

**REQUEST  
FOR  
PROPOSAL**

**CONSTRUCTION DIVISION  
SUPPORT SERVICES**

**RFP# CD-20160726**



## 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:

Support of the Department's Construction Division on an as-needed basis

**The Contract Amount per Term is \$3,000,000.00**

The Department anticipates awarding multiple contracts to more than one, but not to exceed two qualified prime consultant firms as a result of this Request for Proposal. The contracts will be negotiated and awarded in accordance with the procedure set forth in the current Manual for the Procurement & Management of Professional Services at the time of advertisement.

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.

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.

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.

## PROCUREMENT SCHEDULE

- Expression of Interest Due Date and Time –09/08/2016 at 2:00 PM
- Short List Posted on the VDOT Website – NLT 09/28/2016
- Interviews/Technical Presentations – Week of 10/10/2016
- Final Consultant Selection – NLT 10/24/2016
- Scoping Meeting with Selected Consultant – Week of 10/31/2016
- Selected Consultant Pre-Award Documents Due – NLT 11/10/2016
- Completed Negotiations Agreement Due – NLT 12/02/2016
- Consultant Contract Signed – NLT 12/14/2016

## CONFLICT OF INTEREST:

Organizational and consultant conflicts of interest will be determined in accordance with 48 CFR §9.5.

In addition, the use of the design-build project delivery method on any task orders issued through this contract may result in a potential conflict of interests for the consultant and any of its team members. The consultant and its team members may not be allowed to participate in ANY subsequent contracts (design and/or construction) related to specific tasks assigned as part of this contract. The Conflict of Interest determination will be made in accordance with the Department's policy. The policy is available at:

## SCOPE

The scope of work shall consist of providing professional engineering services as necessary to support the Central Office Construction Division during design, procurement, construction, and post construction phases for activities and work packages produced and administered in accordance with the Construction Division functions. Key Personnel and Functional Personnel anticipated for this contract consist of the requested staffing capable of utilizing the following comprehensive products and performing services for construction and maintenance contracting functions which may include, but are not limited to:

- Consultant Project Manager
- Plan Review/Constructability/Bidability
- Estimating
- Scheduling
- Specifications
- Value Engineering
- Construction Management Information System Administrator
- Local Assistance
- Construction Quality Improvement Program (CQIP) Administration
- Design-Build Contract Administration
- Consultant Engineering & Inspection Training
- In-house Staff Augmentation
- Other Engineering Support Services including Claims Analysis and Contract Review

The firm selected must be able to provide program management, project management and administrative support and all other staff and activities as required to meet the needs of the construction program, including: responding quickly to task assignments; providing appropriate task management, staffing expertise and resources; handling multiple tasks concurrently; and completing assigned tasks on accelerated schedules. Task schedules will be functional area specific and identified when the task is assigned.

The Department reserves the right to assign work from one division, district and/or region to other divisions, districts and/or regions on a temporary basis, when there is a need for the same services in the second division, district and/or region.

## **STAFF FUNCTIONS, FEATURES OF WORK and KNOWLEDGE, SKILLS AND ABILITIES**

### **KEY PERSONNEL**

#### **Consultant Project Manager (Design and Construction)**

**Function:** To serve as the single point of contact and liaison to the Construction Division's contract administrator for all task assignments; coordinates all assignments and assigns knowledgeable personnel for requested tasks; provides consultation, investigations, evaluations, and written documentation in the areas of, but not limited to, constructability/bidability review, shop drawings,

schedule review and value engineering; prepares and submits invoices to the Construction Division contract administrator for work performed on a monthly basis.

Features: Coordinates and assigns Functional Personnel to match the requested task; submits invoices in a manner suitable for input into Cardinal; budget monitoring; assumes responsibility for the performance, training, and actions of the assigned personnel (Functional Personnel); ability to handle multiple priorities; may conduct and lead design and construction related meetings and training sessions, write correspondence; review and recommend design and construction revisions; demonstrates working knowledge of all Functional Personnel: experience with the practical application of engineering procedures in roadway design/construction for design-bid-build and design-build projects.

Knowledge, Skills and Abilities: Experience and expertise in the administration of project/program delivery tasks, leadership roles in the management and delivery of highway construction and maintenance projects with a background in the administration of design, construction, operation and maintenance programs. Considerable knowledge of construction methods, procedures, practices, plans, specifications, estimates, schedules, safety, documentation, and contracts, to include, but not be limited to: materials quality control and quality assurance, environmental compliance, legal implications; working knowledge of VDOT Road & Bridge Specifications & Standards; working knowledge of VDOT business processes as they pertain to construction administration, knowledge and ability to utilize math skills; ability to read and comprehend plans.

### **Plan Reviewer**

Function: To identify constructibility and bidability issues and suggest appropriate solutions during the review of preliminary plans, final plans, and construction plan revisions.

Features: Use extensive experience in construction management, quality control, contract preparation, proposal preparation, and bid letting to ensure constructability, consistency, and cost effectiveness of project designs; thoroughly evaluate preliminary plans, final plans, construction plan revisions, pay items, maintenance of traffic, sequence of construction, permits and all other project documentation; identify omissions, discrepancies, errors, needed clarifications, and unnecessary items; maintain construction estimate; recommend corrections, changes to project documentation and design; attend pre-advertisement conferences and pre-construction meetings; meet all established deadlines; develop required specifications and standards; establish appropriate construction time limits; examine bid documents for conformance with the Code of Virginia; coordinate bid proposals with necessary contract provisions; coordinate contract development to verify that the final construction plans are representative of the pay items, specifications, special provisions and copied notes included in the contract; provide support to VDOT, consultants, contractors, local governments, and the general public in all related areas described above.

Knowledge, Skills & Ability: Thorough knowledge of standard construction means, methods and procedures; knowledge of specifications and contract provisions; knowledge and ability to utilize math skills; ability to read and comprehend plans; ability to communicate orally as well as in writing; ability to draft clear and concise reports; knowledge of the Code of Virginia and Code of Federal Regulations as it relates to plan reviews, constructability reviews, and bidability reviews; extensive highway construction experience involving means and methods, maintenance of traffic, cost estimation, and construction inspection work. Requires technical school certificate or an associate engineering degree.

### **Estimator**

Function: To obtain an accurate estimated cost for the work identified in the contract documents,

including, but not limited to the plans, bid items, and specifications. Make recommendations to award or reject the apparent low bids.

Features: Verify, confirm, and develop a fair and equitable estimated project cost to be utilized as a means of comparison against all bids received at the time of the project letting. Prepare rational estimates that detail the required manpower, equipment, labor, and production rates necessary to complete each unit of work, with concentration on major items that have the greatest potential to drive the total project cost. Must be able to accurately consider project site conditions, maintenance of traffic restrictions, construction duration, time limits, sequences of construction, seasonal limitations, regional conditions, current market conditions, risk, quantities versus price relationships, and inflation to produce the Final Estimate. Individuals performing estimating tasks must be able to keep information confidential and exhibit ethical behavior at all times, and may be required to sign confidentially agreements prior to working on assigned tasks.

Knowledge, Skills, and Abilities: Five years minimum highway construction management or estimation experience. Demonstrated ability to: utilize and update the two (2) Year Bid History database; Apply the RS Means Construction Estimating manuals; Derive equipment costs from the Blue Book of Construction Equipment Rental Rates; Review labor rates from the most current rates as furnished and published by the VA Employment Commission; Research "Material on Hand" reports, individual suppliers, and/or Internet searches to develop material prices. Must have working and operational knowledge of software programs such as **TRNS\*PORT** and **ESTIMATOR**, and **Microsoft Excel**. Experience with both design-bid-build and design-build project estimating is preferred.

### **Specifications Reviewer**

Function: To develop, revise, review, and interpret contract provisions, specifications, special provisions, and special provision copied notes for design-bid-build and design-build contracts. Ensure that VDOT's Road and Bridge Specifications remain current and refreshed on a regular basis and comply with State and Federal statutes and regulations.

Features: Employ principles of engineering and methods of construction for highway transportation projects including preparation of contracts, development of specifications and administration of construction projects. Perform research, analysis, and consultation. Develop technical and legal language, publications, and policy memorandum utilized in statewide construction and maintenance projects. Write specifications and similar contractual or technical documents that include all direction, provisions and requirements necessary for the construction of various types of heavy-civil transportation projects.

Knowledge, Skills, & Abilities: Working knowledge of laws, regulations, rules, and policies controlling state and federally funded heavy-civil transportation construction project procurement and delivery. Working knowledge of contract law, sealed bid contracting, and contract termination. Demonstrated experience providing cost and price analysis, construction management, and contract administration. Working knowledge of roadway and bridge design principles, construction methodologies including equipment, materials, and maintenance of traffic, and the basis for the payment of such work. Excellent oral and written communication skills, ability to organize and analyze data, problem solve as part of a team and individually, develop detailed instructions, correspondence, and memos, minutes, reports, policies and provisions, present information and respond to questions from internal and external stakeholders, collect data, establish facts and draw valid conclusions, and use computer software programs for word-processing, email and Internet research.

## **Value Engineer**

**Function:** To use logic, reason and engineering judgement in an organized approach to breakdown complex problems in a team environment, identify alternative solutions and determine the strengths and weaknesses associated with each.

**Features:** Lead a team to analyze project scoping documents, conceptual design plans, and engineering reports to understand the purpose and need of transportation projects and recommend alternative approaches that result in cost and/ or time savings. Provide advice on life cycle costing, cost analysis techniques, and the cost benefit analysis associated with the project. Requires creative and alternative thinking to develop innovative ideas and cost effective approaches to highway engineering challenges; may recommend improvements in testing equipment and techniques; may conduct basic and applied research to evaluate adaptability of materials and equipment to transportation related projects.

**Knowledge, Skills & Abilities:** Working knowledge of value engineering procedures, highway construction and maintenance terminology and techniques, VDOT, local, state, and federal laws, rules, regulations, policies, and procedures. Ability to apply design and planning principles and practices to complex projects and develop context sensitive solutions; read and interpret highway design plans, including vertical and horizontal alignments, and all geometric design features; apply VDOT Roadway Design Standards and Specifications to highway design projects; arrange and facilitate interactive problem-solving groups; knowledge of information gathering techniques, alternative generation, cost savings evaluation, and presentation; communicate effectively, both orally and in writing, including ability to prepare and give effective, visually-aided briefings and presentations; interact diplomatically with department personnel, public officials, and the general public; and maintain schedules and meet deadlines. Bachelors Degree and a minimum of one-year experience, or equivalent combination of education and experience in Value Engineering. Experience leading multi-disciplined engineering groups in Value Engineering applications. Experience reading and using construction plans.

## **Construction Management Information System Specialist**

**Function:** To provide implementation and user support for SiteManager and/ or VDOT's Project Document Management System.

**Features:** Ensure all routine processes are complete on schedule including the input of metadata, routing of documents for storage, archiving and file restoration. Work with all VDOT departments to provide all technical support as required to deliver documents through web-based interfaces. Convert all existing and new documents as required to reside in the new system. Train users on using SiteManager and the new document management system. Configure, setup, and run routine processes such as metadata input, routing of documents for storage, archiving and file restoration. Monitor all daily backups and reporting produced by the system. Routinely sample backups to ensure backups are executing properly and data is intact. Troubleshoot issues as they arise. Write and maintain operational procedures and troubleshooting procedures.

**Knowledge, Skills & Abilities:** At least three years experience managing a document management system for a mid-sized organization. At least three years experience in a production environment with responsibility for the timely production of business processes and output. Demonstrated ability to consult with staff to determine business requirements, functional requirements and input/output requirements. Demonstrated ability to define and document system requirements for data, workflow, logical processes, interfaces with other systems, auditing and reporting requirements and production configuration using common documentation tools such as Visio, Microsoft Word and Microsoft Excel. Experience with formal, structured, application development processes including the use of

project management documentation, source control software for document management. Ability to read, analyze, and interpret general business documentation, professional journals, technical specifications and project management documentation. Ability to write reports, business correspondence and procedure manuals. Ability to effectively present information and respond to questions from groups of managers, business partners and customers. Demonstrated ability to define problems, collect data, establish facts, draw valid conclusions, and implement solutions.

### **Engineering Support Staff**

**Function:** To support VDOT staff by performing shop drawing reviews, schedule reviews and analysis, CQIP reviews, notice of intent and claims analysis, and contract review/analysis.

**Features:** Provides consultations, investigations, evaluations, and written documentation in the areas of, but not limited to: shop drawing reviews, schedule review and analysis, CQIP reviews, notice of intent analysis and contract review/analysis as requested by VDOT.

**Knowledge Skills and Abilities:** The Engineering Support Staff shall be under the supervision of a Virginia licensed P.E. having a minimum of 10 years of experience in the practice of engineering. The engineering support staff shall represent a diverse knowledge base and be able to demonstrate experience planning and design of public or private utilities, structures, and roadways, relocating private and public utilities, and administering a vast array of highway construction projects. Construction experience should include locally administered projects, maintenance projects, VDOT administered Tier 1 projects, VDOT administered Tier 2 projects, and design-build projects.

### **FUNCTIONAL PERSONNEL**

The Department reserves the right to issue task orders under this contract for traditional construction engineering and inspection services. Functional Personnel may include, but are not limited to the following classifications: Construction Inspector Seniors, Construction Inspectors, and Construction Inspector Trainees. Although consultants are not required to identify Functional Personnel in the organizational chart included in the EOI, they should be able to demonstrate that their team has Functional Personnel available to meet the needs of the Department. Resumes of Functional Personnel should not be included with the EOI.

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 Jeff Rodgers 804-786-2552 or email Jeff.Rodgers @VDOT.Virginia.gov.

### **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 2-18
  - 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 18
- 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 (if applicable)

(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 resumes in SF 330 Part I, Section E (Resumes of Key Personnel Proposed for This Contract). 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 five (5).
6. In SF 330 Part I, Section G (Key Personnel Participation in Example Projects), limit example projects to no more than five (5). 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 demonstrate relevant qualifications, capacity, and capability in performing the Scope of Services and specifically address items 11, 12, 13, 14, and 15 indicated below. Section H of SF 330 Part I is limited to a maximum of twenty (20) 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. This is the ONLY section of the submission which may include pictures or graphics (included in the twenty page limit).
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 Department believes that these services support 10% DBE participation.

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, 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 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 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 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](mailto: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 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 C 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. **TEAM'S EXPERIENCE PROVIDING SIMILAR TYPES OF SERVICES**

Demonstrate the Consultants' expertise and experience in the following areas:

- Managing, administering, and providing construction engineering management support services for a wide variety of highway construction and maintenance projects utilizing design/build and design/bid/build delivery.
- Specialized competence related to all aspects of construction and materials quality control and quality assurance requirements, maintenance of traffic, and construction operations on transportation projects
- Managing and analyzing construction and field issues and determining appropriate responses to these situations in a timely manner
- Experience providing services associated with preconstruction activities on construction and maintenance contract, including but not limited to, Plan Review, Constructability, Bidability, Estimating, Specifications Development, and Value Engineering
- Experience performing Project Controls functions (cost, quality and schedule).
- Developing policies and/ or guidance documents that promote the consistent administration of a statewide program

12. **PERSONNEL'S EXPERIENCE IN PROVIDING SIMILAR TYPES OF SERVICES**

Demonstrate the Key Personnel's relevant experience in the following areas:

- Managing, administering, and providing construction engineering management support services for a wide variety of highway construction and maintenance projects utilizing design/build and design/bid/build delivery.
- Specialized competence related to all aspects of construction and materials quality control and quality assurance requirements, maintenance of traffic, and construction operations on transportation projects
- Managing and analyzing construction and field issues and determining appropriate responses to these situations in a timely manner
- Experience providing services associated with preconstruction activities on construction and maintenance contracts, including but not limited to, Plan Review, Constructability, Bidability, Estimating, Specifications Development, and Value Engineering
- Developing policies and/ or guidance documents that promote the consistent administration of a statewide program

13. **QUALIFICATIONS OF THE CONSULTANT PROJECT MANAGER**

Demonstrate the Consultant Project Manager's relevant experience in the following areas:

- Leading and managing similar staff augmentation contracts for government agencies.
- Administering the construction of significant transportation infrastructure projects.
- Communicating effectively, both orally and in writing, with the Department's Project Manager/Contract Administrator

- Presenting detailed information in an easy to understand format to a diverse group of stakeholders.
- Coordinating the activities and efforts of a large organization/team that includes numerous consultants, contractors, and VDOT staff that represent a wide array of disciplines involved in the development, design, and construction of transportation projects.
- Identifying, addressing, and otherwise resolving project challenges, disputes and all administrative issues affecting the successful completion of the tasks
- Identifying and mitigating items of potential risk
- Organizing documentation for consultant contracts to clearly illustrate tasks assigned, work performed, and amounts billed on a monthly basis

14. **ORGANIZATIONAL CAPABILITY**

Demonstrate the Consultant's capability in the following areas:

- Experience that clearly supports each consulting firm's proposed role and associated responsibilities and demonstrates how each firm's capabilities can be best utilized by VDOT.
- Provide a narrative detailing how the proposed team will work together to successfully deliver assignments within budget and on schedule.
- Describe the processes and tools that will be used to manage staffing considerations, cost controls, and assignment schedules for work performed under this contract.
- Describe how you will manage the task assignments requiring quick turnaround times on deliverables with short notice.
- Describe how the individual firms on the proposed team have worked together in the past and/or will work together to complete tasks assigned by VDOT.
- Describe which proposed individuals are available to work full time out of VDOT's Central Office located in Richmond, VA.

15. **PROGRAMMATIC APPROACH**

One of the key initiatives of the Construction Division in the first term of this consultant contract will be the development of a single, cohesive construction administration manual. In three (3) pages or less:

- Identify three (3) critical weaknesses with VDOT's current construction administration guidance documents.
- Discuss why each weakness is critical.
- Indicate the consultant team's approach for addressing each weakness in the new manual

16. 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.

17. 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.
18. 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 Plan Reviews ____	Materials Analysis ____
Permit Drawings <u>X</u>	Environmental <u>X</u>
Hydraulic and Hydrologic Analysis <u>X</u>	Road Plan Reviews ____
Traffic Data <u>X</u>	Traffic Analysis <u>X</u>
Signs and Signals Plan Reviews ____	Lighting Plan Reviews ____
Scour Analysis <u>X</u>	Geotechnical Borings and Analysis <u>X</u>
Utility Plan Reviews ____	Landscape Plan Reviews ____

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 1%; 0.5% 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/gmpms.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 2:00 PM (local time prevailing) on 09/08/2016. 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 2:00 pm, 09/08/2016. 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 (').

File names should follow the format: RFPNo\_Firm Name.pdf.

For Example: **CD-20160726\_Jones Engineering.pdf**

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: Jeff Rodgers

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](mailto: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:   F   (S=State F=Federal)

Project No.:   RFP CD-20160726  

Division:   Construction Division  

EOI Due Date:   September 8, 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 Department of Small Business and Supplier Diversity

**CERTIFICATION REGARDING DEBARMENT**

**PRIMARY COVERED TRANSACTIONS**

**(To be completed by a Prime Consultant)**

Project: Construction Division Support Services

- 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: Construction Division Support Services

- 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.

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Signature

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Date

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Title

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Name of Firm

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

DIVISION: CONSTRUCTION

EOI NO.: \_\_\_\_\_

PROJECT: CD-20160726 FIRM: \_\_\_\_\_

DESCRIPTION: CONSTRUCTION DIVISON SUPPORT SERVICES 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					20%	
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					35%	
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 subconsultants) (1=least, 10=most)	1-10					10%	
PROGRAMMATIC APPROACH (Identification and explanation of critical weaknesses, and approach to addressing each) (1=least, 10=most)	1-10					15%	
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 ___ workload is counted on this selection*)	Above \$4,000,000 3,500,001-4,000,000 3,000,001-3,500,000 2,500,001-3,000,000 2,000,001-2,500,000 1,500,001-2,000,000 1,000,001-1,500,000 750,001-1,000,000 500,001-750,000 250,001-500,000 0-250,000	0 1 2 3 4 5 6 7 8 9 10				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,.
- 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”**  
Employment Commitment Letter

Date:

To:  
Firm Name:  
Address:

Reference – Employment Commitment For

This letter is my commitment to your firm that should your firm become successful in obtaining a contract for construction inspection with the Virginia Department of Transportation I will be available to begin employment upon execution of the referenced inspection services contract.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

**GOOD FAITH EFFORT**  
(Federally Funded Project with DBE Goal)

The Department will be accepting what consultants submit in their Expressions of Interest regarding good faith efforts. If a firm that has submitted good faith effort documentation makes the short list, the procuring Division Administrator (cannot be delegated unless he/she will be out of the office for more than 5 work days) along with a representative of the EO Division will determine if the good faith effort is acceptable.

When there is a contract goal, a consultant must make good faith efforts to meet it. The consultant can do so either through obtaining enough DBE participation to meet the goal or documenting the good faith efforts it made to do so. These means of meeting contract goal requirements are fully equivalent. 49 CFR Part 26 (the Rule) explicitly provides that the Department must not disregard showings of good faith efforts, and it gives consultants the right to have the Department reconsider a decision that their good faith efforts were insufficient. The Department is prohibited from denying a contract to a consultant simply because it did not obtain enough DBE participation to meet the goal. The Department must seriously consider consultants' documentation of good faith efforts. To make certain that consultants' showings are taken seriously, the Rule requires the Department to offer administrative reconsideration to consultants whose good faith efforts showings are initially rejected.

The Rule also ensures flexibility for consultants by requiring that any contract goal be waived entirely for a prime consultant that demonstrates that it made good faith efforts but was still unable to meet the goal.

When the Department sets a contract goal, the basic obligation of consultants is to make good faith efforts to meet it. They can demonstrate these efforts in either of two ways, which are equally valid. First, they can meet the goal, by documenting that they have obtained commitments for enough DBE participation to meet the goal. Second, even though they have not met the goal, they can document that they have made good faith efforts to do so. A refusal by the Department to accept valid showings of good faith is not acceptable under the Rule.

The Rule makes clear that the Department is not to use a "conclusive presumption" approach, in which the apparent successful consultant is summarily found to have failed to make good faith efforts simply because another consultant was able to meet the goal. However, the performance of other consultants in meeting the contract can be a relevant factor in a good faith effort determination, in more than one way. For example, when the apparent successful consultant fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful consultant could have met the goal. It does not, by itself, prove that the apparent successful consultant did not make a good faith effort to get DBE participation, however. On the other hand, if the apparent successful consultant fails to meet the goal, but meets or exceeds the average DBE participation obtained by other consultants, the Department may view this, in conjunction with other factors, as evidence of the apparent successful consultant having made good faith efforts.

The fact that some additional costs may be involved in finding and using DBEs is not in itself sufficient reason for a consultant's failure to meet a DBE contract goal, as long as such costs are reasonable.

If the Department determines that the apparent successful consultant has failed to meet the requirements of a good faith effort, the Department must, before awarding the contract, provide the consultant an opportunity for administrative reconsideration. The Department intends that the process be informal and timely. The Department will ensure that the process is completed within a brief period (e.g., 5-10 days) to minimize any potential delay in procurements. The consultant will have an opportunity to meet with the reconsideration official, but a formal hearing is not required. As part of this reconsideration, the consultant must have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Department's decision on reconsideration will be made by an

official who did not take part in the original determination that the consultant failed to meet the goal or make adequate good faith efforts to do so. The consultant must have the opportunity to meet in person with the reconsideration official to discuss the issues of whether it met the goal or made adequate good faith efforts to do so. The Department will send the consultant a written decision on reconsideration, explaining the basis for finding that the consultant did or did not meet the goal or make adequate good faith efforts to do so. The Department's reconsideration personnel consist of the Commissioner's DBE Review Panel.

It is up to the Department to make a fair and reasonable judgement whether a consultant that did not meet the goal made adequate good faith efforts. It is important for the Department to consider the quality, quantity, and intensity of the different kinds of efforts that the consultant has made. The efforts employed by the consultant should be those that one could reasonably expect a consultant to take if the consultant were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. The Department's determination concerning the sufficiency of the firm's good faith efforts is a judgement call: meeting quantitative formulas is not required.

If DBE is prime, they will be allowed to count toward goals the work they commit to performing with their own forces, as well as the work that they commit to be performed by DBE subcontractors. DBE consultants on prime contracts will be expected to make the same outreach efforts as other consultants.

When a DBE participates in a contract, the Department will count only the value of the work actually performed by the DBE toward DBE goals. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals. Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE 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 involved, you must presume that it is not performing a commercially useful function. If a DBE firm loses certification, its work no longer counts toward the DBE goal.

All consultants will be required to submit the following information to the Department with the EOI:

- The names and addresses of DBE firms that will participate in the contract;
- A description of the work that each DBE will perform;
- The percentage amount of the participation of each DBE firm participating;
- Written documentation of the prime consultant's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
- Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
- If the contract goal is not met, evidence of good faith efforts.

The Department has prepared a list based on Federal Regulations of some of the kinds of efforts that consultants may make in obtaining DBE participation. It is not intended to be a mandatory checklist. The Department does not require that a consultant do any one, or particular combination, of the things on the list, nor is the list intended to be exclusive or exhaustive; it merely offers examples. Other factors or types of efforts may be relevant in appropriate cases. In determining whether a consultant has made good faith efforts, it will usually be important for the Department to look not only at the different kinds of efforts that the Consultant has made, but also of the timeliness, quantity, and intensity of these efforts.

The Department offers the following examples of efforts that may be considered:

A. Soliciting through all reasonable and available means (e.g., attendance at project showings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The consultant must solicit this interest within sufficient time to allow the DBEs to participate effectively. The consultant must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime consultant might otherwise prefer to perform these work items with its own forces.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract.

D. (1) Negotiating in good faith with interested DBEs. It is the consultant's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

D. (2) A consultant using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's costs, 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 DBEs is not in itself sufficient reason for a consultant's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime consultant to perform the work of a contract with its own organization does not relieve the consultant of the responsibility to make good faith efforts. Prime consultants are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations {for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority community organizations; minority contractors' groups; local, state, and Federal minority business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.