

# Network for Success Local Programs Workshop



## Federal Procurement Requirements Breakout Session #5 A Track – Federal Program Requirements

**Jeff Rodgers**- Consultant Services Program Manager

**Patrick Hughes**- Consultant Services Contract Manager

**Richard Britton**- Locally Administered Projects Program Manager

**Olayiwola Okesola, P.E.** - Central Office Civil Rights Manager

**Robert Siegfried**- Environmental Manager

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**Patrick Hughes**- Consultant Services Contract Manager  
Environmental Division, VDOT

## **Federal Procurement Requirements & “Home” Rule**

**For Federal-aid highway program funding, States and local public agencies are required to procure engineering and design related services in accordance with the qualifications based selection procedures prescribed in the Brooks Act (40 U.S.C. 1101 et seq.);**

**and to accept and apply consultant indirect cost rates established by a cognizant Federal or State agency in accordance with the Federal Acquisition Regulation (FAR) cost principles (48 CFR part 31).**

## Define – What are professional services? What does the Code say?

### Code (VPPA) defines 12 areas as professional:

- **Accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, economist, medicine, optometry, pharmacy and professional engineering.**

### Examples of professional services:

- **NEPA Environmental Studies; Bridge safety and construction engineering inspections; Geotechnical; Hydrologic and hydraulic studies; Right of way engineering; Engineering and design related services directly related to a highway construction**

## Define – What are non-professional services?

**Code (VPPA) defines non-professional services as any services not specifically identified as professional services.**

### **Examples of non-professional services:**

- **Appraisal Services; Training; Traffic Monitoring Systems; Stream/Wetland Credits; Meteorological Forecasting; Hazardous Materials Services; Staff Augmentation.**

# What is consulting? And where does consulting fit?

**Consultants provide information, assistance, and guidance of a purely advisory nature, usually in the form of a report or other deliverable.**

**Consultant services are contracted either via the professional or non-professional method, depending on the type of consultant service.**

## What is the same for professional and non-professional services procurement?

- **Both are a qualifications based selection process.**
- **Both procurement methods employ use of an RFP.**
- **Both procurement methods employ use of a selection committee or panel.**
- **Both procurement methods employ use of scoring criteria.**
  - **Subjective, but based on facts as presented in the offerors proposal.**

# What are some of the differences for professional and non-professional services procurement?

## Price

- **For professional services price is not evaluated. There is no scoring criteria for price in the RFP.**
- **For professional services price is consider after one Offeror is selected.**
- **The Code requires an advance determination that the non-professional services RFP process is fiscally advantageous.**
- **For non-professional services price is evaluated for all proposals and price has a scoring weight in the RFP.**

# What are some of the differences for professional and non-professional services procurement?

## Hourly Rates:

**Professional – Actual Cost plus FAR overhead and Net Fee.**

**Non-Professional – Fully Loaded Billable.**

**Note: Travel and Other Direct Expenses at billed at actual cost.**

## What are some of the differences for professional and non-professional services procurement?

### SWAM/DBE

- For professional services there is not a scoring criteria for SWAM/DBE in the RFP; Goals are stated or we believe this project supports \_\_\_\_% DBE participation.
- For non-professional services SWAM/DBE is evaluated and has a scoring weight in the RFP.

## What are some of the differences for professional and non-professional services procurement?

- **Award Document – the contract templates, or form, are quite different between professional and non-professional.**
- **The “T’s and C’s” are quite different.**
- **APSPM contract form for non-professional vs. the Departments’ MOA templates for professional services.**

## Contract Administration

- **Invoice Review – pretty much the same, checking Rates and Pay Items for contract compliance.**
- **Monitoring of Maximum Compensation and Schedule – pretty much the same; we manage to the contract language.**
- **Performance Evaluation's – we evaluate every six months, although two different forms are used.**

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**Richard Britton**- Locally Administered Projects Program Manager  
Scheduling & Contract Division, VDOT

- Clearly Define Work
- Specification
  - **Use VDOT Standards and Specifications when possible and applicable**
  - **Mandatory Federal-Aid Provisions**
    - **Form FHWA-1273**
    - **Requirement for Affirmative Action (Executive Order 11246)**
    - **Buy America**
    - **Plus Others...**

## **Bid Document (continued)**

- **Specification (continued)**

- **Bid items adequately described**

- **Materials**
    - **Equipment**
    - **Procedures**
    - **Measurement and Payment**

## **Bid Document (continued)**

- **Bid Form**
- **Required Forms**
- **Use VDOT Pre-Qualified Contractors for Traditional Highway Construction**
- **Avoid Sole Source Products / Proprietary Products**
- **Negotiation is not allowed on Federally Funded Projects between the receipt of bids and the award**
- **Adequate Construction Time Limit**
- **Current Estimate – Consider cost of Labor, Equipment, Materials, & Production Rate**

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## Advertisement

- **Authorization to Advertise is Required**
- **Locality submit PS&E package to VDOT**
- **Locality addresses all review comments**
- **VDOT Request FHWA Authorization to Advertise**
- **Authorization is granted to Advertise**
- **District Project Coordinator notifies Locality to advertise**
- **Advertise for Minimum 21 Days**

## Award

- **Authorization to Award is Required**
- **Locality Receives, Opens & Publicly Reads Bids**
- **Analyze Bid & Compare to Estimate (without CEI & Contingency)**
- **Submit Award Package to District Coordinator**
- **District Civil Rights Verifies Contractor met DBE Requirements**
- **District and Scheduling & Contract reviews Award Package**
- **Availability of funds is verified based on low bid**
- **Authorization is given to award**

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## Federal Procurement Requirements Breakout Session #5 A Track – Federal Program Requirements

**Olayiwola Okesola, P.E.** - Central Office Civil Rights Manager  
Civil Rights, VDOT

## Task/Submittal/File Documentation

- **Project Estimate / Bid Proposal Document**
  - **Submit Scope of Work**
  - **Submit Estimate**
- **DBE Goal**
  - **20 Business Days to complete**
  - **Bid proposal does not need to accompany estimate**
  - **No goals set on projects less than \$100K.**

## DBE Goal Setting

- **Detail Estimate**
  - **Location of project by coordinates**
  - **Cost of each Item to be constructed**
  - **Total dollar value of the project**
- **Verify the location of the project**
- **DBE  $\neq$  SWaM**
- **DBE (Federal Designation)**
- **SWaM (State Designation)**
- **Certified by Department of Minority Business Enterprise (DMBE) and Metropolitan Washington Airports Authority (MWAA)**

## DBE Goal Setting

### Guidelines for Determining DBE Goals on Projects

- Calculate the total value (sum) of the selected items determined constructible by DBEs
- Calculate the total percentage of the gross (unadjusted) DBE goal for the project

**Example:** 
$$\frac{\text{Total Dollar Value of Selected Items}}{\text{Total Value of the Contract}} = \text{Unadjusted Gross DBE Goal}$$

## DBE Goal Setting

### Guidelines for Determining DBE Goals on Projects

- **Analyze the results of this calculation considering:**
  - **Projects currently under construction**
  - **New, upcoming, and currently advertised projects**
  - **Historical performance of prime contractors on similar projects**
  - **Type of work activities considered**
  - **Cost (dollar value) of the work activities**
  - **Availability of DBEs who are ready, willing, and able to bid on the project**
- **Adjust the goals in accordance with the results of the aforementioned analysis**

## Pre-Award

- **After bid opening, locality submits a letter of recommendation of award to the VDOT Project Manager.**
- **Project Manager will provide the District Civil Rights Office with DBE goal attainment documentation.**
- **District Civil Rights Office will provide response to PM and locality regarding concurrence of recommendation.**

## Pre-Award

- **If bidder submits required documents late, bid may be rejected.**
- **Guidelines laid out in Special Provision 107.15.**
- **If the lowest bidder is rejected the Locality may either award the work to the next lowest bidder, or re-advertise project.**
- **Commonwealth Transportation Board has final say.**
- **To award a contract to a bidder who didn't meet DBE contract goal, the Locality will determine if the bidder made a good faith effort.**

## Good Faith Efforts Guidelines

**Include the following completed forms:**

- Form C-111 – Minimum DBE Requirements**
- Form C-112 – Certification of Binding Agreement**
- Form C – 48 - Subcontractor/Supplier Solicitation and Utilization Form**
- Form C-49 – Summary of GFE Documentation**
- Copy of the Request for Bid Solicitation to DBEs**
- Solicit through reasonable and available means, such as but not limited to:**
  - **Advertising in at least one daily newspaper**
  - **Phone contact including the date and time called, and contact**
  - **Internet contacts with supporting documentation**

## Good Faith Efforts Guidelines

- ☑ Solicit DBEs no less than five (5) business days before the bids are due.**
  - ☑ Follow up initial solicitations as evidenced by documentation (form C-49).**
  - ☑ Select portions of the work to be performed by DBEs in to increase DBE participation.**
- 
- Breaking out contract work items into smaller packages to facilitate DBE participation.**
  - Setting aside work for DBEs that the prime can self-perform.**

## Good Faith Efforts Guidelines

- Provide DBEs with plans, specifications, and requirements of the contract in a timely manner.**
- Provide names, addresses, and telephone numbers of DBEs that were considered for the solicitation.**
- If DBE participation is low, evidence why additional DBEs could not be reached to perform the work.**

## Good Faith Efforts

- For DBE bids declared non-competitive, include copies of DBE and non-DBE bid quotes.
- DBE quotes may be rejected as non-competitive if the DBE quote is more than 10% higher than the non-DBE's quote.
- The prime must contract with the non-DBE sub when declaring a DBE firm non-competitive.
- Offered assistance to DBEs in obtaining bonding, lines of credit, or insurance.
- Offered assistance to DBEs with information about securing equipment, supplies, materials, or related services.

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# Questions?



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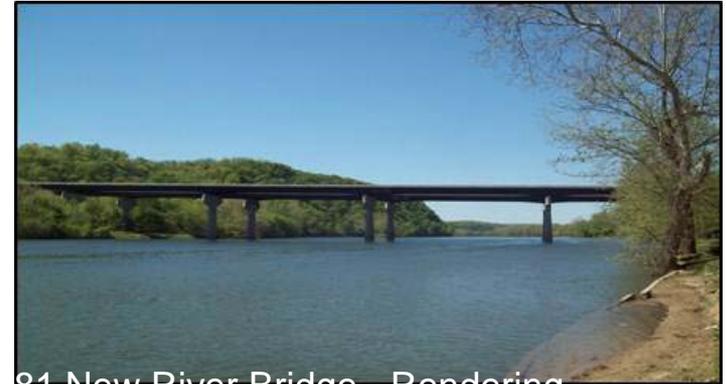
## Federal Procurement Requirements Breakout Session #5 A Track – Federal Program Requirements

**Robert Siegfried**- Environmental Manager, Vice President  
Whitman Requardt & Associates, LLP

## Types of Contracts WR&A Submits on?

### VDOT & Locally Administered Projects

- Professional Services
- Non-Professional Services
- Design / Build
- PPTA



### Areas Of Expertise For The Contracts

- Engineering – Roadway, Bridges, Utility Relocation, Drainage, Geotech, Traffic
- Environmental – NEPA Documents, Wetland Permitting & Monitoring
- Construction Management and Inspection

### Prime and Sub

- WR&A has been selected primarily as Prime Engineering Firm but also routinely as a sub

# Types of Contracts WR&A Is Currently Working On ?

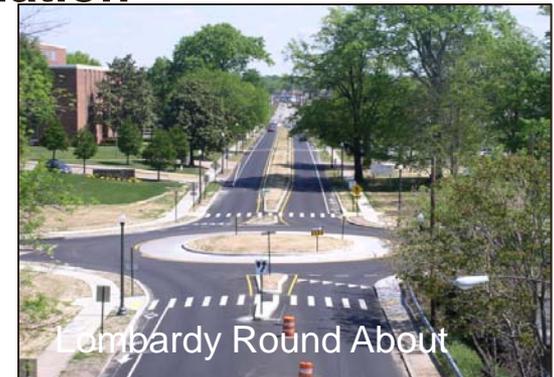
## VDOT ENVIRONMENTAL

- **NEPA On-call, Statewide (Professional)**
- **Wetlands Monitoring and Maintenance (Non-Professional)**

## VDOT ENGINEERING (Professional)

- **Location and Design NOVA District On-Call – Transportation Engineering**
- **Location and Design Statewide On-Call – Transportation Engineering**
- **Bridge Maintenance and Repair Engineering**
- **I-81 Bridge over New River “Turnkey Design”**
- **Statewide Utilities Relocation & UFI Coordination**
- **Construction Management and Inspection**

## SEVERAL LOCALLY ADMINISTERED PROJECTS



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## Preparing Submittals For VDOT For Professional Services

- **Uniformity of VDOT Proposals is a Positive**
  - Formatting
  - DBE/SWaM Goals
  - Clear Scope of Services
  - Clear Scoring Criteria
- SF 254 and SF 255 Forms Required
- Short List and Presentation Process is Very Competitive
- No Detailed Approach, Scope or Costs Required

## Qualification Based Selection (QBS)

<b>STANDARD FORM (SF) 255</b> <small>Approval Expense and Revenue Statement - Commonwealth VA</small>	<b>1. Project Name, Location for which Firm is Bidding</b>  VDOT Statewide Environmental Documents And Related Services RFP #032012	<b>2a. Commence Business</b> Daily Announcement Date, if any	<b>2b. Agency Identification</b> Number, if any																																
<b>3. Firm (or Joint-Venture) Name &amp; Address</b>   Whitman, Requardt & Associates, LLP 3703 Pender Drive, Suite 450 Fairfax, Virginia 22030 Phone: (703) 293-9717 • Fax: (703) 273-6773		<b>3a. Name, Title &amp; Telephone Number of Principal to Contact</b>  <b>Amanda Baxter - Vice President - (703) 293-9717</b> <b>John Maddox, PE - Senior Vice President - (804) 272-8700</b>  <b>3b. Address of office to perform work, if different from item 3</b>																																	
<b>4. Personnel by Discipline (List each person only once, by primary function.) Enter proposed consultant personnel to be utilized on this project on line (A) and in-house personnel on line (B).</b>  <table border="1"> <tr> <td>(A) 1 (B) 130 Administrative</td> <td>(A) 2 (B) 59 Drivers/CAD Operators</td> <td>(A) (B) 18 Hydrologists</td> <td>(A) (B) 14 Soils Engineers</td> </tr> <tr> <td>(A) (B) 80 Architects</td> <td>(A) (B) 17 Ecologists</td> <td>(A) (B) 17 Interior Designers</td> <td>(A) (B) 15 Specification Writers</td> </tr> <tr> <td>(A) (B) 80 CAD System Specialists</td> <td>(A) (B) 43 Electrical Engineers</td> <td>(A) (B) 2 Landscape Architects</td> <td>(A) (B) 30 Structural Engineers</td> </tr> <tr> <td>(A) (B) 3 Chemical Engineers</td> <td>(A) 54 (B) 42 Environmental Scientists</td> <td>(A) (B) 75 Mechanical Engineers</td> <td>(A) (B) 10 Surveyors</td> </tr> <tr> <td>(A) (B) 132 Civil Engineers</td> <td>(A) (B) 18 Estimators</td> <td>(A) 4 (B) 2 Home and Air Analysts</td> <td>(A) 1 (B) 12 Traffic Engineers</td> </tr> <tr> <td>(A) (B) 7 Computer Programmers</td> <td>(A) (B) 6 Geologists</td> <td>(A) (B) 18 Planners, Urban/Regional</td> <td>(A) 2 (B) 42 Transportation Engineers</td> </tr> <tr> <td>(A) (B) 112 Construction Inspectors</td> <td>(A) 2 (B) 4 Civil Analysts</td> <td>(A) (B) 2 Railroad Engineers</td> <td>(A) 1 (B) 200 Other Support Staff</td> </tr> <tr> <td>(A) 3 (B) 44 Cultural Resources</td> <td>(A) (B) 8 Graphic Artists</td> <td>(A) (B) 31 Utility Engineers</td> <td>(A) 20 (B) 1,001 Total Personnel</td> </tr> </table>				(A) 1 (B) 130 Administrative	(A) 2 (B) 59 Drivers/CAD Operators	(A) (B) 18 Hydrologists	(A) (B) 14 Soils Engineers	(A) (B) 80 Architects	(A) (B) 17 Ecologists	(A) (B) 17 Interior Designers	(A) (B) 15 Specification Writers	(A) (B) 80 CAD System Specialists	(A) (B) 43 Electrical Engineers	(A) (B) 2 Landscape Architects	(A) (B) 30 Structural Engineers	(A) (B) 3 Chemical Engineers	(A) 54 (B) 42 Environmental Scientists	(A) (B) 75 Mechanical Engineers	(A) (B) 10 Surveyors	(A) (B) 132 Civil Engineers	(A) (B) 18 Estimators	(A) 4 (B) 2 Home and Air Analysts	(A) 1 (B) 12 Traffic Engineers	(A) (B) 7 Computer Programmers	(A) (B) 6 Geologists	(A) (B) 18 Planners, Urban/Regional	(A) 2 (B) 42 Transportation Engineers	(A) (B) 112 Construction Inspectors	(A) 2 (B) 4 Civil Analysts	(A) (B) 2 Railroad Engineers	(A) 1 (B) 200 Other Support Staff	(A) 3 (B) 44 Cultural Resources	(A) (B) 8 Graphic Artists	(A) (B) 31 Utility Engineers	(A) 20 (B) 1,001 Total Personnel
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<b>5. If submittal is by JOINT VENTURE list participating firms and outline specific areas of responsibility (including administrative, technical and financial) for each firm. (Attach SF 254 for each if not on file with Procuring Office.)</b>																																			
5a. Has this joint venture previously worked together? <input type="checkbox"/> yes <input type="checkbox"/> no																																			

# How Could The Offeror Make The Request For Proposal Better?

## Focus on Selecting the Highest Qualified Engineer

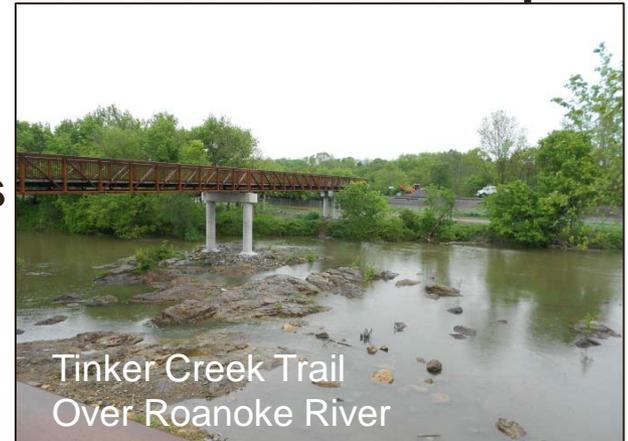
- **Sufficient Time To Prepare Proposal**
  - 4 weeks minimum,
  - 6-8 weeks for larger projects
- **Standardized Format**
  - SF 330 or SF 254
- **Page Limits**
  - Focus on Quality not Quantity of information
- **Provide Clear Scoring Criteria**
  - Helps Us Build Best Team and Focus Content of Proposal
- **Number of Firms to be Selected**
  - May Encourage More Firms To Submit If More Than One Contract



# How Could The Offeror Make The Request For Proposal Better?

## Focus on Selecting the Highest Qualified Engineer

- **Documentation of Professional Registration**
  - **Keep Simple, Avoid Paper Work Exercise**
- **Identifying The Most Likely Services Required**
  - **Avoid Laundry Lists Which Can Inflate Size of Teams And Proposals**
- **Do Not Require A Detailed Project Approach**
  - **Focus on Experience with Similar Projects Unless it's a Unique Project**
- **Do Not Require Cost Information**
  - **Focus on Qualification of Firms/Teams**
  - **Follow State Procurement Codes and Regulations**



Tinker Creek Trail  
Over Roanoke River

# Potential Issues with Locally Administered Project RFPs

- **Federally Funded Projects**
  - **Federal Requirements for Audits, Environmental, ROW, and Wages**
- **RFPs Written for Construction**
  - **Extraneous Language about Construction Creates Confusion**
- **Indemnification Clauses**
  - **Insurability and Fairness**



## Indemnification Clauses

- **Is Your Indemnification Clause Insurable?**
- **Words Like “Defend” And “Warranty” Are Not Insurable**
- **Engineers Are Liable For Their “Negligent” Acts, Not “Any And All”**
- **“...Claims of Any Kind...”**
- **Requirement To Agree To Contract Language As Part Of Proposal Is Costly for each Engineer Submitting Proposal**

**Risky Indemnification Clause May Deter Well  
Qualified Firms From Submitting**

## Prime vs. Sub Roles

### Deciding to be a Prime

- **Right Project Manager**
- **History Working With Offeror**
- **Availability of Staff To Deliver On Schedule**
- **Strength In Providing Requested Services**
- **Amount of Risk**

### Deciding to be a Sub

- **Ability to Meet Specific Requirement of RFP**
- **Teaming Relationships with Other Firms**
- **Ability to Provide Additional Resources to Team**

**Assemble the Most Qualified  
Team for the Project**



# Decision to Submit Proposals On Locally Administered Contracts

## Qualifications

- **Project Manager**
- **Experience on Similar Projects**
- **Availability of Key Staff**
- **Location**
- **Familiarity with Client**

## Business Decision

- **Size of Contract and Number of Firms Selected**
- **Risk of Contract (insurability)**
- **Complexity of Submission**
- **Availability of Marketing Staff**
- **Type of Contract**
- **Profitability**
- **Tasks Assigned by Qualifications Not By Bidding Services**

## The Process Is Working Well !!

- **Current Process is Working Well**
- **Our Suggestions are to Improve the Process**
- **We All Benefit from a Fair Competitive Process**
- **We are Partners in the Delivery of Transportation Improvements Across the State**

