised and redefined to meet the project need as identified by the Department. The consultant and its team members may not be allowed to participate in ANY subsequent contracts (design and/or construction) related to this project. The Conflict of Interest determination will be made in accordance with the Department's policy. The policy is available at:

<http://www.virginiadot.org/business/resources/LocDes/IIM-APD-2.pdf>

SCOPE

The scope of work shall consist, but not be limited to providing the following services:

Phase I will develop the project from alternatives analysis through public involvement and approval of major design elements. VDOT will supervise and support all task. The scope of work shall consist of, but is not limited to providing the following services:

- Traffic engineering design, including supplemental traffic counts if needed, analyses, projections, signal design & coordination, and conceptual MOT and TMP Plans.
- Detailed roadway design including shared use path. Typical section and alignment alternative study with comparison of construction costs and right-of-way impact costs.
- Preparation of an Interchange Justification Report (IJR) and concepts for consideration along with detailed cost estimate of each concept.
- Detailed structural investigation and preparation of structural design plans including aesthetic treatment for bridges and retaining walls.
- Preparation of plans (line, grade, and typical section) up to Public Hearing (40%).
- Develop documentation and get approval for all required Design Exceptions and Design Waivers
- Detailed Drainage Analysis, Hydrology & Hydraulic Analysis and Stormwater Management (SWM) Analysis documented in reports, and design of drainage systems, SWM facilities, and major culverts and bridges (detailed conceptual SWM design at PFI phase).
- Facilitation of Project Risk Assessment & Analysis meetings and preparation of reports at each milestone (PFI, PH).
- Participation in value engineering study.
- Coordinate with external agencies including FCDOT, FCPA, DRPT, Railroad companies etc.
- Experience in public involvement and participate in public outreach meetings. Develop displays, brochures, comment sheets. Review all comments and prepare final transcript of public hearing comments for approval.
- Utility field inspection, coordination, and Utility In-Plan Design. Evaluation of feasibility of undergrounding utilities.
- Generate detailed cost estimate using VDOT's PCES /Trns*port Software. Detailed cost estimates will be required at each milestone.

Phase II may be negotiated near the completion of Phase I. VDOT may negotiate services with the Phase I design consultant, which will either 1) take the project through Right-of-Way acquisition process to advertisement of a conventional Design-Bid-Build contract procurement, or 2) support for Design-Build procurement to complete project design and construction. The scope for Phase II will be further defined prior to negotiations for a supplemental agreement.

This work is to be accomplished utilizing computerized design and drafting systems compatible with the Department's automated design and drafting systems. The Department's roadway design system is GEOPAK Civil Design Software and the drafting system is MicroStation. This project will be developed utilizing the Department's policies and procedures and FHWA's guidelines. This Request for Proposal does not commit the Department to award a contract, to pay any costs incurred in the preparation of a proposal for this request, or to procure or contract for services.

All procurement related questions or information should be directed to Ms. Wazirah Wallace by email at wazirah.wallace@vdot.virginia.gov or for general information 804-786-2561.

EXPRESSION OF INTEREST (EOI)

1. The Expression of Interest shall be organized in the following order:
 - Transmittal letter - one (1) page or less

- Table of Contents
- Understanding of Scope of Work - two (2) pages or less
- Response to RFP Expression of Interest Items 2-16
- Present Workload with Department form
- **Standard Form (SF) 330 Part I** – one combined for the project team
- **Standard Form (SF) 330 Part II** – one for each firm
- A table or matrix containing the requested information in item 16
- Full size copies of Commonwealth of Virginia SCC and DPOR supporting registration/licensing documentation for each firm (including that of each pertinent branch office)
- Full size copies of Commonwealth of Virginia DPOR registration certificate for the Key Personnel
- Firm Data Sheet
- Certification Regarding Debarment form
- DBE Commitment and Confirmation Letter

(All items shall be on 8 1/2" X 11" and printed on one side with single-spaced type no smaller than 10 point where applicable.)

2. Furnish current SF 330 Part II for each firm involved, and one (1) combined SF 330 Part I for the project team. Please follow the instructions included on the form, unless indicated otherwise within this RFP.
3. As referenced in SF 330 Part I, Section D (Organizational Chart of Proposed Team), a one page organizational chart showing all firms involved and key personnel assignments and responsibilities is required to be included.
4. Indicate KEY PERSONNEL ONLY resumes in SF 330 Part I, Section E (Resumes of Key Personnel Proposed for This Contract). Key personnel are defined as those to whom the contract will be assigned and who will be performing the actual management of the work and be responsible for inspection, administrative and design services. Each resume shall be limited to one page per person with a font no less than 10 point.

Furthermore, all individuals identified as Key Personnel in the EOI shall remain on the Consultant's Team for the duration of the procurement process and, if the consultant is awarded a contract, the duration of the contract. If extraordinary circumstances require a proposed change, it must be submitted in writing to the Department's Project Manager for approval, who, at his/her sole discretion, will determine whether to authorize a change. Unauthorized changes to the Consultant's Team at any time during the procurement process may result in elimination of the Consultant's Team from further consideration.

5. In SF 330 Part I, Section F (Example Projects Which Best Illustrate Proposed Team's Qualifications for This Contract), limit example projects to no more than ten (10). Limit each project example to one (1) page.
6. In SF 330 Part I, Section G (Key Personnel Participation in Example Projects), limit example projects to no more than ten (10). The example projects listed in Section G (#29) should match the example project list provided in Section F.
7. In SF 330 Part I, Section H (Additional Information), the consultant should detail the plan to assure the Department that the staff submitted for evaluation will be available for the services requested

by the RFP. Section H of SF 330 Part I is limited to a maximum of ten (10) pages with a font no less than 10 point. This section should describe the organization of the proposed project staff indicating the role of each by individual. If subconsultants are proposed, the role of each subconsultant should be discussed. It should also include statements that are responsive to the attached Consultant Short List Score Sheet that will be used to evaluate your submission. List any computer and CADD equipment and any specialized computer software packages that you will use on this VDOT project.

8. It is the policy of the Virginia Department of Transportation that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of federally funded consultant contracts. A list of Virginia Department of Small Business and Supplier Diversity (DSBSD) certified DBE firms is maintained on their web site (<http://www.dmbv.virginia.gov/>) under the **DBE Vendor Directory of Virginia Unified Certification Program**. Consultants are encouraged to take all necessary and reasonable steps to ensure that DBE firms have the maximum opportunity to compete for and perform services on the contract, including participation in any subsequent supplemental contracts. If the consultant intends to subcontract a portion of the services on the project, the consultant is encouraged to seek out and consider DBE firms as potential subconsultants. The consultant is encouraged to contact DBE firms to solicit their interest, capability and qualifications. Any agreement between a consultant and a DBE firm whereby the DBE firm promises not to provide services to other consultants is prohibited. The DBE contract goal for this procurement is **11%**.

In accordance with the Governor's Executive Order No. 20, the Virginia Department of Transportation also requires a utilization of Small, Women and Minority (SWaM) Businesses to participate in the performance of state funded consultant contracts. A list of Virginia Department of Small Business and Supplier Diversity (DSBSD) certified SWaM firms is maintained on the DSBSD web site (<http://www.dmbv.virginia.gov/>) under the **SWaM Vendor Directory** link. Consultants are encouraged to take all necessary and reasonable steps to ensure that SWaM firms have the maximum opportunity to compete for and perform services on the contract, including participation in any subsequent supplemental contracts. If the consultant intends to subcontract a portion of the services on the project, the consultant is encouraged to seek out and consider SWaM firms as potential subconsultants. The consultant is encouraged to contact SWaM firms to solicit their interest, capability and qualifications. Any agreement between a consultant and a SWaM firm whereby the SWaM firm promises not to provide services to other consultants is prohibited.

If portions of the services are to be subcontracted to a DBE or SWaM, the following needs to be submitted with your EOI and both must reference the project number(s) for the services:

- Written documentation of the prime's commitment to the DBE or SWaM firm to subcontract a portion of the services, a description of the services to be performed and the percent of participation.
- Written confirmation from the DBE or SWaM firm that it is participating, including a description of the services to be performed and the percent of participation.

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

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

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

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

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

The prime consultants are encouraged to achieve all or a percentage of the required DBE participation/goals determined for this project by the utilization of BOWD approved firms. To assist consultants in taking advantage of this opportunity for utilization of approved BOWD firms, please contact the BOWD Center for additional information, details, resources and support. The BOWD Center can be contacted at (804) 662-9555 or via email to BOWDCenter@vdot.virginia.gov.

9. If any firms involved with this submission currently have work with the Department, indicate the projects, the division managing the projects, the amount of outstanding fee remaining, and the estimated date of completion. For limited services term contracts, include only the amount of all tasks orders executed or under negotiation. Also, include your estimated fees for pending supplemental agreements and any projects for which the firms have been selected, but have not executed an agreement. Work of affiliated and/or subsidiary companies is to be included. The outstanding workload of any Virginia Department of Small Business and Supplier Diversity certified DBE or SWaM prime or subconsultant may be reduced up to \$4 million and the remainder (>\$0) shall be added to the team's total workload. When a DBE or SWaM firm graduates from the program, their workload incurred while a DBE or SWaM may be reduced up to \$4 million for the next three years. All new work obtained after graduating from the program will be counted. Work being performed under the Public Private Transportation Act (PPTA) shall not be included. Work being performed as a prime, joint venture, or subconsultant on a VDOT Design-Build project shall be included. The outstanding fee remaining is the maximum total compensation payable less the amount previously paid to date. Only Category [B] work will be counted in the scoring criteria. This information shall be submitted using the attached Present Workload with Department form. Please carefully read the instructions on the Present Workload with Department form.

10. Give names and detailed addresses of all affiliated and/or subsidiary companies. Indicate which companies are subsidiaries. If a situation arises in responding to this questionnaire where you are unsure whether another firm is or is not an affiliate, doubt should be resolved in favor of affiliation and the firm should be listed accordingly.

Affiliate - Any business entity which is closely associated to another business entity so that one entity controls or has the power to control the other entity either directly or indirectly; or, when a third party has the power to control or controls both; or where one business entity has been so closely allied with another business entity through an established course of dealings, including but not limited to the lending of financial wherewithal, engaging in joint ventures, etc. as to cause a public perception that the two firms are one entity. Firms which are owned by a holding company or a third party, but otherwise meet the above conditions and do not have interlocking directorships or joint officers serving are not considered affiliates.

A firm (prime) shall not submit more than one Expression of Interest (EOI) in response to this Request for Proposals (RFP). If more than one EOI is submitted by an individual, partnership, Corporation, or any party of a Joint Venture, then all EOIs submitted by that individual, partnership, Corporation, or any party of a Joint Venture shall be disqualified. If more than one EOIs are submitted by an affiliate, or subsidiary company of an individual, partnership, Corporation, or any party of a Joint Venture, then all EOIs submitted by that individual, partnership, Corporation, or Joint Venture shall be disqualified.

11. In 1 page(s) or less, provide information that will indicate your firm's ability to meet the time schedule for this project. The tentative schedule is as follows:

Survey Available	November 2016
Scope Project/Alternatives Development	March 2017
Public Information Meeting	May 2017
PFI (30%) Team Meeting	July 2017
Preliminary UFI	August 2017
VE Study/Meeting	September 2017
Public Hearing	May 2018
Design Approval (Complete Phase I)	October 2018

12. In 5 page(s) or less, please emphasize your qualifications in the following areas:

- Expertise in structures and bridge design
- Examples of innovative interchange design in constrained urban areas
- Expertise in Interchange Justification Reports (IJR)
- Expertise in access management for corridors and interchanges
- Expertise in traffic modeling and analysis
- Expertise in drainage and stormwater management design
- Expertise in building consensus through public involvement and stakeholders coordination in politically sensitive regions
- Expertise in the design of shared use paths
- Firm capacity for project acceleration

13. A project approach discussion is neither required nor desired for this project.

14. Please indicate, by executing and returning the attached Certification Regarding Debarment forms,

if your firm, subconsultant, subcontractor, or any person associated therewith in the capacity of owner, partner, director, officer or any position involving the administration of Federal or State funds:

- Is currently under suspension, debarment, voluntary exclusion or determination of ineligibility by any federal agency.
- Has been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past 3 years.
- Does have a proposed debarment pending; or has been indicted, convicted, or had a civil judgment rendered against it or them by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

Any of the above conditions will not necessarily result in denial of award, but it will be considered in determining offeror responsibility. For any condition noted, indicate to whom it applies, initiating agency, and dates of action. Providing false information may result in Federal criminal prosecution or administrative sanctions.

15. If the prime consultant or subconsultant does not have the in-house capability to provide non-professional services, each with an estimated cost of \$5,000 or greater, such as diving services, soil drilling, sampling services or laboratory testing, these services must be subcontracted in accordance with State procurement procedures once a contract is executed, with no DBE or SWaM credit in the selection of the most qualified firm or team. Clearly indicate these services in the EOI.
16. Each business entity (prime and subconsultants) on the proposed team who is practicing or offering to practice professional services in Virginia, including, but not limited to, those practicing or offering to practice engineering, surveying, hydrologic and hydraulic analysis, geotechnical analysis and landscape architecture, should provide evidence including full size copies of appropriate commercial professional registrations and licenses for all main and branch offices proposed for this Project, as well as providing full size copies of appropriate individual registrations/licenses for those professional occupations per the requirements listed below. The EOI should convey the requested information for each regulant by the use of a concise table or matrix. (All full size copies of the Commonwealth of Virginia State Corporation Commission (SCC) and Department of Professional and Occupational Regulation (DPOR) supporting registration documentations should be included in the EOI and will not be counted towards page restriction):
 - .1 The Commonwealth of Virginia SCC registration detailing the name, registration number, type of corporation and status of the business entity.
 - .2 For this Project/Contract, the Commonwealth of Virginia DPOR registration information for each office practicing or offering to practice any professional services in Virginia: Provide the business name, address, registration type, registration number, expiration date.
 - .3 For this Project/Contract, the Commonwealth of Virginia DPOR license information for each of your Key Personnel practicing or offering to practice professional services in Virginia: Provide the name, the address, type, the registration number, and the expiration date. Provide the office location where each of the Key Personnel is offering to practice professional services.
 - .4 For this Project/Contract, the Commonwealth of Virginia DPOR license information

for those services not regulated by the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers, and Landscape Architects (e.g. real estate appraisal): the business name, the address, the registration type, the registration number, and the expiration date.

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

ADMINISTRATIVE

1. The following services marked with an X will **NOT** be required:

Surveying <u>X</u>	Specifications ____
Bridge and Structure Plans ____	Materials Analysis <u>X</u>
Permit Drawings ____	Environmental <u>X</u>
Hydraulic and Hydrologic Analysis ____	Road Plans ____
Traffic Data ____	Traffic Analysis ____
Signs and Signals Plans ____	Lighting Plans ____
Scour Analysis <u>X</u>	Geotechnical Borings and Analysis <u>X</u>
Utility Plans ____	Landscape Plans <u>X</u>
Right-of-Way Acquisition <u>X</u>	Pavement Design <u>X</u>

2. Prior to the time of submittal of the EOI, all business entities, except for sole proprietorships, are required to register with the Virginia State Corporation Commission. Information about entity formation can be found at <https://www.scc.virginia.gov/default.aspx>. Foreign Professional corporations and Foreign Professional Limited Liability Companies (i.e., organized or existing under the laws of a state or jurisdiction other than Virginia) must possess a Commonwealth of Virginia Certificate of Authority from the State Corporation Commission to render professional services. Any business entity other than a professional corporation, professional limited liability company or sole proprietorships that do not employ other individuals for which licensing is required must be registered in the Commonwealth of Virginia with the Department of Professional & Occupational Regulation <http://www.dpor.virginia.gov/>, Virginia Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects (Board). Board regulations require that all branch offices of professional corporations and business entities located in Virginia, which offer or render any professional services relating to the professions regulated by the Board shall be registered as separate branch office with the Board. All offices, including branches, which offer or render any professional service, must have at least one full-time resident professional in responsible charge who is licensed in the profession offered or rendered at that office. All firms involved that are to provide professional services must meet these criteria prior to submitting an Expression of Interest to the Department. Individual engineers shall meet the requirements of Chapter 4, Title 54.1 of the Code of Virginia.
3. The Department will not consider for award any cost proposals submitted by any consultants and will not consent to subcontracting any portions of the contract to any subconsultants in violation of the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.
4. The method of payment for this contract will be cost plus fixed fee. This contract shall be performed and audited in compliance with cost principles contained in the Federal Acquisition Regulations (FAR) of Part 31 of Title 48 of the Code of Federal Regulations. The overhead rate

shall be established by an audit by a cognizant government agency or independent CPA firm. Subconsultant contracts may be lump sum if they are for \$2 Million or less, have a clearly defined scope of work, and will take 2 years or less to complete. Based upon the procurement/contract schedule, the approved escalation rate for this contract is .5%; for year 1 and 1% for all subsequent years.

5. All firms submitting Expressions of Interest (prime consultants, joint ventures and subconsultants) must have internal control systems in place that meet Federal requirements for accounting. These systems must comply with requirements of 48CFR31, "Federal Acquisition Regulations, Contract Cost Principles and Procedures," and 23CFR172, "Administration of Negotiated Contracts." All architectural or engineering firms selected for a project (prime consultants, joint ventures and subconsultants) must 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 the Department within 10 work days of being notified of their selection, whereby an official of an architectural or engineering firm shall certify that the indirect cost rate submitted does not include any costs which are expressly unallowable and that the indirect cost rate was established only with allowable costs in accordance with the applicable cost principles contained in the Federal Acquisition Regulations (FAR) of 48CFR31. A sample Contractor Cost Certification is available for architectural or engineering firm's use on VDOT website at <http://www.virginiadot.org/business/gpmps.asp>. Should any firm on the consultant team fail to submit the required audit data and certification within the 10 work days, negotiations may be terminated by the Department and the next most qualified team invited to submit a proposal.
6. 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 the Virginia Department of Transportation 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 of the Virginia Department of Transportation:
 - 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 Inspector General of the Virginia Department of Transportation shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial records of the private entity. The Virginia Department of Transportation shall make a written determination of the nature and scope of the protection to be afforded by it. Notwithstanding the foregoing, Contractor'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 contractor

will be responsible for all litigation costs incurred by contractor and/or VDOT associated with such litigation. In no event shall the Virginia Department of Transportation or its officers, employees or agents be liable to the contractor 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 Inspector General's Office, whether or not the Inspector General 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 the Virginia Department of Transportation, or its officers, employees, or agents be liable to the contractor for any damages or other claims arising directly or indirectly from a determination that the exclusion from public disclosure will not be granted.

7. **Electronic EOI submittals are encouraged for this EOI, with the entire submittal in a single cohesive PDF file.** Submittals shall be prepared simply and economically, providing a straightforward, concise description of the firm's capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content. Elaborate brochures and other representations beyond that sufficient to present a complete and effective proposal are neither required nor desired. Please do not duplicate information furnished in the SF 330 Part I and Part II elsewhere in the submittal. **All information must be submitted either electronically through VDOT's Falcon system or by mail (one hard copy) and received no later than 3:00 PM (local time prevailing) on 8/04/2016. Responses received after this time will not be considered. Please note that electronic submittals are time stamped at the moment that a file completes uploading. The uploading process is sensitive to connection speed and file size – a 25 MB file may take 15 minutes to load. Please plan accordingly, so that the time stamp occurs prior to 3:00 pm, 8/04/2016. An offeror choosing to submit the EOI through hard copy delivery must include one CD-ROM containing the entire submittal in a single cohesive PDF file.** All text in the PDF file shall be searchable using Adobe Acrobat software except within illustrations and scanned registration documents.

- A. When submitting the Expression of Interest electronically, send a test file to insure that your computer software is compatible. The Falcon program will not accept files submitted using Firefox, Chrome or Safari web browsers. We recommend Internet Explorer 8, 9 or 10
- B. Java needs to be loaded and working on the user's computer. Java version 6 and 7 will work.
- C. The file name field is limited to a maximum of 80 characters. File names cannot contain special characters such as an ampersand (&) or apostrophe (').
- D. Do not wait until the last minute to upload the EOI. The time required for the upload to complete has several variables, including the load on the system with multiple concurrent uploads.

All hard-copy deliveries shall be made to the following VDOT address:

Commonwealth of Virginia
Department of Transportation (VDOT)
Central Office Mail Center
Loading Dock Entrance
1401 E. Broad Street
Richmond, Virginia 23219

Attention: Wazirah Wallace

All electronic deliveries shall be made to the following VDOT Web address:
<http://falcon.virginiadot.org/falcon/>.

Any offeror needing access to submit an Expression of Interest to the Professional Services Procurement area on the Falcon Web Site must email the VDOT CADD Support Helpdesk at CADDsupport@VDOT.virginia.gov at least 7 business days prior to the submission date to request a Falcon login and password or to request that an existing Falcon account be given access.

The VDOT CADD Support Helpdesk phone numbers are:

LOCAL: (804) 786-1280

TOLL FREE: (888) 683-0345

HOURS: 7:30AM – 4:30PM Monday – Friday (Closed on State Holidays)

8. The Department assures compliance with Title VI of the Civil Rights Act of 1964, as amended. The consultant and all subconsultants selected for this project will be required to submit a Title VI Evaluation Report (EEO-D2) within 10 work days of notification of selection when requested by the Department. This requirement applies to all consulting firms when the contract amount equals or exceeds \$10,000.
9. The Department does not discriminate against an offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.
10. Any offeror who desires to protest the award of a contract shall submit such protest in writing to the Department no later than ten days after the announcement of the award. Public announcement of the award shall be posted on the Department's Business Center Internet site.
11. eVA Business-to-Government Vendor Registration: The eVA Internet electronic procurement solution, web site portal (<http://www.eva.state.va.us>), streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution through either eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. For more detail information regarding eVA, registrations, fee schedule, and transaction fee, use the website link: <http://www.eva.state.va.us>. All bidders or offerors must register in eVA; failure to register may result in the bid/proposal/expression of interest being rejected.
12. The required services will involve the handling of Critical Infrastructure Information/Sensitive Security Information (CII/SSI) material. Firm(s) 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, personnel handling CII/SSI material, visiting Critical Infrastructure (CI) facilities or performing bridge/tunnel inspections may be required to pass a fingerprint-based Criminal History Background Check (CHBC). An individual employee's failure to successfully pass the fingerprint-based CHBC will not negate the selection and offerors will be allowed to replace those individuals. However, if key personnel fail the fingerprint-based CHBC, the selection may be cancelled and negotiations begun with the next ranked offeror. VDOT reserves the right to conduct fingerprint-based CHBC 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 CHBC 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 access to VDOT CI facilities or who will be performing bridge/tunnel inspections. Based upon the results of the fingerprint-based CHBC, VDOT reserves the right to deny issuance of a VDOT security clearance or a VDOT issued photo-identification badge.

FIRM DATA SHEET

Funding: ____ (S=State F=Federal)

Project No.: 0286-029-259, P101, R201, C501

District: Northern Virginia

EOI Due Date: 8/04/2016

The prime consultant is responsible for submitting the information requested below on all firms on the project team, both prime and all subconsultants. All firms are to be reported on one combined sheet unless the number of firms requires the use of an additional sheet. Failure to submit all of the required data may result in the Expression of Interest not being considered.

Firm's Name, Address and DBE and/or SWAM Certification Number	Firm's DBE or SWaM Status *	Firm's Age	Firm's Annual Gross Receipts

* YD = DBE Firm Certified by DMBE

N = DBE or SWaM Firm Not Certified by DMBE

NA = Firm Not Claiming DBE or SWaM Status

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

DMBE is the Virginia Department of Small Business and Supplier Diversity

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

Project: Route 286 (Fairfax County Parkway) Widening

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

- 2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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

Signature

Date

Title

Name of Firm

CERTIFICATION REGARDING DEBARMENT

LOWER TIER COVERED TRANSACTIONS

(To be completed by a Sub-consultant)

Project: Route 286 (Fairfax County Parkway) Widening

- 1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

- 2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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

Signature

Date

Title

Name of Firm

CONSULTANT SHORT LIST SCORE SHEET – FEDERALLY / STATE FUNDED PROJECT
(FOR PROFESSIONAL SERVICES)

DIVISION: Location & Design

EOI NO.: _____

PROJECT: Route 286 (Fairfax County Parkway) Widening

FIRM: _____

DESCRIPTION: Route 286 (Fairfax County Parkway) Widening
From 4 to 6 Lanes

SUBS: _____

DATE: _____

		NUMERICAL VALUE				AVG.	WEIGHT	WEIGHTED EVALUATION
FIRM/TEAM'S EXPERIENCE IN SIMILAR TYPE OF SERVICES (Expertise, experience and qualifications of team in providing services as related to the scope of services) (1=least, 10=most)		1-10					10%	
PERSONNEL'S EXPERIENCE IN SIMILAR TYPE OF SERVICES (Expertise, experience and qualifications of team in providing services as related to the scope of services) (1=least, 10=most)		1-10					40%	
QUALIFICATIONS OF PROJECT MANAGER (Expertise, experience and qualifications in project management as related to the scope of services) (1=least, 10=most)		1-10					10%	
ORGANIZATIONAL CAPABILITY (Ability to complete work in a timely manner, size of firm(s) relative to size of project, proposed project staff resources, proposed use of sub-consultants) (1=least, 10=most)		1-10					30%	
PRESENT WORKLOAD WITH DEPARTMENT (Dollar value of present outstanding fee including estimated pending contracts under negotiation. For limited services term contracts, include the amount of all task orders executed or under negotiation. Work being performed under the Public Private Transportation Act (PPTA) shall not be included. Work being performed as a prime, joint venture or sub-consultant on a Design-Build project shall be included.) † (Only Category <u>B</u> workload is counted on this selection*)	Above \$4,000,000	0					10%	
	3,500,001-4,000,000	1						
	3,000,001-3,500,000	2						
	2,500,001-3,000,000	3						
	2,000,001-2,500,000	4						
	1,500,001-2,000,000	5						
	1,000,001-1,500,000	6						
	750,001-1,000,000	7						
	500,001-750,000	8						
	250,001-500,000	9						
0-250,000	10							
							TOTAL	

*CATEGORIES OF WORKLOAD:

- A - TERM SURVEYING AND UTILITY DESIGNATION/LOCATION CONTRACTS**
- B - PRELIMINARY ENGINEERING CONTRACTS** - includes transportation planning and environmental studies, utility relocation and design, and roadway and bridge design.
- C - CONSTRUCTION ENGINEERING CONTRACTS** - includes construction inspection, preparation of final estimates, and bridge and traffic structure safety inspection.
- D - OPERATION AND MAINTENANCE CONTRACTS** - includes operation and maintenance of traffic management systems.
- E - BRIDGE SAFETY INSPECTION CONTRACTS** - includes bridge and traffic structure safety inspection.

† The outstanding workload of any certified DBE or SWaM prime and sub-consultant may be reduced up to \$4M and the remainder (>\$0) added to the team's total workload. When a DBE or SWaM firm graduates from the program, their workload incurred while a DBE or SWaM may be reduced up to \$4M for the next three years. Any new work obtained after graduating from the program will be counted.

In determining the final short list, the top ranked firms and their sub-consultants will have their VDOT Consultant Performance Reports reviewed and/or references checked.

ATTACHMENT A**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

subconsultanting; and, if insufficient DBE participation seems likely, evidence as to why additional agreements could not be reached for DBE firms to perform the work;

2. Consultant should, using good business judgment, consider a number of factors in negotiating with subconsultants, and should take a DBE firm's price, qualifications, and capabilities, as well as contract goals, into consideration. However, the fact that there may be some additional costs involved in finding and using DBE firms is not sufficient reason for a Consultant's failure to meet the DBE goal as long as such costs are reasonable and comparable to costs customarily appropriate to the type of work under consideration. Also, the ability or desire of a Consultant to perform the work with its own organization does not relieve the Consultant of the responsibility to make diligent good faith efforts. Consultants are not, however, required to accept higher quotes from DBE firms if the price difference can be shown by the Consultant to be excessive, unreasonable, or greater than would normally be expected by industry standards;
- (e) A Consultant cannot reject a DBE firm as being unqualified without sound reasons based on a thorough investigation of the DBE firm's capabilities. The DBE firm's standing within its industry, membership in specific groups, organizations, associations, and political or social affiliations, are not legitimate causes for the rejection or non-solicitation of bids in the Consultant's efforts to meet the contract goal for DBE participation;
 - (f) Making efforts to assist interested DBE firms in obtaining or related assistance or services subject to the restrictions contained in this Special Provision;
 - (g) Effectively using the services of appropriate personnel from VDOT and from 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 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, at the time of submitting its Proposal, knowingly cannot meet or exceed the required DBE contract goal, The Expression of Interest must include 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 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.

During Negotiation: If a Consultant is unable to attain the DBE goal as a result of negotiation with the Department, consideration will be given to an adjustment DBE goal. However the Consultant will be required to demonstrate that it made a Good Faith Effort to attain the 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

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 subcontractant 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 subcontractant, the prime consultant must give notice in writing to the DBE subcontractant, 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 or subcontracted by the DBE to other DBE firms.
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 H below.

G. Performing a Commercially Useful Function (CUF)

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

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

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

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

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

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

H. Verification of DBE Participation and Imposed Damages

Within fourteen (14) days after subcontract execution between Consultant and DBE subconsultants (or subcontract execution between DBE subconsultants and DBE subconsultants), 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 with 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.